

6974 Liberty



STATE of SOUTH CAROLINA

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ATTORNEY GENERAL

Office of the Attorney General
Columbia 29211

August 10, 2000

By Facsimile

The Honorable Hugh K. Leatherman, Sr.
1817 Pineland Avenue
Florence, South Carolina 29501

Dear Senator Leatherman:

You have asked for an opinion concerning the following situation:

[s]everal candidates have received donations from a legislative caucus committee on two different dates, during an election cycle that total \$4,500. These candidates have determined that they do not need the donations and wish to return the entire amount to the legislative caucus. Is there any section in the *Ethics, Government Accountability, and Reform Act* or any other law that you know of prohibiting the return of these campaign contributions by those candidates to the contributor.

Law/Analysis

Typically, this would be a question for the Senate Ethics Committee and, under normal circumstances, we would defer to that Committee. However, you have advised that you are Chairman of that Committee, and there could be an obvious conflict of interest by the Committee's response. Therefore, in this unusual and pressing circumstance, we will provide you with an advisory opinion.

There are several provisions of the Ethics Act which are relevant to your inquiry. S.C. Code Annotated Section 8-13-1322(A) prohibits any person from contributing "to a committee and a committee may not accept from a person contributions aggregating more than three thousand five hundred dollars in a calendar year." On the other hand, §8-13-1316(A) provides that within an election cycle, a candidate may not accept or receive contributions from a political

Request Letter

party through its party committees or legislative caucus committees which total in the aggregate more than : (1) fifty thousand dollars in the case of a candidate for statewide office; (2) five thousand dollars in the case of a candidate for any other office.

In the situation which you have outlined, the question is whether the return of the money to the legislative caucus committee is a "contribution" in the amount of more than \$3,500 in violation of §8-13-22(A). In our opinion, it is not.

Section 8-13-1300(7) defines the term "contribution" in pertinent part as "a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, in advance, in-kind contribution, expenditure, a deposit of money, or anything of value made to a candidate or committee to influence an election....."(emphasis added).

A simple return of the money in its entirety, which was legally given to the candidate in the manner you have described, is not a "contribution" because it is not intended to "influence an election." As you have outlined, the money is returned in whole simply because it is not needed. No earmarking for expenditure on a particular race or election is made. As far as the candidate returning the money is concerned, the sum could be used by the committee for any valid purpose. In our view, the mere return of money which was legally give in the first place cannot be made illegal by that return.

Moreover, common sense dictates that candidates do not typically contribute to legislative caucus committees. The candidate is usually looking for money from a committee not seeking to contribute to that committee. It defies all logic to think that simply by returning to a committee what was contributed by it to the candidate because it is not needed, one is himself making a "contribution" to that committee.

Accordingly, in our opinion, the circumstances you describe do not constitute a "contribution" for purposes of §8-13-1322(A) and thus the \$3,5000 limitation is not applicable. In other words, there is no violation of the Ethics Act here.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Charlie Condon', written in a cursive style.

Charlie Condon
Attorney General