



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 27, 1995

The Honorable Carole C. Wells
Member, House of Representatives
104 Spring Valley Drive
Spartanburg, South Carolina 29301

RE: Informal Opinion

Dear Representative Wells:

As you were advised by letter of March 9, 1995, your opinion request made to Attorney General Condon dated February 13, 1995, was referred to me for research and response. You asked whether or not it would be proper for a local Fire District Commission to attempt to organize a "Special Purpose District Lobby" on a local basis using department funds for postage, stationery, and the like. Because no specific special purpose district has been identified, this will necessarily be a general response.

This Office has provided opinions on such an issue previously. By an opinion dated May 29, 1979 (copy enclosed), this Office concluded that the St. Andrews Public Service District Commission would not be authorized to expend District funds to be used to oppose formally the proposed incorporation of a portion of the District's service area. The basis of the opinion was, first, that the South Carolina Constitution requires every expenditure of public funds to be for a public purpose. Art. X, §5. Then, legal authorities were in apparent agreement that the expenditure of public funds to obtain or oppose legislation would not be authorized in the absence of express statutory language to the contrary. In that situation, no statutory authority was found for the District to expend public funds to oppose incorporation of a portion of the District's service area.

More recently, this Office has examined the same issue in an opinion dated November 2, 1990 (copy enclosed), particularly in response to question 3 (beginning on page 5 of the opinion). Therein, we recognized the difficulty in answering such a question

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because the law continues to evolve in this area. Courts seem to be recognizing a difference between educating and informing the public on a particular issue, on the one hand, and advocating a particular outcome of the election process, on the other. As was observed in that opinion:

[W]e advise that the resolution of the question may ultimately be up to the courts. The law is still evolving in this area, and courts are becoming less reluctant to prohibit all aspects of government speech. On the other hand, a court must be assured that where public funds are expended, such activities possess a valid public purpose. The activities of an individual official, employee, or political subdivision (through its governing body) will require examination to determine whether such activities are educational, informative, or advocacy in nature. ... Depending upon the actual activities, and even the motivations of those engaged in the particular activity, a court might find some to be legal and others not.

Thus, the answer to your question is dependent upon the nature of the activities undertaken by the fire district commission. If such activities are educational or informative in nature, the courts are more likely to consider such an expenditure of public funds to be for a public purpose. If such activities are advocacy in nature, the courts more readily reach the opposite conclusion. As noted in the opinion of November 2, 1990, however, a per se rule cannot be stated; the facts and circumstances of a particular expenditure are crucial to an accurate response. We cannot, of course, predict how a court facing this issue would decide, particularly without additional information as to the proposed lobbying activities.

The foregoing addresses only the issue of the use of public funds for lobbying purposes. No attempt has been made to address whether anyone associated with such an effort would be required to register as a lobbyist or similar issues.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that the foregoing is as responsive to your inquiry as is possible under the circumstances. Please advise if clarification or additional assistance should be necessary.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

Enclosures