



ALAN WILSON
ATTORNEY GENERAL

August 16, 2017

The Honorable Tommy M. Stringer
Member
South Carolina House of Representatives
District No. 18
P.O. Box 2078
Greer, South Carolina 29652

Dear Representative Stringer:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

State law requires that anyone who files a Statement of Intention of Candidacy must also file a State of Economic Interest (SEI) "for the previous year."

I would appreciate your opinion on these questions.

1. If a citizen, in furtherance of a candidacy for public office, starts collecting and expending funds in excess of \$500.00 and begins reporting those transactions via an online campaign disclosure, is he required to file a SEI at any time before he officially files a Statement of Intention of Candidacy?
2. If a citizen, in furtherance of a candidacy for public office, starts collecting and expending funds in excess of \$500.00 and begins reporting those transactions via an online campaign disclosure, and never officially files a Statement of Intention of Candidacy, is he ever required to file a SEI?
3. If a citizen becomes a candidate by officially filing a Statement of Intention of Candidacy and files the required SEI for the previous year, and is ultimately unsuccessful in the election, is he required to file a SEI thereafter? In particular, if an unsuccessful candidate retains an open balance on a campaign disclosure must he continue to file a SEI even though he is no longer legally a candidate for any office?

Law/Analysis

The questions presented require this Office to interpret the State Ethics Act. S.C. Code Ann. §§ 8-13-100 et seq.¹ This Office defers to the construction of the Ethics Act rendered by the State Ethics

¹ This opinion references sections of the S.C. Code of Laws as reflected in the 2016 Cumulative Supplement except where otherwise noted.

Commission, as well as the House of Representatives Legislative Ethics Committee (“House Ethics Committee”) and the Senate Legislative Ethics Committee. See S.C. Code Ann. §§ 8-13-310 (creating the State Ethics Commission); 8-13-320 (duties and responsibilities of the State Ethics Commission include “ascertain[ing] whether a person has failed to comply fully and accurately with the disclosure requirements of this chapter...”); 8-13-510 (creating the House of Representatives Legislative Ethics Committee and the Senate Legislative Ethics Committee); 8-13-530(1) (additional powers and duties of each committee include “ascertain[ing] whether a person has failed to comply fully and accurately with the disclosure requirements of this chapter...”); 8-13-530(4) (each committee shall “receive, investigate, and hear a complaint which alleges a possible violation of a breach of a privilege or a rule governing a member or staff of the appropriate house or legislative caucus committee, or candidate for the appropriate house.”) (emphasis added). This Office’s December 11, 2015 opinion explained our practice of deference as follows:

We should also observe that this Office has, in any interpretation of the Ethics Act, consistently deferred to the construction rendered by the agency assigned by law to interpret the Act - whether that agency be the State Ethics Commission or, in the case of a legislator, the House or Senate Ethics Committee. See Op. S.C. Att’y Gen., 2013 WL 6924890 (Dec. 23, 2013) (and opinions cited therein); Op. S.C. Att’y Gen., 1989 WL 508504 (Feb. 16, 1989) (up to House Ethics Committee to advise member of General Assembly re Ethics Act). This is especially true in the latter instance, because of constitutional implications. Only recently, in Rainey v. Haley, 404 S.C. 320, 326, 745 S.E.2d 81, 84 (2013), the South Carolina Supreme Court stated that “the South Carolina Constitution and this Court have expressly recognized and respected the Legislature’s authority over the conduct of its own members.” Thus, “ethics investigations concerning members and staff of the Legislature are intended to be solely within the Legislature’s purview...” 404 S.C. at 327, 745 S.E.2d at 84-85. Pursuant to the South Carolina Constitution, and our longstanding practice, we must, therefore, defer to the interpretation of the House Ethics Committee unless we believe that interpretation to be plainly wrong.

Op. S.C. Att’y Gen., 2015 WL 9406833, at 3-4 (December 11, 2015); see also Ops. S.C. Att’y Gen., 2005 WL 2250212 (August 17, 2005) (“[T]he House of Representatives Legislative Ethics Committee is the designated appropriate supervisory office under the Ethics Act for State representatives. See Sections 8-13-510 et seq. As a result, that Committee is charged with supervisory enforcement of the Act and we would defer to its findings on the propriety of the activities of House members.”); 1990 WL 599273(August 7, 1990) (“Of course, because a Rule of the House of Representatives is involved, separation of powers requires that the House be the final interpreter of such rules.”).

Because this request comes from a member of the South Carolina House of Representatives, we have consulted with the House Ethics Committee to determine whether the Committee has issued an interpretation of the Ethics Act which addresses the questions presented. The House Ethics Committee has, in fact, issued such an advisory opinion. In pertinent part, Advisory Opinion 2013-3 addressed the question of “[w]hether a person with an open campaign account must file an updated Statement of Economic Interest form by April 15?” The opinion answered the question as follows:

Yes. A person with an open campaign account must file an updated Statement of Economic Interest form by April 15th. Section 8-13-1110 states that a “public official” must file a Statement of Economic Interest form. Section 8-13-100(27)’s definition for

“public official” includes a “candidate.” “Candidate” is defined in part as, “a person who seeks appointment, nomination for election, or election to a state or local office, or authorizes or knowingly permits the collection or disbursement of money for the promotion of his candidacy or election.” S.C. Code Ann. § 8-13-100(5). This Committee concludes that a person with an open campaign account has authorized the collection or disbursement of money for his candidacy. Therefore, for the limited purpose of whether a Statement of Economic Interest form should be filed, a person with an open campaign account should file such a form. This determination in no way impacts whether a person will be found to be a candidate for purposes of appearing on a ballot.

A person required to file a Statement of Economic Interest form under section 8-13-1140 is required to file an update form by April 15. No fines will be imposed until after the lapsing of the five-day grace period under 8-13-1510. Further, it should be noted that the Committee issues this opinion in order to bring clarification to persons with open House Campaign accounts....

Id.

The advisory opinion notes that 2013 Act No. 61² amended S.C. Code Ann. § 8-13-1140 to change the annual SEI filing deadline from April 15th to March 30th. After consultation with counsel for the House Ethics Committee, it is this Office’s understanding that the Committee’s interpretation is that a candidate is under a continuing duty to file an annual SEI pursuant to S.C. Code Ann. § 8-13-1140 until the candidate’s campaign account undergoes final disbursement pursuant to S.C. Code Ann. § 8-13-1370.

We next address your questions with the House Ethics Committee’s advisory opinion and further clarifications in mind. However, if a candidate seeks the public office as a member of the South Carolina Senate, we direct such a candidate to consult with the Senate Legislative Ethics Committee as it is statutorily charged with determining compliance with the disclosure requirements for its chamber of the General Assembly. See S.C. Const. art. III, § 11; S.C. Code Ann. §§ 8-13-510, 8-13-540. Further, if a candidate seeks any other public office within the State of South Carolina, we direct such a candidate to consult with the State Ethics Commission as it is statutorily charged with determining compliance with the Ethics Act. See S.C. Code Ann. §§ 8-13-310; 8-13-320.

- I. If a citizen, in furtherance of a candidacy for public office, starts collecting and expending funds in excess of \$500.00 and begins reporting those transactions via an online campaign disclosure, is he required to file a SEI at any time before he officially files a Statement of Intention of Candidacy?

A person who becomes a candidate by filing a statement of intention of candidacy seeking nomination by political party primary or political party convention, by filing a petition for nomination, or who becomes a write-in candidate is required to file a SEI. See S.C. Code Ann. § 8-13-1356. Candidates are also statutorily required to file a SEI under Article 11 of the Ethics Act. Again, we assume the public office in question refers to that of a member of the South Carolina House of Representatives. House Ethics Committee Advisory Opinion 2013-3 states a person with “an open campaign account” is a

² Please note 2013 Act No. 61 amended several statutes in the Ethics Act related to filing deadlines and providing streamlined procedures for campaign filings.

candidate. The advisory opinion makes no reference to a \$500 threshold³ in campaign funds before the candidate is charged with a duty to file an annual SEI under S.C. Code Ann. § 8-13-1140. The open campaign account itself is considered to be an “authorization of collection or disbursement of funds.” According to the advisory opinion, the SEI is required to be filed “no later than noon on March thirtieth” of the year following the opening of the campaign account. Based on the timing of when such a campaign account is opened and when the candidate files the statement of intention of candidacy, the candidate could be required to file a SEI on March thirtieth following the opening of a campaign account even though the candidate has not filed a statement of intention of candidacy.

- II. If a citizen, in furtherance of a candidacy for public office, starts collecting and expending funds in excess of \$500.00 and begins reporting those transactions via an online campaign disclosure, and never officially files a Statement of Intention of Candidacy, is he ever required to file a SEI?

Again, we assume the public office in question refers to that of a member of the South Carolina House of Representatives. According to House Ethics Committee Advisory Opinion 2013-3, such a citizen with an open campaign account would be required, pursuant to S.C. Code Ann. § 8-13-1140, to file a SEI on March thirtieth of the year following the opening of such an account. In contrast, the requirement to file an SEI in S.C. Code Ann. § 8-13-1356(A) is triggered by the filing of a statement of intention of candidacy. These statutory requirements to file a SEI are distinct. Regardless of whether a candidate ever officially files a statement of intention of candidacy, such a candidate would be required to file an annual SEI under S.C. Code Ann. § 8-13-1140.

- III. If a citizen becomes a candidate by officially filing a Statement of Intention of Candidacy and files the required SEI for the previous year, and is ultimately unsuccessful in the election, is he required to file a SEI thereafter? In particular, if an unsuccessful candidate retains an open balance on a campaign disclosure must he continue to file a SEI even though he is no longer legally a candidate for any office?

Again, we assume the public office in question refers to that of a member of the South Carolina House of Representatives. According to House Ethics Committee Advisory Opinion 2013-3, such a citizen with an open campaign account is considered a candidate, S.C. Code Ann. § 8-13-100(5), with a continuing obligation to annually file an SEI pursuant to S.C. Code Ann. § 8-13-1140 until the candidate’s campaign account undergoes final disbursement pursuant to S.C. Code Ann. § 8-13-1370.

Conclusion

This Office defers to the construction of the Ethics Act rendered by the State Ethics Commission, as well as the House of Representatives Legislative Ethics Committee (“House Ethics Committee”) and the Senate Legislative Ethics Committee. As the questions presented come from a member of the South Carolina House of Representatives, this Opinion’s analysis and answers have been tailored according to the House Ethics Committee’s advisory opinion. If there are further questions regarding the disclosure obligations of a candidate for membership in the South Carolina House of Representative, we direct such

³ Presumably the threshold of \$500 in campaign funds refers to S.C. Code Ann. §§ 8-13-1304, 1308 regarding the requirements for a committee to file a statement of organization and an initial certified campaign report respectively.

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questions to the House Ethics Committee. However, if a candidate seeks public office as a member of the South Carolina Senate, we direct such a candidate to consult with the Senate Legislative Ethics Committee as it is statutorily charged with determining compliance with the disclosure requirements for its chamber of the General Assembly. Further, if a candidate seeks any other public office within the State of South Carolina, we direct such a candidate to consult with the State Ethics Commission as it is statutorily charged with determining compliance with the Ethics Act.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General