

# The State of South Carolina



## Office of the Attorney General

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September 26, 1988

Victoria H. Josey  
Town Attorney  
Town of Mount Pleasant  
Post Office Box 745  
Mt. Pleasant, South Carolina 29464

Dear Ms. Josey:

On May 25, 1988, you requested an opinion regarding whether or not a Town could enact an ordinance that would limit campaign spending. I interpreted your request as one on whether or not this would be within the possible powers of a municipality and forwarded to you an earlier opinion of this Office regarding that narrow point. By subsequent letter you stated your question was not answered by this prior opinion as it actually concerned whether or not such an ordinance would be constitutional.

The First Amendment protection of political speech extends to the expenditure of funds in political campaigns. The U.S. Supreme Court, in Buckley v. Valeo, stated that

[a] restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs.

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Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech.

424 U.S.1, 19, 96 S.Ct. 612, 634, 46 L.Ed.2d 659 (1976).

At issue in Buckley was the constitutionality of various provisions of the Federal Election Campaign Act which set out limitations on contributions and set certain campaign spending ceilings. The Court found that a contribution ceiling was constitutional, but held unconstitutional limits on independent expenditures that limited how much money could be spent in any one election year, limits on the amount a candidate could spend of his own money, and, limits on overall campaign expenditures.

In Federal Election Commission v. National Conservative Political Action Committee, 470 U.S. 480, 105 S.Ct. 1459, 1469, 84 L.Ed.2d 455 (1985), the court stated that it had

...held in Buckley and reaffirmed in Citizens Against Rent Control that preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances.

Therefore, direct restrictions on campaign expenditures would be subject to rigorous scrutiny. See Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 301, 102 S.Ct. 434, 440, 70 L.Ed.2d 492 (1981), Marshall concurring, and Blackmun and O'Connor concurring. To justify an ordinance limiting political speech in the form of campaign expenditures, a municipality would have to show that the ordinance advanced a compelling governmental interest and that it avoided unnecessary abridgement of First Amendment freedoms. Federal Election Commission v. Massachusetts Citizens For Life, 479 U.S. \_\_\_\_\_, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986); First National Bank of Boston v. Bellotti, 435 U.S. 767, 786, 98 S.Ct. 1407, 1421, 55 L.Ed.2d 707, 1724 (1978).

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Therefore, although this Office could not tell you without seeing the ordinance that it would be per se unconstitutional, it would appear extremely unlikely in light of the United States Supreme Court's opinions that such an ordinance would be able to pass constitutional scrutiny. Of course, only a court of competent jurisdiction could ultimately rule on the constitutionality of such an ordinance.

Sincerely yours,



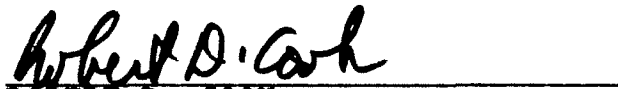
Treva G. Ashworth  
Senior Assistant Attorney General

TGA:bvc

REVIEWED AND APPROVED BY:



EDWIN E. EVANS  
CHIEF DEPUTY ATTORNEY GENERAL



ROBERT D. COOK  
EXECUTIVE ASSISTANT FOR OPINIONS

1/ This determination may also somewhat depend on if the ordinance sought to limit expenditures for candidates or concerned referendums. See Citizens Against Rent Control, supra.