



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

June 7, 2004

Agnes M. Garvin, Executive Director
Beaufort County Board of Elections and Registration
104 Ribaut Road
Beaufort, South Carolina 29901-1228

Dear Ms. Garvin:

In a letter to this office you requested an opinion as to the meaning of "political management" as used in S.C. Code Ann. Section 7-13-75 (Supp. 2003) which states:

No member of a county or municipal election commission, voter registration board, or combined election and voter registration commission may participate in political management or in a political campaign over whose election the member has jurisdiction during the member's term of office. No member may make a contribution to a candidate or knowingly attend a fundraiser held for the benefit of a candidate over whose election the member has jurisdiction. Violation of this section subjects the member to removal by the Governor or appropriate appointive authority. (emphasis added).

Noting the prohibition of a member of a county election and registration commission from participating in "political management", you indicated that a question has been raised as to whether members of the Beaufort County Board of Election and Registration can serve as an officer of a political party.

I am unaware of any South Carolina cases addressing the meaning of "political management" as used in Section 7-13-75. However, a prior opinion of this office dated December 10, 1999 dealt with the question as to whether a municipal election commissioner could be active in the political party of his or her choice without violating Section 7-13-75. That opinion stated:

Section 7-13-75 does not appear to prohibit a municipal election commissioner from being active in a political party. However, the extent of a commissioner's activities is not unlimited. If a commissioner's activities amount to participation in the political management of a political party, the statute would be violated. Unfortunately, no South Carolina court has addressed the question of what party activities are permitted under the statute. Until this issue is decided, municipal

election commissioners may want to be guided by the longstanding restrictions placed on employees of the Federal Election Commission.

The opinion noted that pursuant to 5 C.F.R. Section 734.409 (1999), entitled "Participation in political organizations; prohibitions", employees of the Federal Election Commission and other affected employees could not:

- (a) Serve as an officer of a political party, a member of a national, State, or local committee of a political party, an officer or member of a committee of a partisan political group, or be a candidate for any of these positions;
- (b) Organize or reorganize a political party organization or partisan political group;
- (c) Serve as a delegate, alternate, or proxy to a political party convention; and
- (d) Address a convention, caucus, rally or similar gathering of a political party or partisan political group in support of or in opposition to a candidate for partisan political office or political party office, if such address is done in concert with such a candidate, political party, or partisan political group. (emphasis added).

The opinion further advised that

I must caution that until a South Carolina court rules on this issue, municipal election commissioners should only use this list as a guide. A court may find some activities not listed above constitute participation in the political management of a political party. Ultimately, whether an individual commissioner's activities violate the statute is a question of fact to be made by the reviewing body, whether the appointive authority or a court, after analyzing the particular circumstances involved.

Therefore, that opinion recommended that a municipal election commissioner not serve as an officer of a political party.

Examples of other activities deemed to be prohibited by Section 7-13-75 noted in prior opinions of this office include the prohibition of an election commissioner from taking part in either the management or the conduct of his or her spouse's political campaign (Ops. Atty. Gen. dated February 13, 2002 and October 12, 2000), the prohibition of a county election commissioner from being a candidate for county council (Op. Atty. Gen. dated August 23, 2000); and the prohibition of a municipal election commissioner from serving as a volunteer campaign chairman of a political campaign (Ops. Atty. Gen. dated December 10, 1999 and October 21, 1999).

In examining your question, reference may be had to construction of similar provisions in federal law. A provision of the federal Hatch Act which had been codified as 5 U.S.C. Section 7324 (a)(2) prohibited federal employees from taking "an active part in political management or in political campaigns." In Blaylock v. United States Merit Systems Protection Board, 851 F.2d 1348, 1351 (11th Cir. 1988), the court noted that pursuant to the implementing regulations of such

provision, an employee was not allowed to “serve as an officer of a political party, solicit funds for a political party, run for office in a partisan election, act as a ‘poll watcher’ in a partisan election, drive voters to the polls ‘on behalf of a political party’, or serve as a delegate to a party convention.” (emphasis added).

In United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548 (1973), the Supreme Court dealt with a case which involved a challenge by federal employees to the same Hatch Act referenced above. In its decision, the Court noted that as to the language of 5 U.S.C. Section 7324 forbidding a federal employee from taking “an active part in political management or in political campaigns”, such statute provided that

For the purpose of this subsection, the phrase “an active part in political management or political campaigns” means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

413 U.S. at 550. In its opinion, the Court noted that included in the prohibited activities set out in these referenced regulations was the prohibition against serving as an officer of a political party. 413 U.S. at 576-579.

The Texas Attorney General in an opinion dated September 27, 1988 noted that

Before 1975, the terms of the Hatch Act prohibited the targeted individuals from holding political party offices...However, in 1974 Congress amended the statute so that it would not have that effect. The amendment deleted language that prohibited state and local officers and employees from “tak[ing] an active part in political management or in political campaigns.” That language had been held to prohibit state employees from holding political party offices.

The opinion noted that the 1974 amendment provided that affected employees “may take an active part in political management and in political campaigns” except that they may not be candidates for elective office.

An opinion of the New Hampshire Attorney General dated July 30, 1990 similarly commented as to the type of activities permitted under the Hatch Act. As to the authorization that “State or local employees subject to the provisions of the Hatch Act may take an active part in political management and political campaigns”, as to the type permitted activities included in the term “political management” was the conclusion that “employees may be members of and may hold office in political parties...”

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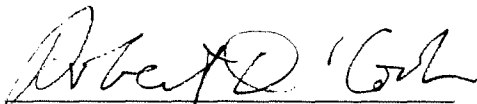
Therefore, depending upon whether the activity is permitted or not permitted, construction of the meaning of the phrase "take an active part in political management" has been construed to either permit or forbid serving as an officer of a political party. Of course, as provided in Section 7-13-75, "(n)o member of a county or municipal election commission, voter registration board, or combined election and voter registration commission may participate in political management." Therefore, "political management" activities are prohibited. Consistent with the above authorities construing such term to include holding office in political parties, and consistent with the December 10, 1999 opinion of this office noted previously, it is my opinion that a members of the Beaufort County Board of Election and Registration would not be authorized to serve as an officer of a political party. I would only further note that pursuant to the Political Activity Guidelines for Members and Staff of the Beaufort County Board of Elections and Registration approved by the Board on April 28, 2004 is the statement that individuals "may not hold any office, preside or supervise over any meeting of a political party."

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General