1982 S.C. Op. Atty. Gen. 36 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-33, 1982 WL 155003

Office of the Attorney General

State of South Carolina
Opinion No. 82-33
May 18, 1982

***1 In Re: H–2353**

The Honorable Arthur Ravenel, Jr.
Member
South Carolina Senate
Suite 608, Gressette Building
Columbia, South Carolina 29202

Dear Senator Ravenel:
I have received your inquiry of May 13, 1982, which was hand delivered to this Office on the same date.

Because you have requested a response to your inquiry by noon today, May 18, 1982, and because of the intervening weekend in which the General Assembly was not in session, the conclusions herein expressed are the result of a sharply curtailed period of time for a complete research and full deliberation, particularly with respect to the legislative history of the bill about which you inquire.

H–2353 is apparently a product of continuing legislative consideration which, in one form or another, has taken place at least since 1979, and which basically provides for the public financing of political campaigns. It permits taxpayers to allocate one dollar of tax liability to be contributed to a state-recognized political party of his choice. The monies generated are deposited by the Comptroller General in a special campaign fund account, from which the recognized political parties may obtain funds deposited to their accounts. There are presently six recognized political parties in South Carolina and campaign funds collected by the various parties may be used only for certain specified campaign expenses. These are designated as:
(a) Radio, television and newspaper advertising on behalf of that political party or its statewide candidates in general elections;

(b) Leaflets, fliers, buttons and stickers;

(c) Campaign staff salaries;

(d) Costs related to political party primaries;

(e) Administrative costs related to the continuing operations of political party offices, including but not limited to salaries of employees, rent, office supplies, travel expenses and similar costs.

Other provisions are included in H–2353 relating to the restrictions imposed upon those parties benefiting under the terms of the bill, including penalization against political parties which fail to return unused contributions in a timely manner, but the foregoing items are the principal facets of the bill considered by me.

Approximately seventeen other states have adopted similar statutes which time has not permitted me to fully consider, but H–2353 and corresponding statutes of other states stem from a federal statute adopted in 1971 and designated as the Federal Election Campaign Act of 1971. That act has been upheld by the United States Supreme Court in Buckley v. Valeo, 424 U.S. 1,

46 L.Ed.2d 659, 96 S.Ct. 612. The basic right of the federal government to enact legislation of this type, providing, in essence, for the subsidization of political party activity with public funds was upheld as constitutional. The reasons stated in Buckley are, in my opinion, applicable to consideration of the same premise as set forth in H–2353. The use of state monies in the choice of taxpayers is, in my opinion, therefore, valid.

***2** The only section to which I express doubt as to the validity of is that set forth in Section 4(d) which specifies as one of the items for which contributing funds may be used as 'costs related to political party primaries.' I would assume that this would include the costs of primaries, whether conducted on a local basis in local races or whether conducted for primaries relating to statewide races. The majority of certified political parties in this State do not use the primary method of nomination but, instead, use the convention nomination procedures, and campaign contributions made available to a party under the terms of the bill cannot, apparently, be used for the costs of conducting conventions. In this respect, H–2353 differs from the federal act which makes provision for three separate accounts to finance (1) party nominating conventions, (2) general election campaigns, and (3) primary campaigns. The failure of H–2353 to make provision for the costs of conducting nominating conventions is, in my opinion, a serious one. This conclusion is based upon two cases which have been decided by federal court decisions in this state, one of which was decided by a three-judge court: United Citizens Party v. South Carolina State Election Commission, 319 F.Supp. 784, and Toporek v. South Carolina State Election Commission, 362 F.Supp. 613. Neither of these cases is precisely in point but, as stated, are supportive of my view that the act must make provision for all parties equally or it incurs serious constitutional doubt. I reach this conclusion despite the due consideration to be given to the principle that acts of the General Assembly are presumed to be valid unless their unconstitutionality appears clear; in this instance, with the limited time available for research, enough appears to lead me to conclude that serious doubts exist.

Very truly yours,

Daniel R. McLeod
Attorney General

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