

Official Opinion No. 80-3, Political Action Committees

January 10, 1980

The Honorable Alice Kundert
Secretary of State
State Capitol
Pierre, South Dakota 57501

Official Opinion No. 80-3

Political Action Committees

Dear Miss Kundert:

You have requested an official opinion from this office in regard to the following factual situation:

FACTS:

A number of political action committees are in the process of organization. The committees will contribute money to support legislative candidates in the 1980 election. Questions have been raised regarding limitations on contributions, reporting requirements, and restrictions on solicitation.

Based upon the above facts, you have asked the following questions:

QUESTIONS:

1. Do PAC's fit the definition of 'person' in SDCL 2-14-2(16)?
2. If so, are they bound by the limitations on contributions established in SDCL 12-25-1.1?
3. SDCL 12-25-14.2 refers to 'candidate or his committee' as being exempt from filing if less than \$500 is collected or expended. Does it then follow that all other committees, specifically political action committees, must file the detailed report of receipts and expenditures at the end of the year regardless of how much or how little was collected or expended?
4. Are PAC's included in the exemption from filing in SDCL 12-25-18.1?

5. The federal laws governing Political Action Committees supporting federal candidates restrict solicitation of employees to a certain number of times in a year and also define which employees can be solicited. Are there any restrictions on solicitation by PAC's supporting state candidates?

6. If a political action committee based in another state supports state- wide, legislative, or local candidates in South Dakota, what are the reporting requirements?

IN RE QUESTION NO. 1:

SDCL 2-14-2(16) defines the term 'person' as including natural persons, partnerships, associations, and corporations. Based on this definition, in my opinion the answer to your question is yes. Political action committees would be 'persons' within the purview of § 2-14-2.

IN RE QUESTION NO. 2:

SDCL 12-25-1.1 provides:

No person, except as otherwise provided in this chapter, shall contribute more than one thousand dollars to or in behalf of any individual candidate for state-wide office in any calendar year or more than two hundred and fifty dollars to or in behalf of any individual candidate for legislative or county office in any calendar year. The limitation on individual contributions to any individual candidate in this section shall not apply to contributions from the candidate, his spouse, any relative within the third degree of kinship of the candidate or his spouse and the spouses of such relatives.

SDCL 12-25-1(4) specifically defines the term 'political committee.' Throughout Chapter 12-25 the Legislature has in many instances specifically included these terms of art, specifically defined, when providing for various election procedures. In view of this background, it appears to me that the exclusion of the term political committee from SDCL 12-25-1.1, does have significance and should be viewed as indicative of legislative intention not to include political action committees within the confines of SDCL 12-25.1.1.

IN RE QUESTION NO. 3:

In my opinion the answer to your third question is yes. SDCL 12-25-13 provides for statements to be required of candidates for office or 'any committee participating in such election' (general or primary election). SDCL 12-25-14.2 specifies that the filings required by § 13 shall be required only when a candidate or his committee collects or expends more than five hundred dollars in a calendar year. In my view, SDCL 12-25-13 provides a

broader set of requirements than those only for a candidate or his committee _and thus the limitation of SDCL 12-25-14.2 can be specifically applied only to the entities included therein, i.e., 'a candidate or his committee.'

IN RE QUESTION NO. 4:

In my opinion the answer to your question is yes. A political action committee is a 'committee' within the purview of SDCL 12-25-18.1. This exemption, however, it should be noted, is only from the requirement to file a preelection report and therefore is not inconsistent with the answer to the previous question.

IN RE QUESTION NO. 5:

2 U.S.C.A. 453 states that as a matter of federal law the provisions of the new federal Election Campaigns Act dealing with political action committees preempt provisions of state law with respect to election to federal office. In view of this limitation insofar as state offices and state election matters are concerned, however, I believe that any such limitations would purely be a matter of state law.

SDCL 12-25 appears to be the only section of the law referring to regulation on a state level of what would be a political action committee. SDCL 12-25-2, for example, would limit any such political action committee in the source of contributions. Likewise, other reporting requirements of Chapter 12-25, referring to 'committees,' would include political action committees.

IN RE QUESTION NO. 6:

In my opinion, I do not see any statutory language which would exempt a political action committee based in another state, but engaging in activities in South Dakota, from complying with the same reporting requirements as domestic political action committees under Chapter 12-25.

Respectfully submitted,

Mark V. Meierhenry
Attorney General