STATE ETHICS COMMISSION
ADVISORY OPINION
S.E.C. 2010-03

Whether public utility corporations regulated by the Public Service Commission, and persons acting on behalf of such public utility corporations, are prohibited from contributing to efforts to publicize views on a proposed constitutional amendment or state-wide referendum.

ADVISORY OPINION

Section 21-5-30(f) of the Georgia Ethics in Government Act (the "Act") prohibits any person acting on behalf of a public utility corporation regulated by the Public Service Commission from contributing any funds to a political campaign. This statutory prohibition does not extend to contributions by public utility corporations with respect to proposed constitutional amendments or state-wide referenda.

As a statutory matter, the Legislature drafted Section 21-5-30 on a narrow basis. That is, public service corporations are not permitted to contribute to the specific activity of "political campaigns." If the Legislature intended the prohibition against contributions to extend to proposed constitutional amendments or state-wide referenda, it would have added such language to the section to manifest this intent. As the language regarding constitutional amendments and state-wide referenda are included in other portions of the Section, but not subsection (f), we must presume that the Legislature's failure to do so was intentional. See Bauerband et al. v. Jackson County et al., 278 Ga. 222 (2004), where the Georgia Supreme Court stated the following in declining Plaintiff's interpretation of a statute that a sum certain for rentals must be stated in a multiyear lease entered into by a county,

> *"however, elsewhere in the statute, the general assembly used the terms "sums payable in the individual calendar year renewal term" and "annual payments" see O.C.G.A. 36-60-13 (c) & (h) (1) (a). Clearly, had the general assembly wished to require that future obligations be set forth as a sum certain, it knew how to accomplish that."*

Id. at 226. See also, Inland Paperboard & Packaging, Inc. V. Georgia Dept. of Revenue, 274 Ga. App. 101, 104 (2005).

The purpose of the prohibition established by Section 21-5-30(f) is to limit the appearance or actual corruption and influence by public utility corporations with respect to those candidates and legislators who regulate the public utilities. As a constitutional matter, this policy has been found to be a sufficient justification to limit the speech of the public utilities, but only on that narrowly drawn basis.

The Attorney General of Georgia has stated that

> *"Limiting the actuality and appearance of corruption, found to be the purpose of the Act in question in Buckley, is clearly a purpose of Section 8B*[1] *of the Campaign and Financial Disclosure Act. This purpose was found sufficient to justify the limitations considered in Buckley, and I feel this purpose would likewise sustain this Act. Furthermore, the regulation could not be more narrowly drawn and be effective to achieve its purpose. First, contribution limitations by their nature involve only marginal restrictions on speech since the prospective contributor is left free to communicate his views by other means. The requirements of Section 8B have been narrowly construed to apply only to political campaigns and not other political activities."*

Op. Att'y Gen. 79-54. 1982 Op. Att'y Gen. No. 82-56.

Extending the prohibition against public utility corporation contributors to proposed constitutional amendments and state wide referenda would not advance the policy of limiting the appearance or actual corruption and influence by public utility corporations. In First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978), the Supreme Court found a Massachusetts statute to be in violation of the First Amendment because the statute prohibited certain corporations from making contributions or expenditures for the purpose of influencing a referendum vote. In discussing the appearance of corruption with respect to a referendum vote the Court stated, "The risk of corruption perceived in cases involving candidate elections, e.g., United States v. Automobile Works, supra; Untied States v. CIO, supra, simply is not present in a popular vote on a public issue. To be sure, corporate advertising may influence the outcome of the vote; that would be the purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it." Id at. 791.

Based on the above statutory and constitutional analysis, the prohibitions of 21-5-30(f) do not extend to contributions by public utility corporations with respect to proposed constitutional amendments or statewide referenda.

Prepared by Stacey Kalberman, Executive Secretary

[1] currently O.C.G.A. 21-5-30(f).