

**NOTICE OF INTENT TO ADOPT AN ADVISORY OPINION OF THE
GEORGIA GOVERNMENT TRANSPARENCY AND
CAMPAIGN FINANCE COMMISSION**

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the Georgia Government Transparency and Campaign Finance Commission (hereinafter "Commission") proposes to adopt:

Advisory Opinion No. 2016-01

This notice, together with an exact copy of the proposed advisory opinion is being mailed to all persons who have requested, in writing, that they be placed on a mailing list. A copy of this notice, an exact copy of the advisory opinion may be reviewed during normal business hours of 8:30 a.m. to 4:30 p.m. Monday through Friday, except official State holidays, at the Georgia Government Transparency and Campaign Finance Commission, 200 Piedmont Avenue SE, Suite 1402 - West Tower, Atlanta, Georgia 30334. These documents will be available for review on the Georgia Government Transparency and Campaign Finance Commission website (www.ethics.ga.gov). Copies may be requested by contacting the Commission at 404-463-1980.

A public hearing is scheduled to begin at 10:00 AM on June 23, 2016 in Room 606 at the Coverdell Legislative Office Building, 18 Capitol Square SW, Atlanta, GA 30334 to provide the public an opportunity to comment upon and provide input into the proposed advisory opinion. At the public hearing anyone may present data, make a statement, comment, or offer a viewpoint or argument whether orally or in writing. Lengthy statements or statements of a considerable technical or economic nature, as well as previously recorded messages, must be submitted for the official record. Oral statements should be concise and will be limited to five (5) minutes per person. Written comments are welcome. Such written comments must be legible and signed, and should contain contact information from the maker (address, telephone and/or facsimile number, etc.). To ensure their consideration, written comments must be received on or before June 22, 2016. Written Comments should be addressed to Nancy Sandberg, Legal Administrative Assistant, Georgia Government Transparency and Campaign Finance Commission, 200 Piedmont Avenue SE, Suite 1402 – West Tower, Atlanta, Georgia 30334. Fax: 404-463-1988.

The proposed advisory opinion will be considered for adoption by the Commission at its meeting scheduled to begin at 10:00 a.m. on June 23, 2016, at the Coverdell Legislative Office Building, Room 606, 18 Capitol Square SW, Atlanta, GA 30334.

The Georgia Government Transparency and Campaign Finance Commission has the authority to adopt this advisory opinion pursuant to authority contained in O.C.G.A. § 21-5-6(b)(13).

This 24th day of May, 2016.



Stefan Ritter, Executive Secretary



GEORGIA GOVERNMENT TRANSPARENCY & CAMPAIGN FINANCE COMMISSION

Advisory Opinion 2016-01

In 2011 in Advisory Opinion 2011-05 the Commission advised that allowing a candidate to use a governmentally owned computer to complete a Campaign Contribution Disclosure Report (CCDR) could be construed as a contribution to a political campaign in violation of O.C.G.A. § 21-5-30.2. It came to this conclusion although also concluding that governmental computers could be used to complete Personal Financial Disclosure Statements (PFDS). The distinction was that one was used for fulfillment or in relation to office (the PFDS) while the other was personal, and it seemed to view the CCDR as only being completed by one campaign, not allowing governmental computers to be completed by all campaigns. The statutory law was subsequently revised returning to local filing, and, indeed, campaign funds (and attendant reporting on CCDRs) plainly may be used in fulfillment of office not just campaigns. Therefore, the Commission now advises, in response to numerous informal requests, that governmental computers may be used to complete CCDRs if access to such computers is provided in a non-discriminatory manner so as not to favor one campaign over another.

Question Presented

Does the Campaign Finance Act's prohibition on the making of "public agency contributions" per O.C.G.A. § 21-5-30.2(b) prohibit governmental agencies from allowing equal access to their computers to all public officers or candidates for public office for the purpose of making filings with the agency?

Background

Prior to 2012, it was common practice for local public officers and candidates for local public office to rely upon the local government agency's filing officer² for technical assistance in the completion of their Campaign Contribution Disclosure Reports and Personal Financial Disclosure Statements as at that time the reports were filed with local government agencies prior to January 1, 2011. *See* Ga. Laws 680, 2009 Ga. SB17 (2009) (Amended O.C.G.A. § 21-5-34(a)(2)(B) (2009)). There then followed a period where all reports were filed at the State level. In 2013, effective January 1, 2014, the General Assembly amended the Campaign Finance Act

² Filing Officer includes county election superintendents and municipal clerks.

in 2014 to require all local public officers and candidates for local office to file their campaign finance and personal financial disclosures locally, with the relevant local government agency then, in turn, electronically submitting the local public officer's or candidate's disclosures to the Commission by "eFiling" or "eFax." See O.C.G.A. §§ 21-5-34(a)(3)-(4), 21-5-50(a)(3.1) (2014)). Commission Rule 189-3-.08 expressly allows local filing entities and their staff to render assistance of local filers if doing so is in the ordinary course of the their duties. Ga. Comp. R. & Regs 189-3-.08.

As discussed above, in 2011, in response to a request from the Association of County Commissioners of Georgia (hereinafter "ACCG") and the Georgia Municipal Association (hereinafter "GMA"), the Commission issued advisory opinion AO 2011-05 as to what equipment and services local government agencies could provide to public officers and candidates for public office. It concluded that local governmental computers could be used to file PFDS as they were required of governmental officials but that local governmental computers could not be used to file CCDRs. CCDRs should be treated differently in the Commission's view at that time since they were personal in nature and using governmental computers could be viewed as an agency contribution to a campaign in violation O.C.G.A. § 21-5-30.2. The Commission did not consider, however, the potential for equal access to computers by all competing campaigns (so their use was public access and not a contribution to an individual campaign). Nor did it consider that CCDRs are, in fact, required to be filed while in office and the expenses reported thereon can (and often are) related to fulfillment of office, see O.C.G.A. § 21-5-33(a), and so they are filed in fulfillment of office just as PFDS are.

Since the 2014 amendment of the Campaign Finance Act calling for local filing, some local government agencies permit local public officers and candidates for local office to utilize governmentally owned computers so that said persons may properly complete and file their relevant campaign finance and personal financial disclosures. There are some local government agencies, however, which still prohibit any person not employed by the agency to use their computers, even on a public basis, out of concern that the use would constitute an impermissible "public agency contribution."

Discussion

The Campaign Finance Act, O.C.G.A. § 21-5-1 *et. seq.*, requires every elected public officer and every candidate for public office to file periodic campaign finance disclosures and personal financial statements in the form of CCDRs and PFDS, respectively. See O.C.G.A. §§ 21-5-34(a)(1)(A) and 21-5-50(a)(1). While state level public officers and candidates for public office are required to file their periodic campaign finance and personal financial disclosures with the Commission directly and are required to file electronically, local public officers and candidates for local office are required to first file their disclosures with a local government

agency (and may file electronically or on paper), and the governmental filing officer then must transmit those disclosures to the Commission by "eFiling" or "eFax." *See* O.C.G.A. §§ 21-5-34(a), 21-5-50(a)(3.1) (2014)).

The Campaign Finance Act also provides, however

No agency and no person acting on behalf of an agency shall make, directly or indirectly, any contribution to any campaign committee, political action committee, or political organization or to any candidate; but nothing in this Code section shall prohibit the furnishing of office space, facilities, equipment, goods, or services to a public officer for use by the public officer in such officer's fulfillment of such office.

O.C.G.A. § 21-5-30.2(b) Likewise, "No campaign committee, political action committee, or political organization or candidate shall accept a contribution in violation of [O.C.G.A. § 21-5-30.2(b)]." O.C.G.A. § 21-5-30.2(c).

As discussed above, in 2011 the Commission issued AO 2011-05 holding that the use of governmental computers to complete a PFDS was by the public officer in such officer's fulfillment of such office and so not a violation of § 21-5-30.2 but that the use of governmental computers to complete a CCDR was not in by the public officer in fulfillment of office and so could violate § 21-5-30.2. The Commission assumed, in reaching this conclusion, that in allowing a governmental computer to be used only a single or certain candidates would be allowed to use the computers (and it did not consider equal access to computers as a public right). Likewise, it did not address the completion of CCDRs when they are, in fact, required to be filed as a part of the fulfillment of office.

The Campaign Finance Act, however, expressly allows campaign funds to be used in fulfillment of public office. O.C.G.A. § 21-5-33(a). And it requires that CCDRs be filed throughout the period an elected official is holding public office. *See, e.g.*, O.C.G.A. § 21-5-33(c)(1) (filing schedule for non-election years). Thus, it is plain that in many instances the filing of CCDRs is not merely an election task but is necessary and statutorily required for the fulfillment of office by elected officials. To the extent that AO 2011-05 suggested that filing of a CCDR is not a task incumbent on fulfillment of office, it is incorrect.

Of broader significance, however, the provision of equal access by the public or candidates to publicly owned computers does not meet the statutory definition of a "contribution" in the Campaign Finance Act. Under the Act:

"Contribution" means a gift, subscription, membership, loan, forgiveness of debt,

advance or deposit of money or anything of value **conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office**, bringing about the recall of a public officer holding elective office or opposing the recall of a public officer holding elective office, or the influencing of voter approval or rejection of a proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state. ...

O.C.G.A. § 21-5-3(7) (emphasis added).

Consistent with this, § 21-5-30.2(a)(2), governing agency contributions, states:

"Contribution" means a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money, or **anything of value conveyed or transferred by or on behalf of an agency**, without receipt of payment therefor, to any campaign committee, political action committee, or political organization or to any candidate for campaign purposes.

(Emphasis added.)

The allowance of equal access to public computers is not a conveyance of transfer of anything of value to any specific campaign by or on behalf of an agency. Thus, it does not meet the definition of a "contribution" under O.C.G.A. §§ 21-5-3(7) or 21-5-30.2(a)(2). This is distinct from the situation specifically addressed in AO 2011-5 where the allowance of only certain candidates to use a governmental computer to complete their required forms would be a transfer of value to that campaign by or on behalf of the agency. In the latter situation the campaign receives value on behalf of the agency because the agency is singling out a specific campaign to allow use of governmental facilities but is not making it available to all.⁴

When equal access to public computers is allowed, there is no basis for an assertion that governmental agencies are permitting public officers or candidates to utilize agency owned computers for the purpose of influencing the nomination for election or the election of any person to office. So, too, the use of local government agency computers and computer systems is not being permitted for "campaign purposes," but rather the usage is permitted to allow for the timely and complete disclosure of a public officer's or candidate's campaign finance and personal financial disclosures as required by the Campaign Finance Act. Thus, equal access to public computers for the purpose of filing CCDRs does not violate the limitation on agency gifts

⁴ Note, moreover, that there is no actual public cost for the public access to computers for CCDR completion if the public computers are available anyway for the completion of PFDS, as AO 2011-5 contemplates. That is, once the computers are available, it is not more expensive nor a meaningful public cost to allow them to be used for completion of CCDRs on a nondiscriminatory basis.

in O.C.G.A. § 21-5-30.2(b).

Conclusion

For the forgoing reasons, the Georgia Government Transparency and Campaign Finance Commission advises that a local government agency may, but is not required to, allow all persons, including public officers and candidates for public office, equal access to the local government agency's computer and/or computer system for the purpose of filing Campaign Contribution Disclosure Reports and Personal Financial Disclosure Statements,⁵ and such access will not constitute a violation of the Campaign Finance Act. However, the Commission does note that if a local government agency does not provide equal access to all public officers and candidates for public office, said selective access would constitute an "public agency contribution" in violation of the Campaign Finance Act pursuant to O.C.G.A. §§21-5-3(7) and 21-5-30.2(b).

Advisory Opinion 2016-01 is hereby adopted by the Commission in conformity with O.C.G.A. § 21-5-6(13) on _____, 2016.

R. Lawton Jordan III
Chair of the Commission

AO 2016-01 prepared by Stefan Ritter and Robert S. Lane.
May 24, 2016.

⁵ This shall include any other documents which must be filed in order to comply with the Campaign Finance Act or any rule or regulation promulgated by the Commission.