

NOTICE OF INTENT TO ADOPT AN ADVISORY OPINION OF THE STATE ETHICS COMMISSION

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the State Ethics Commission (hereinafter "Commission") proposes to adopt:

Advisory Opinion No.: 2023-03

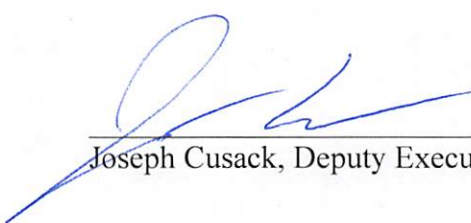
This notice, together with an exact copy of the proposed advisory opinion is being mailed to all persons who have requested, in writing, that they be placed on a mailing list. A copy of this notice and an exact copy of the advisory opinion may be reviewed during normal business hours of 8:30 a.m. to 4:30 p.m. Monday through Friday, except official State holidays, at the State Ethics Commission, 200 Piedmont Avenue SE, Suite 1416 - West Tower, Atlanta, Georgia 30334. These documents will be available for review on the State Ethics Commission website (www.ethics.ga.gov) and copies may be requested by contacting the Commission at 404-463-1980.

A public hearing is scheduled to begin at 10:00 AM on December 8th, 2023, at the Chatham County Board of Commissioners Chamber Room 124 Bull Street Savannah, Ga. 31401 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 December 1, 2023. Written Comments should be addressed to Katie Easterwood, Senior Paralegal, State Ethics Commission, 200 Piedmont Avenue SE, Suite 1416 – West Tower, Atlanta, Georgia 30334. Email: keasterwood@ethics.ga.gov.

The proposed advisory opinion will be considered for adoption by the Commission at its meeting scheduled to begin at 10:00 a.m. on December 8th, 2023, at the Chatham County Board of Commissioners Chamber Room 124 Bull Street Savannah, Ga. 31401

The State Ethics Commission has the authority to adopt this advisory opinion pursuant to authority contained in O.C.G.A. § 21-5-6(b)(13).

This 15 day of November, 2023.



Joseph Cusack, Deputy Executive Director



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In response to an advisory opinion request on August 15, 2023, from Defending Digital Campaigns, Inc. ("DDC") by and through their counsel Wiley Rein LLP, the State Ethics Commission advises that DDC may provide its cybersecurity goods and services, including those offered through DDC's corporate partners, at no cost or at a reduced cost to Georgia campaign committees and political parties without making an in-kind contribution to the participating campaign committees and political parties.

Questions Presented in Request for Advisory Opinion 2023-03

May DDC provide its cybersecurity goods and services, including those offered through DDC's corporate partners, at no cost or at a reduced cost to Georgia campaign committees and political parties without making an in-kind contribution to the participating campaign committees and political parties?

Discussion and Legal Analysis

Pursuant to a written request for an advisory opinion dated August 15, 2023, Wiley Rein LLP, on behalf of DDC, seeks guidance as to whether DDC may provide its cybersecurity goods and services at no cost or a reduced cost to Georgia campaign committees without making an in-kind contribution.

DDC is a non-partisan, non-profit organization that engages with campaigns and political parties to provide them with knowledge, training, and resources to defend themselves from foreign cyber threats. DDC has offered free and reduced cost cybersecurity products and services during the 2020 and 2022 election cycles to federal campaigns. The success of this program has led DDC to expand its offerings to state campaigns and political parties.

DDC offers, through its corporate partners, many state-of-the-art cybersecurity products to campaigns. These include, but are not limited to, Titan Security Keys, YubiKeys (multi-factor authentication software), and Cloudflare. All these products are offered through DDC, which has negotiated free or reduced costs, and are available on a non-partisan basis for any campaign to utilize. In a sense, DDC is operating as the marketplace or bundler for all these products as a one stop shop for campaign cybersecurity.

In their proposed question DDC believes they are not making an in-kind contribution to any campaigns by providing these products at a reduced cost or free. DDC is no different than Target or Home Depot in this analysis, they are the marketplace or provider of products and services and just because they offer every campaign or political party a discount, this discount does not magically turn every transaction into an in-kind contribution. An in-kind contribution is,



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“(1) Deemed a "contribution" for purposes of the Act, and refers to any item of value other than money received by a candidate or any committee.

(2) The aggregate of monetary and in-kind contributions from the same contributor shall not exceed the maximum contribution limits authorized by the Act.”

Ga. Comp. R. & Regs. r. 189-6-.07.

An example of a classic in-kind contribution to a campaign is normally food and beverage. A restaurant will contribute food and beverage to a campaign for a fundraiser in lieu of a monetary contribution. The campaign then discloses the monetary value of the food and beverage on its next Campaign Contribution Disclosure Report (“CCDR”) as an in-kind contribution. In this example, the campaign is receiving something of value and must report this as an in-kind contribution.

Compare the previous example to when a campaign utilizes a Costco membership to buy food in bulk for a campaign event. The campaign buys food in bulk at a cheaper price than they could at a supermarket. Although the campaign saves money buying in bulk from Costco, the difference in price they would spend at a supermarket is not an in-kind contribution from Costco. The same analysis applies to DDC, because they are offering the products to everyone on a non-partisan basis, an in-kind contribution has not been made.

DDC intends to offer their products and services at no cost or a reduced cost on a non-partisan basis to any campaign who meets a *de minimis* requirement of total receipts. Because these products and services are offered to any campaign that qualifies, DDC contends that the products and services it offers would not qualify as a contribution. Campaign contributions must be made “for the purpose of influencing the nomination for election or election of any person for office” O.C.G.A. § 21-5-3. DDC has asserted the structure in which these products and services are being offered is in no way intended to influence the outcome of an election. The product offering is solely intended to provide cybersecurity to state and local campaigns which hold vulnerable information. Because of the way DDC has structured the way they offer products and services to campaigns on a non-partisan basis, DDC is not making an in-kind contribution as their offerings are not intended to influence the outcome of an election.

Campaigns in Georgia that purchase DDC’s offerings and products must disclose any purchases made by the campaign as an expenditure. This is no different than if a campaign purchases anti-virus software or something similar, campaigns must still disclose any expenditure made by the campaign.

Conclusion

The State Ethics Commission advises DDC may provide its cybersecurity goods and services, including those offered through DDC’s corporate partners, at no cost or at a reduced cost to



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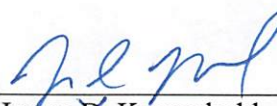
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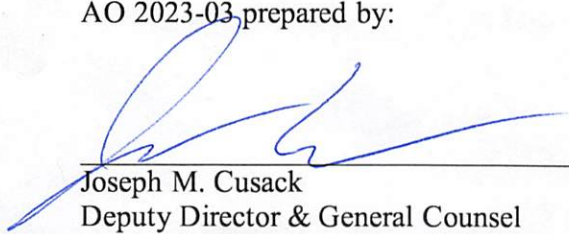
Georgia campaign committees and political parties without making an in-kind contribution to the participating campaign committees and political parties.

This Advisory Opinion concerns the application of the Georgia Government Transparency and Campaign Finance Act, or regulations prescribed by the State Ethics Commission, to the specific facts, transaction, or activity set forth for Advisory Opinion 2023-03.

Advisory Opinion 2023-03 is hereby adopted by the Commission in conformity with O.C.G.A. § 21-5-6(13) on December 8, 2023.


James H. Kreyenbuhl
Chairman

AO 2023-03 prepared by:


Joseph M. Cusack
Deputy Director & General Counsel