

Georgia campaign finance commission signals intent to be active in 2018 election

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In recent weeks, the Georgia Government Transparency and Campaign Finance Commission (Commission) has undertaken a pair of important actions that indicate the agency's desire to play a more expansive regulatory role on campaign finance and ethics matters heading into the 2018 election cycle. In light of these announcements, candidates, PACs, nonprofit organizations and other political stakeholders on both sides of the aisle must be cognizant of how a potentially activist Commission will influence the manner in which state law and regulations are enforced and shaped heading into the statewide campaign season and beyond.

The first prominent proclamation coming from the Commission in recent weeks was an announcement made at its September 21, 2017 meeting that its staff will be taking an increasingly proactive approach to investigating the use of campaign funds by Georgia candidates—particularly those running statewide in 2018. As specified by the Commission's Executive Secretary in his statements at the September 21 meeting, the Commission intends to begin auditing statewide campaigns for Governor, Lieutenant Governor, Attorney General and other offices in the coming months. As per the same statement, the Commission also intends to audit a handful of down-ballot candidates for state legislative and local offices so as to ensure general compliance with the demands of the Georgia Government Transparency and Campaign Finance Act and the Commission's rules thereunder.

While the advent of this new audit initiative shows that the Commission is dedicated to reasserting its oversight authority concerning candidate committees under state law, it is unclear at present how such audits will be conducted, or how extensive or invasive they will be. In light of this uncertainty, candidates for statewide office—or indeed any public office—should continue to diligently and accurately report all campaign contributions and expenditures, carefully monitor state contribution limits and restrictions, and consult qualified counsel concerning any compliance questions that may arise.

The second important action by the Commission in recent weeks was the adoption, during a special emergency hearing held on October 5, of a proposed Advisory Opinion. The unanimously adopted Opinion—No. 2017-05—touches on a host of important campaign finance issues related to the making of express advocacy communications by independent, non-campaign groups, including the Commission's interpretation of what constitutes coordination between such groups and candidates under state law. The language of the Advisory Opinion, while characterized by the Commission during the emergency hearing as narrowly tailored, contains analysis and discussion that has the potential to be broadly applied to restrict or limit a wide range of political engagement by independent groups that has been heretofore permissible activity under Georgia law.

For example, under the language of the Advisory Opinion, the Commission indicates that a candidate may not directly or indirectly "solicit funds for a nonprofit corporation or other entity" that proposes to "bring about the nomination or election of a candidate for any office," lest such solicitation be considered an in-kind contribution to the candidate. This application of the coordination standard to fundraising or solicitation activities for independent political groups, as opposed to just the expenditures made by such organizations, represents a departure from the common

understanding of the legal principle of coordination under both Georgia and federal law. The language of the Advisory Opinion also leaves room for interpretation as it relates to the Commission's view on what types of public communications constitute express advocacy under Georgia law. The impact of this line of discussion in the Opinion is yet to be seen, but it almost certainly indicates that the Commission may be willing to classify certain types of issue advocacy communications—which are not defined in either state law or regulation—as subject to additional regulation and scrutiny.

Although uncertainty as to the Advisory Opinion's breadth of application is sure to be met with trepidation by candidates, campaigns and independent political stakeholders alike, the Opinion may well be just an entrée to greater changes in Georgia campaign finance law. In conjunction with the passage of the Opinion, the Commission's Executive Secretary, Stefan Ritter, noted that when the Commission meets again in December, agency staff will be announcing a number of proposed rules on independent expenditure activity, express advocacy communications and coordination. Although the specifics of such proposed rules remain vague at this point, there are some preliminary indications that they will attempt to mirror some of the elements of the federal framework.

Whatever changes in Georgia campaign finance requirements lie ahead, Dentons' Political Law, Ethics and Disclosure team will be available to provide advice and counsel on the technical and practical impacts of regulatory change on business, public policy and political stakeholders.

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