

**INFORMAL OPINION IO-2004-001
ISSUED MARCH 4, 2004**

Because your question is reasonably susceptible to a single analysis by the clear language of the rule, we have responded by an informal opinion, as provided by the Constitutional Ethics Rules [Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. 2001, Ch. 62, App.]¹. You have asked:

Do the Constitutional Ethics Rules [“the Rules], supra, allow a candidate for elective state office to use in his/her campaign material a picture that he/she had taken in the office of a governmental entity?

FACTS

You have advised that your client wishes to in his/her campaign material a photograph made in a government office in his campaign material. You have indicated that the picture was not taken or developed at taxpayer expense.

ANALYSIS

The Rules prohibit the use of state property, funds, equipment, time or personnel to print material intended to influence a campaign as follows:

Use of public funds, property, time, and personnel to influence elections

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(b) A person shall not use or authorize the use of public funds, property, or time to produce, print, publish, broadcast, or otherwise disseminate material designed or timed to influence the results of an election for state office or a ballot measure, except political activities or statements inherent to or part of the function of a candidate or an elective officer or in the performance of a state officer's or state employee's duties or as allowed by law, regardless of the lack of specific reference to the election.

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(d) A person shall not authorize the use of state officers or state employees for the purposes set forth in Subsections (a) and (b) while in a uniform that identifies him or her as a state officer or state employee or during the hours that the state officer or state employee is officially in work status for a governmental entity.

(e) A person shall not print or distribute or cause to be printed or distributed, at public expense, a newsletter or other mass mailing of promotional material on behalf of

¹Rules' Section 257:1-1-6(h) provides:

...The executive director or the general counsel may issue informal written opinions, as time permits and with the prior approval of the chair or vice chair, pertaining to the provisions of this title on questions that are susceptible to a single analysis by the clear language of the rule and are not the subject of litigation, investigation or legislation.

an elective officer from the day the officer files a declaration of candidacy through the date of the election for the office.

* * *

(g) A person shall not distribute or post, or cause to be distributed or posted, in a facility ordinarily used for the conduct of state government business, a communication designed to influence the outcome of an election for state office or a ballot measure.

(h) This section, except for Subsection (e), does not apply to:

(1) activities that are part of the ordinary conduct of the governmental entity; and

(2) nonpartisan voter registration activities.

257:10-1-3

There is no restriction on an elective official using his or her office or any government building as background for a campaign picture. However, restrictions do prohibit using state time, equipment, personnel, funds, etc. to produce, print, publish, disseminate or broadcast such a picture. An exception exists if the picture is taken as part of the ordinary conduct of the governmental entity, i.e. for a House function.

CONCLUSION

It is therefore the informal opinion of the Ethics Commission staff that nothing in the Rules prohibits a candidate for elective state office from using a picture that he/she had taken in the office of a governmental entity in his/her campaign. It is prohibited, however, to use state time, equipment, personnel, funds, etc. to produce, print, publish, disseminate or broadcast such a picture unless it is taken as part of the ordinary conduct of the governmental entity.

Like ethics interpretations, informal staff opinions are fact specific. They answer only the question or questions put forth in the underlying request according to information described in the "Facts" section [supra]. While they may shed light on other situations, this opinion does not necessarily control them.

The Rules permit the Commission staff to issue informal opinions, upon the approval of the Chair or Vice Chair, provided the matter is reasonably susceptible to a single analysis and is not the subject of litigation, investigation or legislation. We hope these informal letters shed light on the issues and provide guidance. They are not, however, official pronouncements.

This opinion letter has been approved by the Commission Chairman. According to policy, this opinion will be submitted to the members, any of whom can request that the matter be converted to an ethics interpretation and considered by the full Commission.

Informal opinions are published with sufficient deletions to prevent identification of the person or persons involved in the situations herein described. The name of the requestor is considered confidential. This letter has been labeled accordingly.