

Constitutional Amendment 1

On November 6, 2018, Missouri voters approved [Constitutional Amendment 1](#), which, among its provisions, imposes a two-year limitation before members and employees of the general assembly can register as a lobbyist, adjusts campaign contribution limits on candidates for the Missouri Senate and House of Representatives, establishes rules for Missouri committees receiving contributions from federal political action committees, and restricts the value of lobbyist gifts given to members of the General Assembly.

December 6, 2018 is the effective date of this Amendment. MO Const. Article XII, Sec. 2(b).

The following discussion is a summary of some of the provisions. Please note that some of these provisions may be subject to additional interpretation.

The Missouri Ethics Commission, at its January 15, 2019 meeting, took the following actions:

The Commission voted unanimously to request an advisory opinion from the Attorney General's office regarding Amendment 1. The question is:

Amendment 1 provides that “no person serving as a member of or employed by the General Assembly shall act or serve as a paid lobbyist, register as a paid lobbyist, or solicit prospective employers or clients to represent as a paid lobbyist during the time of such service until the expiration of two calendar years after the conclusion of the session of the general assembly in which the member or employee last served. . . .” It also contains the following prohibition: “No person serving as a member of or employed by the General Assembly shall accept directly or indirectly a gift of any tangible item, service, or thing of value from any paid lobbyist or lobbyist principal in excess of five dollars per occurrence.” Does Section 105.957.1(6), RSMo, authorize the Missouri Ethics Commission to accept complaints regarding alleged violations of these provisions and to issue advisory opinions pertaining to these provisions?

On February 1, 2019, the Missouri Attorney General's Office issued the following opinion to the Commission: [35-2019](#)

Two-Year limitation on Members and Employees of the General Assembly

“After the effective date of this section, no person serving as a member of or employed by the General Assembly shall act or serve as a paid lobbyist, register as a paid lobbyist, or solicit prospective employers or clients to represent as a paid lobbyist during the time of such service until the expiration of two calendar years after the conclusion of the session of the general assembly in which the member or employee last served and where such service was after the effective date of this section.”

- This section applies to members and persons employed by the General Assembly after December 6, 2018.

- The section prohibits those individuals from acting or serving as a paid lobbyist, registering as a paid lobbyist, or soliciting prospective employers or clients for representation as a paid lobbyist until the expiration of two calendar years after the conclusion of the session of the general assembly in which the member or employee last served.
- Section 105.470, RSMo, defines legislative, executive, judicial and elected local government official lobbyist.
- Section 105.470, RSMo, requires all lobbyists to register with the MEC no later than January 5 of each year or 5 days after beginning the activities as a lobbyist.
- Section 105.455, RSMo, which placed a six month limitation on registering as a lobbyist remains in effect for other officials who are not members or employees of the General Assembly.

Lobbyist Gifts

“No person serving as a member of or employed by the General Assembly shall accept directly or indirectly a gift of any tangible or intangible item, service, or thing of value from any paid lobbyist or lobbyist principal in excess of five dollars per occurrence. This Article shall not prevent Candidates for the General Assembly, including candidates for reelection, or candidates for offices within the senate or house from accepting campaign contributions consistent with this Article and applicable campaign finance law. Nothing in this section shall prevent individuals from receiving gifts, family support or anything of value from those related to them within the fourth degree by blood or marriage. The dollar limitations of this section shall be increased or decreased each year by the percentage of increase or decrease from the end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Department of Labor, or its successor agency and rounded to the nearest dollar amount.”

- This section applies to members and persons employed by the General Assembly
- This section imposes a \$5.00 restriction per “occurrence” on “gifts of tangible and intangible items, services or things of value.”
- The restriction applies to paid lobbyists or lobbyist principals.
- Lobbyists will continue to report expenditures under Section 105.473, RSMo.
- Candidates for the General Assembly may still accept campaign contributions according to applicable limits.
- Individuals may still receive gifts, family support or anything of value from relatives within the fourth degree by blood or marriage.
- The section provides for an annual increase or decrease based on economic factors.

Campaign Contribution Limits

“The General Assembly shall make no law authorizing unlimited campaign contributions to candidates for the General Assembly, nor any law that circumvents the contribution limits contained in this Constitution. In addition to other campaign contribution limitations or restrictions provided for by law, the amount of contributions made to or accepted by any candidate or candidate committee from any person other than the candidate in any one election for the General Assembly shall not exceed the following:

- (1) To elect an individual to the office of state senator, two thousand five hundred dollars; and
- (2) To elect an individual to the office of state representative, two thousand dollars.

The contribution limits and other restrictions of this section shall also apply to any person exploring a candidacy for a public office listed in this subsection.

For purposes of this subsection, “base year amount” shall be the contribution limits prescribed in this section. Contribution limits set forth herein shall be adjusted on the first day of January in each even-numbered year hereafter by multiplying the base year amount by the cumulative consumer price index and rounded to the nearest dollar amount, for all years after 2018.”

- This section adjusts campaign contribution limits for candidates for State Senator or House of Representatives, as well as persons with exploratory committees. The contribution limits of Mo. Const. Art. VIII, Section 23 have been lowered to \$2,500 for candidates for Senate and \$2,000 for the House of Representatives -- per election.
- This section applies to contributions received on or after December 6, 2018.
- Contribution limits in the amount of \$2,600 for candidates for statewide office in Mo. Const. Art. VIII, Section 23 remain in effect.
- For more information about election cycles, please consult the information and advisory opinions found [HERE](#).

Contributions funded by a Single Person, Individual, or Other Committee

“No contribution to a candidate for legislative office shall be made or accepted, directly or indirectly, in a fictitious name, in the name of another person, or by or through another person in such a manner as to, or with the intent to, conceal the identity of the actual source of the contribution. There shall be a rebuttable presumption that a contribution to a candidate for public office is made or accepted with the intent to circumvent the limitations on contributions imposed in this section when a contribution is received from a committee or organization that is primarily funded by a single person, individual, or other committee that has already reached its contribution limit under any law relating to contribution limitations. A committee or organization shall be deemed to be primarily funded by a single person, individual, or other committee when the committee or organization receives more than fifty percent of its annual funding from that single person, individual, or other committee.”

In no circumstance shall a candidate be found to have violated limits on acceptance of contributions if the Missouri Ethics Commission, its successor agency, or a court determines that a candidate has taken no action to indicate acceptance of or acquiescence to the making of an expenditure that is deemed a contribution pursuant to this section.”

- This section creates a rebuttable presumption that a contribution to a candidate for public office is made or accepted with the intent to circumvent contribution limits for State Senate or House of Representatives when a contribution is received from a committee or organization that is primarily funded by a single person, individual, or other committee that has already reached its contribution limit under any law relating to contribution limitations.
- A committee or organization shall be deemed to be primarily funded by a single person, individual, or other committee when the committee or organization receives more than fifty percent of its annual funding from that single person, individual, or other committee.
- The section applies to the contribution limits for Senate and House of Representatives and does not directly address contribution limits for Statewide Office.

- The presumption will not apply upon a finding by the MEC or a court that a candidate has taken no action to indicate acceptance of or acquiescence to the making of an expenditure deemed a contribution pursuant to this section.
- "Person" is defined in Article VIII, §23.7(19) of the Missouri Constitution.

Federal Political Action Committees

“No candidate shall accept contributions from any federal political action committee unless the committee has filed the same financial disclosure reports that would be required of a Missouri political action committee.”

- This section requires federal PAC s to file the same campaign finance disclosure reports required of Missouri PACs/continuing committees when making contributions to Missouri candidates.
- Missouri candidates are restricted from accepting contributions from federal PACs unless the federal committee has complied with this requirement.
- The Commission recently promulgated Commission Rules [1 CSR 50-5.010 and 1 CSR 50-5.020](#) requiring federal PACs to register as Missouri committees and file campaign finance reports if they meet certain contribution and expenditure thresholds. This Constitutional provision applies to all contributions made by a federal PAC to candidates; therefore, the Commission is reviewing the current rules and contemplating any necessary amendments.

Political Fundraising

“No political fundraising activities or political fundraising event by any member of or candidate for the general assembly, including but not limited to the solicitation or delivery of contributions, supporting or opposing any candidate, initiative petition, referendum petition, ballot measure, political party or political committee, shall occur in or on any premises, property or building owned, leased or controlled by the State of Missouri or any agency or division thereof. Any purposeful violation of this section shall be punishable by imprisonment for up to one year or a fine of up to one thousand dollars or both, plus an amount equal to three times the illegal contributions. The Missouri Ethics Commission or its successor agency is authorized to enforce this section as provided by law.”

To stay up-to-date on Commission guidance regarding Amendment 1 please continue to visit our [website](#).

Review of Lobbyist Reporting

The MEC has received a number of questions regarding Amendment 1's impact on lobbyist reporting. It is important to distinguish the question of receipt by a member or employee of the General Assembly from lobbyist reporting.

The following is a summary of the issues:

Amendment 1 did NOT change the way in which lobbyist expenditures are reported.

Amendment 1 makes no changes in lobbyist reporting of expenditures under Missouri statutes.

Amendment 1 states that members and employees of the General Assembly may receive "gifts of tangible and intangible items, services or things of value" up to \$5 per occurrence by a paid lobbyist or principal.

Section 105.470 (3), RSMo defines "expenditures" for reporting purposes and Section 105.473, RSMo states how to report expenditures.

What must be reported individually to the member or employees?

Section 105.473 (2), RSMo requires lobbyists to report the following expenditures regardless of the amount or fair market value. For example:

- Entertainment (including the time, venue and nature of the entertainment)
- Gifts
- Honoraria
- Meals, food and beverage
- Media and other advertising expenses
- Printing and publication expenses
- Travel

What is not required to be reported?

Section 105.470 (3), RSMo states that the following items are not "expenditures" and do not have to be reported by lobbyists:

The transfer of any item, provision of any service or granting of any opportunity with a reasonably discernible cost or fair market value when such item, service or opportunity is necessary for a public official or employee to perform his or her duty in his or her official capacity, including but not limited to entrance fees to any sporting event, museum, or other venue when the official or employee is participating in a ceremony, public presentation or official meeting;

Any item, service or thing of *de minimis* value offered to the general public, whether or not the recipient is a public official or a staff member, employee, spouse or dependent child of a public official, and only if the grant of the item, service or thing of *de minimis* value is not motivated in any way by the recipient's status as a public official or staff member, employee, spouse or dependent child of a public official;

Souvenirs or mementos valued at less than \$10. **NOTE:** This dollar limit does not apply to food or beverages;

Informational material such as books, reports, pamphlets, calendars or periodicals informing a public official regarding such person's official duties;

Any item, service or thing of value transferred to any person within the 3rd degree of consanguinity (blood relation) of the transferor which is unrelated to any activity of the transferor as a lobbyist;

Contributions to the public official's candidate committee that are reported under Chapter 130, the campaign finance disclosure law.

Any payment, gift, compensation, fee, expenditure or anything of value which is bestowed upon or given to any public official or a staff member, employee, spouse or dependent child of a public official when it is compensation for employment or given as an employment benefit and when such employment is in addition to their employment as a public official;

Any loan made or other credit accommodations granted or other payments made by any person or entity which extends credit or makes loan accommodations or such payments in the regular ordinary scope and course of business, provided that such are extended, made or granted in the ordinary course of such person's or entity's business to persons who are not public officials.

What qualifies for group reporting?

Section 105.473.3(2)(d), RSMo states that lobbyists may report the following expenditures to a qualified group of the General Assembly, rather than an individual member, if the following conditions are met:

Reporting is for an occasion; and, the group is invited in writing.

The qualified groups are as follows:

- All members of the Senate;
- All members of the House of Representatives;
- All members of a joint committee of the General Assembly or a standing committee of either the House of Representatives or Senate;
- All members of a caucus of the majority party of the House of Representatives, minority party of the House of Representatives, majority party of the Senate, or minority party of the Senate;

NOTE: Because the reporting is for an occasion, this type of reporting does not apply to items, souvenirs, mementos etc. delivered to members which may not otherwise meet the expenditure exception.

What is the fair market value of items that may be donated for free to the lobbyist or principal?

The value of all items that may be donated for free or at a reduced cost to a lobbyist or principal to give to public officials is still calculated at fair market value. For example, items in a gift bag with a fair market value of \$25.00 which may have been donated by businesses are still considered to have a fair market value of \$25.00.