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# Constitutional Article VIII, Section 23

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On November 8, 2016, Missouri voters approved Constitutional Amendment 2 which, among its provisions, imposes campaign contribution limits on certain candidates for state office including statewide offices, legislative offices and judicial offices. The specific constitutional provision is Article VIII, §23. The full text of Article VIII, §23 can be viewed [here](#).

## Advisory Opinions

The Commission issued several opinions regarding Article VIII, §23. Opinion summaries can be found [here](#) (page 6-7 of this document). The full opinions can be found on the [Advisory Opinions](#) page of the MEC website.

## Litigation Update:

Portions of Article VIII, §23 have been challenged in federal litigation in **Free and Fair Election Fund, et al. v. Missouri Ethics Commission, et al. & Missouri Electric Cooperatives, et al. v. State of Missouri, et al., Consolidated Case No. 16-04332-CV-C-ODS** (Western District of Missouri, Central Division). On May 5, 2017, the Federal District Court issued [the ruling](#). The state appealed an injunction on PACs contributing to other PACs. That was the sole issue pending in the Eighth Circuit Court of Appeals.

On September 10, 2018, the Eighth Circuit upheld the injunction in [the opinion](#), finding the PAC to PAC prohibition unconstitutional. On January 8, 2019, the Missouri Ethics Commission filed a petition for a writ of certiorari with the Supreme Court of the United States. At the request of the court, the other parties filed responsive briefs on March 15, 2019, and the MEC filed a reply brief on March 29, 2019. On April 18, 2019, the Court will be in conference and will decide whether to take the case. [\[Updated April 12, 2019\]](#)

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In **Mo. Chamber of Commerce v. Mo Ethics Commission, et. al, No. 17AC-CC00515** (Cole County Circuit Court), the Missouri Chamber has sought a court ruling on whether corporations can make corporate contributions to their connected PAC (the corporation is the connected organization). This litigation could impact the Commission's opinions 2017.03.CF.010 and 2017.03.CF.014.

On April 24, 2018, the Circuit Court of Cole County issued [a judgment](#) in favor of the Commission, agreeing with the Commission's interpretation that corporations that serve as connected organizations cannot contribute corporate funds to its connected PAC. An appeal was filed in the Missouri Court of Appeals, Western District. On April 9, 2019, the Court of Appeals upheld the Cole County judgment. The regulated community should continually check the Commission's website for updates. [\[Updated April 12, 2019\]](#)

(see also, **Frequently Asked Questions on page 2**)

## Frequently Asked Questions

Readers are cautioned that portions of this summary may be affected by litigation.

### **What was the effective date of Article VIII, §23?**

Under Article XII, §2(b), “If a majority of the votes cast thereon is in favor of any amendment, the same shall take effect at the end of thirty days after the election.” Therefore, the effective date was December 8, 2016.

### **How does Article VIII, §23 correspond to Chapter 130 of the Missouri Revised Statutes?**

Article VIII, §23 is an amendment to the Missouri Constitution. Chapter 130 of the Missouri Revised Statutes are campaign finance laws passed by the Missouri General Assembly. The constitution provides additional provisions such as contribution limits, provisions relating to corporate and labor organization contributions, contributions received by and made by campaign finance committees, and criminal penalties.

### **What are the contribution limits and what candidates do the limits apply to?**

Article VIII, §23. 3(1), provides a contribution limit of \$2,600 from any person, other than the candidate, to elect an individual to the Missouri state offices of:

- Governor
- Lieutenant Governor
- Secretary of State
- State Treasurer
- State Auditor
- Attorney General
- State Senator
- State Representative
- State Judicial Office
- Other State Office

### **Do contribution limits apply to candidates for local elections?**

The constitution does not include contribution limits for candidates for local elections; however local jurisdictions may have their own contribution limits. (See Commission Opinion 2017.02.CF.001)

### **What elections do contribution limits apply to?**

#### **Is election defined?**

Article VIII, §23.7(11) defines an “election” as any primary, general or special election held:

- to nominate or elect an individual to public office
- to retain or recall an elected officeholder or to submit a ballot measure to the voters
- any caucus or other meeting of a political party or a political party committee at which that party’s candidate or candidates for public office are officially selected

Section 23.7(1) provides that state contribution limits apply to any one election. A primary election and the succeeding general election shall be considered separate elections.

### **Can a candidate subject to contribution limits receive contributions for the primary and general election at the same time, and prior to the primary for the general election?**

In Commission Opinion 2017.03.CF.012 the Commission stated that state office candidates in a primary election may not receive simultaneous contributions from the same contributor up to \$5,200 for the primary and general election in the period leading to the primary election. A contribution of up to \$2,600 for state office candidates in a general election must be received after the primary election. Therefore, contributions for the 2018 general election should not be received until after the August 2018 primary election.

#### **Is person defined?**

Article VIII, §23.3(1), provides a contribution limit of \$2,600 from any “person” to a candidate for certain state offices. The limit does not apply to a contribution made by the candidate to his or her own committee. §23.7 (19) defines a “person” as:

- An individual or group of individuals
- Corporation (Article VIII, §23.3(3) contains separate provisions regarding corporate contributions – See Commission Opinion 2017.03.CF.010 and 2017.03.CF.0140
- Partnership
- Committee (Article VIII, §23.12 contains separate provisions regarding committee to committee contributions)
- Proprietorship or joint venture
- Any department, agency, board, institution or other entity of the state or any of its political subdivisions
- Union or labor organization (Article VIII, §23.3(3) contains separate provision regarding corporate contributions)
- Trade or professional or business association
- Association
- Political party or any executive committee thereof
- Any other club or organization however constituted or any officer or employee of such entity acting in the person's official capacity

NOTE: Article VIII, §23 contains separate provisions and restrictions on contributions by committees and some business entities. The constitutional provision should be reviewed for those specific provisions.

**Do contribution limits apply to contributions made by children?**

Article VIII, §23.3(17) provides that contributions from persons under 14 years of age shall be considered made by the parents or guardians of such person and shall be attributed toward any contribution limits. Where a contributor under 14 years of age has two custodial parents or guardians, 50% of the contribution shall be attributed to each parent or guardian. Where a contributor under 14 years of age has one custodial parent or guardian, all such contributions shall be attributed to the custodial parent or guardian.

**Are the contribution limits for contributions to state candidates and political parties permanently fixed?**

Article VIII, §23.3(18) provides that contribution limits for contributions to state candidates and political parties shall be adjusted according to formula based upon the Consumer Price Index (CPI). The first adjustment shall be done in the first quarter of 2019, and then every four years thereafter. The secretary of state shall calculate such an adjustment in each limit and specify the limits in rules.

**Are there contribution limits for contributions to political parties?**

Political party committees can accept aggregate contributions of \$25,000 per election from persons or committees. The aggregate applies to the party committees at the state, county, municipal, district, ward, and township level combined. In Commission Opinion 2017.02.CF.007, the Commission discussed the election cycle for purposes of the \$25,000 aggregate for political parties. *See* Article VIII, §23.3(2.)

In Commission Opinion 2017.05.CF.013 the Commission stated that the state house and state senate committees for each political party designated by the respective majority or minority floor leaders in §23.3 (13) are not subject to the \$25,000 per election aggregate party contribution limit of Article VIII, §23.3(2).

**What is a political party?**

Article VIII, §23.7(22) defines a “political party” as a political party which has the right under law to have the names of its candidates listed on the ballot in a general election.

**What is a Political Party Committee and how does that differ from a Political Action Committee/ Continuing Committee?**

Article VIII, §23.7(23) defines a political party committee as: a state, district, county, city, or area committee of a political party, as defined in Section 115.603, RSMo, which may be organized as a not-for-profit corporation under Missouri law, and which committee is of continuing existence, and has the primary or incidental purpose of receiving contributions and making expenditures to influence or attempt to influence

the action of voters on behalf of the political party. Examples include the state party committees and county central committees.

Article VIII, §23.7(6)(c) and (20) define continuing committees and political action committees, and each type of committee is referenced in the Constitution. In Commission Opinion 2017.02.CF.002, the Commission stated that these two committees are the same.

Because there are limitations to contributions to and from political action committees that do not apply to political party committees, it is important to confirm the type of committee being considered. The committee type is found on the MEC website committee search.

### **What Rules apply to both state and local candidate committees?**

While the contributions limits do not apply to local candidates, there are numerous provisions that apply to all candidate committees, including local candidates. These provisions include:

- Candidate committees cannot accept from or make contributions to another candidate committee, including federal candidate committees
- Candidate committees cannot make contributions to political action committees/continuing committees
- Candidate committees cannot receive contributions from corporations (with some exceptions) and labor organizations directly (see questions on corporation and labor organization contributions).
- Candidate committees can receive contributions from political action committees/continuing committees subject to contribution limits if they apply
- Candidate committees can make contributions to political party committees
- Candidate committees can receive contributions from political party committees

### **Can a candidate committee give a contribution to or receive a contribution from another candidate committee?**

No. Under Article VIII, §23.3(4) a candidate committee cannot accept contributions from or make contributions to another candidate committee including a candidate committee or equivalent entity established under federal law. This prohibition does not apply to a candidate's personal funds.

### **How does Article VIII, Section 23 affect corporate and labor organization contributions?**

Article VIII, §23.3(3)(a) prohibits corporations or labor organizations from making contributions (monetary or in-kind) to :

- candidate committees
- exploratory committees
- political party committees
- political parties

Examples of in-kind contributions include use of facilities without charge or donating prizes for fundraisers.

Article VIII, §23.3(3)(a) also states that a corporation or labor organization may establish a political action/continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders.

Article VIII, §23.3(12) states that political action/continuing committees may receive contributions from corporations, associations, and partnerships.

The Commission has issued a number of opinions regarding corporate and labor organization contributions:

In Commission Opinion 2017.03.CF.010, the Commission stated that a corporation or labor organization may not contribute its own treasury funds to its connected political action committee/continuing committee; it may contribute its own funds to an unconnected political action committee/continuing committee

In Commission Opinion 2017.07.CF.014, the Commission discussed connected organizations and how a corporation's status under the campaign finance laws is impacted under Art. VIII, §23.

In *Mo. Chamber of Commerce v. Mo Ethics Commission, et. al*, No. 17AC-CC00515 (Cole County Circuit Court), the Missouri Chamber has sought a court ruling on whether corporations can make corporate contributions to their connected PAC (the corporation is the connected organization). This litigation could impact the Commission's opinions 2017.03.CF.010 and 2017.03.CF.014.

### **Is a Limited Liability Company considered a corporation?**

In Commission Opinions 2017.02.CF.005, 2017.02.CF.006 and 2017.03.CF.009, the Commission discussed contributions from limited liability companies (LLC) and foreign entities as follows:

- To the extent that a Missouri LLC is an "eligible entity" and elects to be classified as a corporation under the federal tax code, it is considered a "corporation" for purposes of §23 of the Missouri Constitution. The same holds true for a foreign LLC to the extent it is an "eligible entity" and elects to be treated as a corporation by the Internal Revenue Service, or has publicly-traded shares.
- An LLC with one corporate member/owner that has elected to be treated as a partnership and a disregarded entity under the Internal Revenue Code is subject to the ban on corporate contributions under Article VIII, §23.3(3)(a).
- Political action committees/continuing committees may receive contributions from foreign corporations, associations or partnerships, holding valid certificates of authority to do business in this state under the chapters 347 to 360, RSMo.

### **Are Political Action Committees/Continuing Committees prohibited from receiving contributions from other state committees?**

Political action committees/continuing committees are prohibited from receiving contributions from:

- Other political action committees/continuing committees  
While the Constitution contains the prohibition, the U.S. District Court enjoined this provision and therefore, the prohibition of PACs giving to other PACs is not enforced. The ruling on this section is under appeal.
- Candidate committees
- Political party committees
- Campaign committees
- Exploratory committees
- Debt service committees

A political action committee/continuing committee **may receive** contributions from a federal PAC (see Art. VIII, Sec. 23.3(12)). [Added 12/19/17]

### **Can non-citizens or foreign governments make state contributions?**

Article VIII, §23.3 (16) states that no Missouri committee shall knowingly accept contributions from:

- Any natural person who is not a citizen of the United States; or
- A foreign government

### **What are the penalties for violation of Article VIII, Section 23?**

Article VIII, §23 provides criminal penalties for violations of specific provisions. These penalties can be found in Article VIII, §23.5 and 6. In addition, Section 23.4 allows an individual to file a complaint with the MEC regarding a candidate alleged to be in violation of Article VIII, Section 23.3, within 60 days prior to the primary election until after the general election.

## Constitutional Article VIII, Section 2 - Advisory Opinion Summaries

The full opinions can also be found on the [Advisory Opinions](#) page of the MEC website.

**[2017.02.CF.001](#)** The contribution limits set forth in §23.3(1) do not apply to contributions made to candidates for county or local government offices. A candidate who received a contribution over the \$2,600 limit from December 8, 2016 forward for a county or local office would be required to return the amount exceeding that limit if the candidate later chooses to run for a state office.

**[2017.02.CF.002](#)** Because the definitions of continuing and political action committees are substantially the same, the Commission interprets these committees to be the same despite the fact that the constitutional provision refers to these committees in separate definitions. The Statement of Committee Organization provides a committee type as “Continuing (PAC)” and the committees are identified as political action committees on the Commission’s website.

**[2017.02.CF.003](#)** It is the Commission’s opinion that the contribution limits apply to candidate committees and only to continuing committees/political action committees if a contribution to that committee is restricted or designated for a candidate.

**[2017.02.CF.004](#)** A candidate committee can make an expenditure to support a candidate or ballot measure if those expenditures were “not requested to be made by, directed or controlled by, or made in cooperation with, or made with the express or implied consent of the candidate.”

**[2017.02.CF.005](#)** To the extent that a Missouri LLC is an “eligible entity” and elects to be classified as a corporation under the federal tax code, it is considered a “corporation” for purposes of §23 of the Missouri Constitution. The same holds true for a foreign LLC to the extent it is an “eligible entity” and elects to be treated as a corporation by the Internal Revenue Service, or has publicly-traded shares.

**[2017.02.CF.006](#)** Political action committees can receive contributions from foreign corporations, associations or partnerships, holding valid certificates of authority to do business in this state under the chapters 347 to 360, RSMo.

**[2017.02.CF.007](#)** For purposes of the \$25,000 aggregate received by a political party from individuals and candidates, it is the Commission’s opinion that the aggregate applies to each election in which a political party participates under the definition of election contained in the constitutional provision.

**[2017.02.CF.008](#)** Contribution limits articulated in §23.3(1) do not apply to contributions to the House Republican Campaign Committee (HRCC) and Missouri Senate Campaign Committee (MSCC) unless the contributions received by these continuing committee/political action committees are restricted or designated for a particular candidate. Contributions made by these committees to enumerated candidates are subject to the \$2,600 limitation per election. No, Section 23.3(3) does not prohibit the committees from taking contributions from corporations or labor unions. Yes, the exception to the prohibition against committee to committee transfers articulated in Section 23.3(12) apply to these committees.

**[2017.03.CF.009](#)** A Limited Liability Company (LLC) with one corporate member/owner that has elected to be treated as a partnership and a disregarded entity under the Internal Revenue Code is subject to the ban on corporate contributions under Article VIII, §23.3(3)(a) of the Missouri Constitution.

**[2017.03.CF.010](#)** A corporation or labor organization may not contribute its own funds to its connected political action/continuing committee; it may contribute its own funds to an unconnected PAC as long the contribution is authorized under Art. VIII, §23.3(12). A PAC which is connected to a corporation or labor organization may receive contributions from contributors not connected to the corporation or labor organization; guidance is given on solicitations on behalf of that PAC.

**[2017.03.CF.012](#)** State office candidates in a primary election may not receive simultaneous contributions from the same contributor up to \$5,200 for the primary and general election in the period leading to the primary election. A contribution of up \$2,600 for state office candidates in a general election must be received after the primary election.

## Constitutional Article VIII, Section 2 - Advisory Opinion Summaries (cont.)

The full opinions can also be found on the [Advisory Opinions](#) page of the MEC website.

**[2017.05.CF.013](#)** The state house and state senate committees for each political party designated by the respective majority or minority floor leaders in §23.3(13) are not subject to the \$25,000 per election aggregate party contribution limit of Article VIII, § 23.3(2).

**[2017.07.CF.014](#)** A PAC that is funded with 100% of its monetary contributions by a corporation's general treasury funds cannot be "deemed" to be a "connected organization." However, the PAC can be connected if the corporation is expending funds to establish, administer and maintain the committee, or to solicit officers, directors, employees or security holders of such organization. [Added 7/17/17]

**[2017.08.CF.016](#)** A labor organization which serves as a connected organization may transfer membership dues from its treasury funds to its continuing committee/PAC. It may consider segregation of funds and must keep accurate records. [Added 8/28/17]

**[2017.08.CF.017](#)** A non-profit corporation that meets the requirements of Art. VIII, §23.3(3)(b) may contribute to candidate committees, exploratory committees, and political party committees. Guidance is given on the 3 part-test of Art. VIII, §23.3(3)(b) [Added 8/28/17]

**[2017.09.CF.018](#)** Nothing in Chapter 130 or the Missouri Constitution prohibits a candidate from appearing at a fundraising event, or from fundraising on behalf of the committee. However, committee must be true continuing committee/PAC and not operate as a second candidate committee. 2) A continuing committee/PAC may not receive funds from the general treasury of a corporation where the treasurer of the continuing committee/PAC treasurer is the spouse of a shareholder, board member, partner, executive officer, LLC Manager or LLC Member. 3) Direction is given on donor involvement in continuing committee/PAC given the prohibition on corporate or union funds to certain committees. [Added 10/3/17]

**[2018.01.CF.001](#)** A Federal Leadership PAC registered with the FEC which by definition is established, financed, maintained or controlled by a candidate for federal office, while not an authorized candidate committee under federal law, is considered an equivalent entity of a candidate committee under Mo. Const. Art. VIII, §23(4) and therefore cannot make or receive contributions to or from Missouri candidate. [Added 1/18/18]