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# Constitutional Amendment 2

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As of January 6, 2017, the commission adopted a resolution regarding opinion requests currently pending. The resolution can be found [here](#) (page 4 of this document).

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 full text of **Amendment 2** can be viewed on the Secretary of State's website

The following is a general summary of provisions of Amendment 2, passed by voters in the November 2016 general election. To the extent that individuals have specific questions that require interpretation by the Commission, individuals directly affected by the law may submit a request for advisory opinion in writing under Section 105.955.16, RSMo.

### **What is the effective date of Amendment 2?**

Under Article XII, Sec. 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 is **December 8, 2016**.

### **How does Amendment 2 correspond to Chapter 130 of the Missouri Revised Statutes?**

Amendment 2 is an amendment to the Missouri Constitution which adds Section 23 to Article VIII of the Missouri Constitution and was approved by voters in the November 2016 general election. Chapter 130 of the Missouri Revised Statutes are campaign finance laws passed by the Missouri General Assembly. Amendment 2 provides many definitions and some provisions that are identical to the statutes in Chapter 130. Amendment 2 provides additional provisions that are part of the Missouri constitution, 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?**

Section 23, subsection 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

### **Are there contribution limits for local elections?**

Amendment 2 does not address candidates for local elections.

### **Is election defined?**

Section 23, subsection 7(11) defines an “election” as:

- Any primary, general or special election held to nominate or elect an individual to public office
- Any primary, general or special election held to retain or recall an elected officeholder or to submit a ballot measure to the voters, and
- 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 official selected.
- A primary election and the succeeding general election shall be considered separate elections.

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

Section 23, subsection 3(1), provides a contribution limit of \$2,600 from any person, other than the candidate, to elect individuals to state office for “one” election. Subsection 7(11) states that a primary election and the succeeding general election shall be considered separate elections.

### **Is person defined?**

Section 23, subsection 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. Subsection 7(19) defines a “person” as:

- An individual
- Group of individuals
- Corporation (Amendment 2 contains separate provision regarding corporate contributions)
- Partnership
- Committee (Amendment 2 contains separate provisions regarding committee to committee contributions)
- Proprietorship
- Joint venture, any department, agency, board, institution or other entity of the state or any of its political subdivisions
- Union labor organization (Amendment 2 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:** Amendment 2 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?**

Section 23, subsection 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 contributors shall be attributed to the custodial parent or guardian.

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

Section 23, subsection 3(2)(a) states that no political party shall accept aggregate contributions from any person that exceed \$25,000 per election at the state, county, municipal, district, ward, and township level combined.

Subsection 3(2)(b) states no political party shall accept aggregate contributions from any committee that exceed \$25,000 per election at the state, county, municipal, district, ward, and township level combined.

**What is a political party?**

Section 23, subsection 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.

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

Section 23, subsection 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.

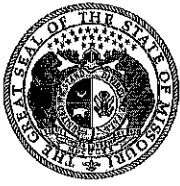
**Are there exceptions and other provisions governing contribution limits?**

Amendment 2 contains provisions governing corporate and labor organization contributions and contributions from campaign finance committees to other committees. These provisions should be consulted and may be subject to Commission interpretation through the advisory opinion process.

**What are the penalties for violation of Amendment 2?**

Amendment 2 provides criminal penalties for violations of specific provisions. These penalties can be found in Section 23, subsections 5 and 6.





## MISSOURI ETHICS COMMISSION

P.O. Box 1254

Jefferson City, MO 65102

[www.mec.mo.gov](http://www.mec.mo.gov)

(573) 751-2020 / (800) 392-8660

James Klahr

Executive Director

January 6, 2017

The Missouri Ethics Commission, at its January 6, 2017 meeting, approved the following resolution regarding pending opinion requests related to Amendment 2, the recently adopted Constitutional Amendment.

Certain provisions of Article VIII, Section 23 of the Missouri Constitution (Amendment 2) are currently being challenged in *Missouri Electric Cooperatives, et. al. v. State of Missouri*, et. al, No. 4:16-cv-01901 (Eastern District of Missouri) and *Free and Fair Election Fund, et. al v. Missouri Ethics Commission*, et. al, No. 2:16-cv-4332 (Western District of Missouri).

The Commission has received advisory opinion requests which are summarized as follows:

1. Do contribution limits apply to candidates for county and local government offices? If they do not, must a county or local candidate that receives a contribution above the limit established have to return it if the candidate decides to run for state or judicial office?
2. Does Amendment 2 place restrictions on fundraiser proceeds from a women's club to a central committee?
3. Is a contribution from a Limited Liability Company (LLC) a contribution from a "corporation" under Amendment 2?
4. Do contribution limits articulated in Section 23.3(1) apply to contributions to the House Republican Campaign Committee (HRCC) and Missouri Senate Campaign Committee (MSCC)? Does Section 23.3(3) prohibit the committees from taking contributions from corporations or labor unions? Does the exception to the prohibition against committee-to-committee transfers articulated in Section 23.3(13) apply to these committees?
5. Are continuing committees/political action committees subject to the contribution limits of Amendment 2?
6. Amendment 2 limits contributions to a party to \$25,000 per election. An election is defined as any primary, special or general election held to nominate or elect a candidate. Since a party will always be active during a general election (unlike a candidate that may lose a primary), can it accept a primary and general election contribution during the primary period? Since a party is active whenever its candidates are running (i.e. primary election, general election, special elections, nominating caucuses, partisan municipal elections, etc.), will a separate contribution limit apply for each election? Does the Commission have suggestions on how a party should track its compliance with these separate election contribution limits?

7. Section 7(6)(c) of the newly-enacted provision of the constitution codifies a definition of a "continuing committee." Section 7(20) codifies a definition of "political action committee." Under Article VIII, Section 2, of the Missouri Constitution, are "continuing committees" and "political action committees" separate and distinct entities?

If the answer to question one is affirmative, are there any limitations in the type or class of donors that can make contributions to continuing committees and to political action committee?

If the answer to question one is affirmative, are there any monetary limitations on the donations that may be received by continuing committees and by political action committees?

If the answer to question one is affirmative, are there any limitations on the type or class of donations that can be made by a continuing committees or by political action committee?

If the answer to question one is affirmative, what process must a political action committee take to have itself designated as a continuing committee and vice versa?

Section 105.955.16 (1), RSMo authorizes the Commission to issue advisory opinions to those "directly affected by the application of law to the facts presented by the requesting person." Opinions may be issued on any issue on which Commission can receive a complaint. Notably, a different statute, Section 105.957.3, RSMo, states that the Commission may refuse to investigate any conduct which is the subject of civil or criminal litigation.

The Commission is required to give an approximate time frame for when an opinion might be issued, but no later than ninety (90) days from receipt of the request. The Commission may decline to issue a written opinion by a vote of four members and shall provide the requesting person the reason for the refusal in writing.

The Commission is aware of the interest of the regulated community in receiving interpretations of these questions. As a represented party, it is currently assessing these questions in terms of the pending litigation. Therefore, the Commission is refusing to issue the opinions on this date due to pending litigation but will consider the issuance on these questions on a future date.

Sincerely,

  
James Klahr  
Executive Director