
Constitutional Article VIII, Section 23

The Commission recently issued several opinions regarding Article VIII, Section 23. Those opinions can be found [here](#) (page 5 of this document) and will be added to the [Advisory Opinions](#) page on the MEC website.

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, Section 23. The full text of [Article VIII, Section 23](#) can be viewed here.

The following is a general summary of provisions of Article VIII, Section 23. 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 an advisory opinion in writing under Section 105.955.16, RSMo.

Portions of Article VIII, Section 23 are being 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)*.

While the Commission will update this summary as appropriate, the reader should stay apprised of any developments in litigation.

What is the effective date of Article VIII, Section 23?

Under Article VIII, Section 23, 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, Section 23 correspond to Chapter 130 of the Missouri Revised Statutes?

Article VIII, Section 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. Article VIII, Section 23 provides many definitions and some provisions that are identical to the statutes in Chapter 130. Article VIII, Section 23 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?

Article VIII, Section 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 | • Attorney General |
| • Lieutenant Governor | • State Senator |
| • Secretary of State | • State Representative |
| • State Treasurer | • State Judicial Office |
| • State Auditor | • Other State Office |

Are there contribution limits for local elections?

Article VIII, Section 23 does not address candidates for local elections.

See Commission Opinion 2017.02.CF.001

Are there restrictions in Article VIII, Section 23 that apply to both state and local candidates?

Yes, 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 are prohibited from accepting or making 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 question 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

Is election defined?

Article VIII, Section 23.7(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 officially selected
- A primary election and the succeeding general election shall be considered separate elections.

What elections do contribution limits apply to?

Article VIII, Section 23.3(1), provides a contribution limit of \$2,600 from any person, other than the candidate, to elect individuals to state office for “one” election. Section 23.7(11) states that a primary election and the succeeding general election shall be considered separate elections.

Is person defined?

Article VIII, Section 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. Section 23.7(19) defines a “person” as:

- An individual or group of individuals
- Corporation (Article VIII, Section 23.3(1)) contains separate provision regarding corporate contributions – *See Commission Opinion 2017.03.CF.010*
- Partnership
- Committee (Article VIII, Section 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, Section 23.3(1)) 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, Section 23 contains separate provisions and restrictions on contributions by committees and some business entities. The constitutional provision should be reviewed for those specific provisions.

Are there contribution limits for contributions to political parties?

Article VIII, Section 23.3(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. Article VIII, Section 23.3(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.

In Commission Opinion 2017.02.CF.007, the Commission discussed the election cycle for purposes of the \$25,000 aggregate for political parties.

The Commission has not opined whether contributions made to the state house and senate committees per political party, referenced in Article VIII, Section 23.3(13) apply to the \$25,000 per political party.

What is a political party?

Article VIII, Section 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, Section 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, Section 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.

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

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

- Other political action committees/continuing committees
- Candidate committees
- Political party committees
- Campaign committees
- Exploratory committees
- Debt service committees

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

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

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

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, Section 23.3(12) states that political action/continuing committees may receive contributions from corporations, associations, and partnerships formed under chapters 347 to 360.

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

In Commission Opinion 2017.03.CF.010, the Commission addressed contributions from corporations and labor organizations to political action committees/continuing committees, stating that a corporation or labor organization may not contribute its own funds to its connected political action committee/continuing committee; it may contribute its own funds to an unconnected political action committee/continuing committee as long the contribution is authorized under Art. VIII, §23.3(12). A political action committee/continuing committee which is connected to a corporation or labor organization may receive contributions from contributors not connected to the corporation or labor organization. The Commission also gave guidance on solicitations on behalf of that political action committee/continuing committee.

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.

Do contribution limits apply to contributions made by children?

Article VIII, Section 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.

Can non-citizens or foreign governments make state contributions?

Article VIII, Section 23(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

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

Article VIII, Section 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.

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

Article VIII, Section 23 provides criminal penalties for violations of specific provisions. These penalties can be found in Article VIII, Section 23.5 and 6.

2017.02.CF.001 Do the contribution limits adopted by voters in Article VIII, Section 23 of the Missouri Constitution 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 changes his or her mind and runs for a state or judicial office?

2017.02.CF.002 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 23, of the Missouri Constitution, are “continuing committees” and “political action committees” separate and distinct entities?

2017.02.CF.003 Are continuing committees/political action committees subject to contribution limits of Article VIII, Section 23 for contributions received by the committees?

2017.02.CF.004 Can a candidate committee make an independent expenditure (not coordinated with any other committee and therefore not a contribution to any other committee) to support or oppose a candidate or ballot measure?

2017.02.CF.005 Is a contribution from a Limited Liability Company (LLC) a contribution from a “corporation” under Article VIII, Section 23?

2017.02.CF.006 Article VIII, Section 23 provides that political action committees shall only receive contributions from, among other donors, “... corporations, associations and partnerships formed under chapters 347 to 360, RSMo.” Is a foreign corporation, association or partnership holding a Certificate of Authority to transact business in Missouri under chapters 347 to 360, RSMo a corporation, association or partnership formed under chapters 347 to 360, RSMo for purposes of Article VIII, Section 23?

2017.02.CF.007 Article VIII, Section 23 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 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?

2017.02.CF.008 Do contribution limits articulated in §23.3(1) apply to contributions to the House Republican Campaign Committee (HRCC) and Missouri Senate Campaign Committee (MSCC)? Does §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 §23.3(13) apply to these committees?

2017.03.CF.009 Is an LLC with one corporate member/owner that has elected to be treated as a partnership and a disregarded entity under the IRC subject to the ban on corporate contributions? In other words, are contributions made by an LLC that has elected to be treated as a partnership attributed (i.e., do they flow-back) to its corporate member/owner?

2017.03.CF.010 Can corporations or labor organizations contribute direct or treasury funds to a connected PAC? Can corporations or labor organizations contribute direct or treasury funds to an unconnected PAC? Can a connected PAC receive contributions beyond those of the connected members, officers, directors, employees or security holders?



MISSOURI ETHICS COMMISSION
P.O. Box 1254
Jefferson City, MO 65102
www.mec.mo.gov
(573) 751-2020 / (800) 392-8660

James Klahr
Executive Director

February 10, 2017

Re: Advisory Opinion No. 2017.02.CF.001

Dear :

At the February 10, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to §105.957, RSMo. The Commission receives complaints alleging violation campaign finance provisions of Missouri law. This opinion is issued within the context of Missouri's laws governing such issues, and assumes the facts presented by you in your letter.

The question presented is:

Do the contribution limits adopted by voters in Amendment 2 of the Missouri Constitution 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 changes his or her mind and runs for a state or judicial office?

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.

Supporting Analysis

Article VIII, § 23.3(1), of the Missouri Constitution provides a contribution limit of \$2,600 from any person, other than the candidate, in any one election 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
- Other State Office
- State Judicial Office

The section defines “office” in §23.7(24) as follows:

As used in this section, the following terms have the following meanings:

(24) "Public office" or "office", any state, judicial county, municipal, school or other district, ward, township, or other political subdivision office or any political party office which is filled by a vote of registered voters;

This definition is consistent with the definition found in §130.011(26), RSMo.

The constitutional provisions specify various state level offices that are subject to the contribution limit per election set out in §23.3(1). The amendment defines “office” to include both state and local offices but this definition lists “any state office” as distinct from other offices such as “municipal, school, or other district, ward, township or other political subdivision office.” The contribution limits set forth in §23.3(1), therefore do not apply to contributions made to candidates for county or local government offices.¹

The contribution limits took effect on December 8, 2016. Because contribution limits apply to candidates for state and judicial office, 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 chose to run for a state office. For example, if a candidate initially declared for a county office and received \$4,000 in contributions from a contributor (not the candidate himself) in an election cycle, and later declared his candidacy for one of the state offices listed above instead of county office, the candidate would have to return the amount over the limit (\$1,400) to the contributor.

¹ While the opinion discusses the question of application of the contribution limits in §23.3(1) to local candidates, other provisions discuss “candidates” and candidate committees without reference to state office candidates or committees, and those other provisions therefore apply to candidates and committees at the local level.

This reasoning is consistent with MEC Opinion No. 2006.01.100, issued by the Commission when contribution limits were previously effect in Missouri. The following is a link to the previous opinion: <http://mec.mo.gov/Scanned/PDF/Opinions/388.pdf>.

Under the question presented, it is assumed that the candidate has changed a Statement of Committee Organization during the same election cycle. It is also possible that a candidate receives contributions for an election to an office not subject to limits, is unsuccessful and terminates, but seeks to transfer contributions to a new committee to run for a future office subject to limits.² This opinion does not directly address this issue or the method of determining which contributions may need to be returned as there may be multiple scenarios depending on the amount and timing of contributions accepted and the available money on hand. For these reasons, a candidate for office who accepts contributions above \$2,600 for an election cycle is cautioned of possible scenarios in which contributions in excess will be required to be returned.

§130.036, RSMo contains requirements for recordkeeping for all campaign finance committees. In the event a candidate for an office not covered by the limits in Article VIII, § 23.3(1), accepts contributions in excess of \$2,600 for an election, it is incumbent for the committee to keep good records of contributions in excess of that limit in the event any amount of the contribution is required to be returned.

Sincerely,



James Klahr
Executive Director

² Art. VIII, §23.7(7) (f) states that funds received by a candidate committee as a transfer of funds from another candidate committee controlled by the same candidate is not a contribution, but such transfer shall be included in the disclosure reports.



MISSOURI ETHICS COMMISSION
P.O. Box 1254
Jefferson City, MO 65102
www.mec.mo.gov
(573) 751-2020 / (800) 392-8660

James Klahr
Executive Director

February 10, 2017

Re: Advisory Opinion No. 2017.02.CF.002

Dear

At the February 10, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to §105.957, RSMo. The Commission receives complaints alleging violation of campaign finance provisions of Missouri law. This opinion is issued within the context of Missouri's laws governing such issues, and assumes the facts presented by you in your letter.

The question presented is:

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 questions 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?

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.

Supporting Analysis

Article VIII, §23.7 provides definitions of campaign finance committees similar to those found in §130.011, RSMo, with the addition of a "political action committee." Continuing committees and political action committees are defined as follows:

"Continuing committee", a committee of continuing existence which is not formed, controlled or directed by a candidate, and is a committee other than a candidate committee or campaign committee, whose primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter.

"Continuing committee" includes, but is not limited to, any committee organized or sponsored by a business entity, a labor organization, a professional association, a trade or business association, a club or other organization and whose primary purpose is to solicit, accept and use contributions from the members, employees or stockholders of such entity and any individual or group of individuals who accept and use contributions to influence or attempt to influence the action of voters. Such committee shall be formed no later than sixty days prior to the election for which the committee receives contributions or makes expenditures; §23.7(6)(c).

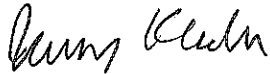
"Political action committee", a committee of continuing existence which is not formed, controlled or directed by a candidate, and is a committee other than a candidate committee, political party committee, campaign committee, exploratory committee, or debt service committee, whose primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter, Such a committee includes, but is not limited to, any committee organized or sponsored by a business entity, a labor organization, a professional association, a trade or business association, a club or other organization and whose primary purpose is to solicit, accept and use contributions from the members, employees or stockholders of such entity and any individual or group of individuals who accept and use contributions to influence or attempt to influence the action of voters, Such committee shall be formed no later than sixty days prior to the election for which the committee receives contributions or makes expenditures; § 23.7 (20).

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.

Because the Commission opines that continuing committees and political action committees are interchangeable, the Commission is not opining on your other questions.

Sincerely,



James Klahr
Executive Director



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P.O. Box 1254
Jefferson City, MO 65102
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(573) 751-2020 / (800) 392-8660

James Klahr
Executive Director

February 10, 2017

Re: Advisory Opinion No. 2017.02.CF.003

Dear .

At the February 10, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to §105.957, RSMo. The Commission receives complaints alleging violation of campaign finance provisions of Missouri law. This opinion is issued within the context of Missouri's laws governing such issues, and assumes the facts presented by you in your letter.

The question presented is:

Are continuing committees/political action committees subject to contribution limits of Amendment 2 for contributions received by the committees?

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.

Supporting Analysis

Article VIII, §23.3(1), of the Missouri Constitution imposes contribution limits as follows:

Except as provided in subdivisions (2), (3) and (4) of this subsection, the amount of contributions made by or accepted from any person other than the candidate in any one election shall not exceed the following:

- (a) To elect an individual to the office of governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, office of state senator, office of state representative or any other state or judicial office, two thousand six hundred dollars.

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.

§23.7 provides definitions of campaign finance committees similar to those found in §130.011, RSMo, with the addition of a "political action committee." A candidate committee is defined as "a committee which shall be formed by a candidate to receive contributions or make expenditures in behalf of the person's candidacy..." §23.7(6)(b).

Unlike a candidate committee which has a specific purpose related to a candidate, continuing and political action committees can have multiple purposes as follows:

"Continuing committee", a committee of continuing existence which is not formed, controlled or directed by a candidate, and is a committee other than a candidate committee or campaign committee, whose primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter.

"Continuing committee" includes, but is not limited to, any committee organized or sponsored by a business entity, a labor organization, a professional association, a trade or business association, a club or other organization and whose primary purpose is to solicit, accept and use contributions from the members, employees or stockholders of such entity and any individual or group of individuals who accept and use contributions to influence or attempt to influence the action of voters. Such committee shall be formed no later than sixty days prior to the election for which the committee receives contributions or makes expenditures; §23.7(6)(c).

"Political action committee", a committee of continuing existence which is not formed, controlled or directed by a candidate, and is a committee other than a candidate committee, political party committee, campaign committee, exploratory committee, or debt service committee, whose primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter. Such a committee includes, but is not limited to, any committee organized or sponsored by a business entity, a labor organization, a professional association, a trade or business association, a club or other organization and whose primary purpose is to solicit, accept and use contributions from the members, employees or stockholders of such entity and any individual or group of individuals who accept and use contributions to influence or attempt to influence the action of voters. Such committee shall be formed no later than sixty days prior to the election for which the committee receives contributions or makes expenditures; § 23.7 (20).¹

¹ As noted in Commission opinion 2017.02.CF.002 the definitions of continuing and political action committees are substantially the same in §23.7. The Commission interprets these committees to be

A continuing committee/political action committee is created for multiple purposes, including supporting or opposing candidates and supporting or opposing ballot issues, even if the committee has not yet identified particular candidates or ballot measures to support or oppose. In addition, this type of committee is one "of continuing existence" and, therefore, may continue in operation beyond any one election cycle.

In order to satisfy the intent of the limitation, the contributing person must intend for the contribution to be used for the election of an individual to one of the enumerated offices. Therefore, the \$2,600 contribution limit per election presumptively does not apply to contributions received by a continuing committee unless a contribution to a continuing committee has been restricted or designated for a candidate. While the committee may ultimately expend money advocating for a specific individual during a campaign, the limitation specifically applies to "contributions made by or accepted from any person." §23.3(1). Thus, contributions made to enumerated candidates by a continuing committee/political action committee are subject to the \$2,600 limitation.

The language in §23.3(1), is similar to §130.032, RSMo (repeal effective December 31, 2006) which previously imposed contribution limits although in different amounts. While that law was in effect, previous Commission opinions also found that the contribution limits did not apply to contributions received by continuing committees, MEC No. 1995.01.102, <http://mec.mo.gov/Scanned/PDF/Opinions/116.pdf>, nor to campaign committees, MEC No. 1996.03.124, <http://mec.mo.gov/Scanned/PDF/Opinions/185.pdf>.

However, if a contribution received by a continuing committee, or a portion of that contribution, is restricted or designated for a particular candidate, the \$2,600 contribution limit per election applies because the contribution is received with the purpose of electing an individual candidate to office. This opinion is consistent with an earlier Commission Opinion, MEC No. 1995.10.156, <http://mec.mo.gov/Scanned/PDF/Opinions/149.pdf>.

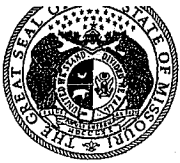
§130.041(10), RSMo, instructs committees how to report contributions restricted or designated for a particular candidate.

Sincerely,



James Klahr
Executive Director

the same despite the fact that the constitutional provision refers to these committees in separate definitions. For the purposes of this Opinion, any references to either committee includes both.



MISSOURI ETHICS COMMISSION
P.O. Box 1254
Jefferson City, MO 65102
www.mec.mo.gov
(573) 751-2020 / (800) 392-8660

James Klahr
Executive Director

February 10, 2017

Re: Advisory Opinion No. 2017.02.CF.004

Dear

At the February 10, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to §105.957, RSMo. The Commission receives complaints alleging violation of campaign finance provisions of Missouri law. This opinion is issued within the context of Missouri's laws governing such issues, and assumes the facts presented by you in your letter.

The question presented is:

Can a candidate committee make an independent expenditure (not coordinated with any other committee and therefore not a contribution to any other committee) to support or oppose a candidate or ballot measure?

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."

Supporting Analysis

Article VIII, §23.3(4) provides a prohibition on candidate committee contributions as follows:

No candidate's candidate committee shall accept contributions from, or make contributions to, another candidate committee, including any candidate committee, or equivalent entity, established under federal law.

Article VIII, §23.3(12) prohibits political action committees/continuing committees from receiving contributions from candidate committees. Both "political action committees" as defined by §23.8(20) and "continuing committees" as defined by §23.8(6)(c) have the "primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed

has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter.”¹

§23.8(7) defines a “contribution” in pertinent part:

(7) "Contribution", a payment, gift, loan, advance, deposit, or donation of money or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office or the qualification, passage or defeat of any ballot measure, ...

§23.8(12) defines an “expenditure” in pertinent part:

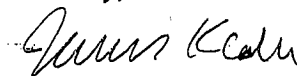
[a] payment, advance, conveyance, deposit, donation or contribution of money or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office or the qualification or passage of any ballot measure ...

While the Missouri Constitution and Chapter 130 do not specifically refer to “independent expenditures”, the Commission has long given guidance that expenditures made by a candidate do not constitute contributions 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.” See MEC No. 1996.06.135, <http://mec.mo.gov/Scanned/PDF/Opinions/190.pdf>, MEC, No. 1996.01.110, <http://mec.mo.gov/Scanned/PDF/Opinions/178.pdf>, and MEC No. 2004.03.100, <http://mec.mo.gov/Scanned/PDF/Opinions/367.pdf>.²

§23.3(4) and, §23.3(12) place prohibitions on contributions and not expenditures by a candidate committee to other candidate committees and political action committees/continuing committees.³ Therefore, 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.”

For campaign finance reporting purposes, any committee that makes an expenditure in support or against a candidate or ballot measure must comply with §130.041.1(7), RSMo, by filing a direct expenditure report.

Sincerely,



James Klahr
Executive Director

¹ As noted in Commission opinion 2017.02.CF.002 the definitions of continuing and political action committees are substantially the same in §23.7. The Commission interprets these committees to be the same despite the fact that the constitutional provision refers to these committees in separate definitions. For the purposes of this Opinion, any references to either committee includes both.

² The definition of independent expenditure in the Commission’s prior opinions was drawn from *Buckley v. Valeo*, 424 U.S. 1 (1976). This Supreme Court reaffirmed this definition of independent expenditure in *Citizens United v. FEC*. See *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 360 (2010) (“By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate.” See *Buckley*, *supra*, at 46, 96 S.Ct. 612).

³ Art. VIII §23 does not contain prohibitions on candidate committee contributions to campaign committees.



MISSOURI ETHICS COMMISSION
P.O. Box 1254
Jefferson City, MO 65102
www.mec.mo.gov
(573) 751-2020 / (800) 392-8660

James Klahr
Executive Director

February 10, 2017

Re: Advisory Opinion No. 2017.02.CF.005

Dear

At the February 10, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to §105.957, RSMo. The Commission receives complaints alleging violation of campaign finance provisions of Missouri law. This opinion is issued within the context of Missouri's laws governing such issues, and assumes the facts presented by you in your letter.

The question presented is:

Is a contribution from a Limited Liability Company (LLC) a contribution from a "corporation" under Amendment 2?

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.

It is recommended that Missouri committees make every effort to receive appropriate documentation from an LLC regarding its current elected tax status at the time a contribution is received. A contribution returned within 10 business days of receipt is not considered accepted by a committee.

Article VIII, §23 became effective on December 8, 2016 and it is possible that Missouri committees received contributions from LLC's prior to the date of this opinion. The Commission considers this interpretation effective on the date of this opinion and therefore applicable to contributions received on or after this date of February 10, 2017.

Supporting Analysis

Article VIII, § 23 makes various references to “corporations” with both prohibitions on direct contributions from corporations to certain campaign finance committees, and authority to make contributions to continuing committees/political action committees. § 23.7, which contains definitions of terms used in §23, does not define “corporation.”¹

§23.3(3)(a) and (b) provide prohibitions on corporate contributions as follows:

(3) (a) It shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee, exploratory committee, political party committee or a political party; except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders.

(b) The prohibition contained in subdivision (a) of this subsection shall not apply to a corporation that:

(i) Is formed for the purpose of promoting political ideas and cannot engage in business activities; and

(ii) Has no security holders or other persons with a claim on its assets or income; and

(iii) Was not established by and does not accept contributions from business corporations or labor organizations.

§23.3(12) however, provides that political action committees/continuing committees are authorized to receive contributions from “corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time...”

§23.3(16)(c) prohibits campaign committees, candidate committees, continuing committees, exploratory committees, political party committees and political parties from receiving contributions from foreign corporations “that do not have authority to transact business in the state of Missouri pursuant to Chapter 347.”

Chapter 347

§23 (12) makes specific reference to Chapter 347 of the Missouri Revised Code -- the “Missouri Limited Liability Company Act.” §347.010, RSMo. In Missouri, an LLC is a hybrid business

¹ As noted in Commission opinion 2017.02.CF.002 the definitions of continuing and political action committees are substantially the same in §23.7. The Commission interprets these committees to be the same despite the fact that the constitutional provision refers to these committees in separate definitions. For the purposes of this Opinion, any references to either committee includes both.

entity, having attributions of both a corporation and a partnership. *Hibbs v. Berger*, 430 S.W.3d 296, 313 (Mo. App. E.D. 2014). In addition, Missouri allows its LLCs to make tax elections. §347.081.1(8), RSMo. A Missouri limited liability company's classification for federal income tax purposes also applies to its Missouri state taxes, §347.186, RSMo. It is also possible that a Missouri committee may receive a contribution from a "foreign limited liability company", as defined in §347.015 (9), RSMo, as "a limited liability company formed under the laws of any jurisdiction other than the state of Missouri."

Due to the hybrid nature of a Missouri limited liability company and the fact that a Missouri committee may receive a contribution from a foreign limited liability company registered in another state, the Commission has looked to persuasive authority in other jurisdictions to determine whether it is appropriate to consider an LLC a "corporation" for purposes of Article VIII, §23 of the Missouri Constitution.

FEC [Federal Election Commission] Regulations

The Federal Election Campaign Act generally prohibits corporations and labor organizations from using their general treasury funds to make contributions or expenditures in connection with federal elections with some exceptions. 52 U.S.C. §30118(a). Under FEC [Federal Election Commission] regulations, a limited liability company (LLC) may be treated as a corporation, depending upon its tax status." See 11 C.F.R 110.1(g) as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (52 U.S.C. 30116(a)(1)).

(g) Contributions by limited liability companies ("LLC") -

- (1) Definition.** A limited liability company is a business entity that is recognized as a limited liability company under the laws of the State in which it is established.
- (2)** A contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service pursuant to 26 CFR 301.7701-3, or does not elect treatment as either a partnership or a corporation pursuant to that section, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e).
- (3)** An LLC that elects to be treated as a corporation by the Internal Revenue Service, pursuant to 26 CFR 301.7701-3, or an LLC with publicly-traded shares, shall be considered a corporation pursuant to 11 CFR Part 114.
- (4)** A contribution by an LLC with a single natural person member that does not elect to be treated as a corporation by the Internal Revenue Service pursuant to 26 CFR 301.7701-3 shall be attributed only to that single member.
- (5)** An LLC that makes a contribution pursuant to paragraph (g)(2) or (g)(4) of this section shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed, and affirm to the recipient committee that it is eligible to make the contribution.

Therefore, for purposes of federal campaign finance reporting, an LLC that elects to be treated as a corporation by the Internal Revenue Service (IRS) or that has publicly traded shares will be treated as a corporation.

LLC Status as a Corporation

Similar to federal law, as stated above, Chapter 347 authorizes a Missouri LLC to make tax elections. This includes elections for both federal and state tax purposes.

It is therefore the Commission's opinion that 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 Art. VIII §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.

Art. VIII, §23 Required Documentation

§23.5 creates civil liability for persons who knowingly and willfully accept or make contributions in violation of §23.3 of the article. §23.6 creates misdemeanors for any person who purposely violates the provisions of §23.3.

§130.036, RSMo contains recordkeeping requirements for Missouri campaign finance committees, and provides for a window of ten (10) business days for a committee to return a contribution before it is considered accepted and received. §130.036.2, RSMo.

It is recommended that Missouri committees make every effort to receive appropriate documentation from an LLC regarding its current elected tax status at the time a contribution is received. A contribution returned within 10 business days of receipt is not considered accepted by a committee.

Effective Date of this Opinion

Article VIII, §23 became effective on December 8, 2016 and it is possible that Missouri committees received contributions from LLC's prior to the date of this opinion. The Commission considers this interpretation effective on the date of this opinion and therefore applicable to contributions received on or after this date of February 10, 2017.

Sincerely,



James Klahr
Executive Director



MISSOURI ETHICS COMMISSION
P.O. Box 1254
Jefferson City, MO 65102
www.mec.mo.gov
(573) 751-2020 / (800) 392-8660

James Klahr
Executive Director

February 10, 2017

Re: Advisory Opinion No. 2017.02.CF.006

Dear

At the February 10, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to §105.957, RSMo. The Commission receives complaints alleging violation of campaign finance provisions of Missouri law. This opinion is issued within the context of Missouri's laws governing such issues, and assumes the facts presented by you in your letter.

The question presented is:

Amendment 2 provides that political action committees shall only receive contributions from, among other donors, "... corporations, associations and partnerships formed under chapters 347 to 360, RSMo."

Is a foreign corporation, association or partnership holding a Certificate of Authority to transact business in Missouri under chapters 347 to 360, RSMo a corporation, association or partnership formed under chapters 347 to 360, RSMo for purposes of Amendment 2?

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.

The Commission interprets the prohibition on contributions to foreign corporations in Article VIII, 23.3(16)(c) not to extend to foreign corporations that have registered to do business in the state under Chapters 347 to 360, RSMo. This includes limited liability companies which fit within the requirements set forth in Commission Opinion 2017.02.CF.005, also issued on this day.

Supporting Analysis

Article VIII, §23 makes various references to “corporations” with both prohibitions on direct contributions from corporations to certain campaign finance committees, and authority to make contributions to continuing committees/political action committees, and a specific prohibition on contributions from foreign corporations. Subsection 7, which contains definitions of terms used in §23, does not define “corporation.”¹

§23.3(3) (a) provides prohibitions on corporate contributions as follows:

(3) (a) It shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee, exploratory committee, political party committee or a political party; except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders.

(b) The prohibition contained in subdivision (a) of this subsection shall not apply to a corporation that:

(i) Is formed for the purpose of promoting political ideas and cannot engage in business activities; and

(ii) Has no security holders or other persons with a claim on its assets or income; and

(iii) Was not established by and does not accept contributions from business corporations or labor organizations.

§23.3(12) however, provides that political action committees/continuing committees are authorized to receive contributions from “corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time...”

§23.3(16) prohibits campaign committees, candidate committees, continuing committees, exploratory committees, political party committees and political parties from receiving contributions from:

(a) Any natural person who is not a citizen of the United States;

(b) A foreign government; or

(c) Any foreign corporation that does not have the authority to transact business in this state pursuant to Chapter 347, RSMo, as amended from time to time.

¹ As noted in Commission opinion 2017.02.CF.002 the definitions of continuing and political action committees are substantially the same in §23.7. The Commission interprets these committees to be the same despite the fact that the constitutional provision refers to these committees in separate definitions. For the purposes of this Opinion, any references to either committee includes both.

The Commission previously issued two advisory opinions in 2010 following the passage of identical language in §23.3(12) upon passage of SB844.² Those opinions are MEC No. 2010.08.CF.004, <http://mec.mo.gov/Scanned/PDF/Opinions/446.pdf> and MEC No. 2011.03CF.002, <http://mec.mo.gov/Scanned/PDF/Opinions/446.pdf>.

One difference from SB844 is that the Article VIII, §23 contains §23.3(16) which also includes a prohibition on foreign nationals, foreign governments, and foreign corporations that do not have the authority to transact business in this state pursuant to Chapter 347, RSMo, Chapter 347 of the Missouri Revised Code is the “Missouri Limited Liability Company Act.” §347.010, RSMo.

Provisions governing foreign corporations holding a certificate of authority can be found in three of the chapters listed in §23.3(12). Those include corporations for profit, see §351.015(7), RSMo and §355.751, RSMo; nonprofit corporations, see §355.020.3, RSMo and §355.771, RSMo; and professional corporations, see §356.031, RSMo. In addition, § 347.015 (9), RSMo, defines a foreign limited liability company as “a limited liability company formed under the laws of any jurisdiction other than the state of Missouri,” and § 347.015 (15) considers a foreign limited liability company as a “person” under that chapter.

According to §351.582.2, RSMo:

A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

§355.771, RSMo contains identical language for foreign nonprofit corporations. §356.031, RSMo, which governs professional corporations states:

The general and business corporation law of Missouri, chapter 351, RSMo, shall be applicable to a professional corporation organized pursuant to sections 356.011 to 356.261, and to the extent chapter 351, RSMo, relates to foreign corporations generally, chapter 351, RSMo, shall be applicable to a foreign professional corporation subject to sections 356.011 to 356.261.

Likewise, the Missouri statutes contemplate the existence of partnerships registered both in Missouri and other states and countries, *See e.g.* §358.500 and §358.510, RSMo.

Finally §347.157, RSMo authorizes registration of a foreign limited liability company with the secretary of state.

§23.3(12) provides specific authorization for political action committees to receive contributions from corporations, associations and partnerships formed under those chapters, and §23.3(16) appears to include a prohibition for foreign corporations although referencing only one chapter

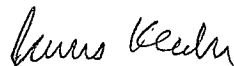
² S.B. 844, 2010, was declared unconstitutional in *Legends Bank v. State*, 361 S.W. 3d 383 (Mo. banc 2012).

of the Missouri Revised Code. It is the Commission's opinion that when both sections are read together, and because the legislature has expressly stated in those chapters listed in §23.3(12) that foreign corporations and other business entities shall have the same rights and privileges as domestic corporations and business entities, 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.

Consistent with this analysis, the Commission interprets the prohibition on contributions to foreign corporations in §23.3(16)(c) not to extend to foreign corporations that have registered to do business in the state under Chapters 347 to 360, RSMo. This includes limited liability companies which fit within the requirements set forth in Commission Opinion 2017.02.CF.005, also issued on this day.

MEC No. 2011.03.CF002, §351.582, RSMo, discussed the effect of a valid certificate of authority issued by the Missouri Secretary of State. The political action committee may use whatever evidence is available from the Secretary of State to ensure a foreign corporation holds a valid certificate of authority.

Sincerely,



James Klahr
Executive Director



MISSOURI ETHICS COMMISSION

P.O. Box 1254

Jefferson City, MO 65102

www.mec.mo.gov

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

James Klahr

Executive Director

February 10, 2017

Re: Advisory Opinion No. 2017.02.CF.007

Dear :

At the February 10, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to §105.957, RSMo. The Commission receives complaints alleging violation campaign finance provisions of Missouri law. This opinion is issued within the context of Missouri's laws governing such issues, and assumes the facts presented by you in your letter.

The question presented is:

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 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?

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.

Supporting Analysis

§ 23.2 provides as follows for aggregate contributions received by a political party.

(2) (a) No political party shall accept aggregate contributions from any person that exceed twenty-five thousand dollars per election at the state, county, municipal, district, ward, and township level combined.

(b) No political party shall accept aggregate contributions from any committee that exceed twenty-five thousand dollars per election at the state, county, municipal, district, ward, and township level combined.

"Political Party" is defined under §23.7(22) 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."

"Election" is defined under §23.7(11) 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, 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 officially selected. A primary election and the succeeding general election shall be considered separate elections.

Under Chapter 115 of the Missouri Revised code, a political party has the right to have the names of candidates listed on a ballot in multiple elections throughout the year. The definition of "election" contained in §23.7.11 acknowledges this as it refers to primary, general and special elections, as well as caucuses and other meetings in which a party may officially select a candidate.

Therefore, 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.

Sincerely,



James Klahr
Executive Director



MISSOURI ETHICS COMMISSION
P.O. Box 1254
Jefferson City, MO 65102
www.mec.mo.gov
(573) 751-2020 / (800) 392-8660

James Klahr
Executive Director

February 10, 2017

Re: Advisory Opinion No. 2017.02.CF.008

Dear

At the February 10, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to §105.957, RSMo. The Commission receives complaints alleging violation of campaign finance provisions of Missouri law. This opinion is issued within the context of Missouri's laws governing such issues, and assumes the facts presented by you in your letter.

The questions presented are:

Do contribution limits articulated in §23.3(1) apply to contributions to the House Republican Campaign Committee (HRCC) and Missouri Senate Campaign Committee (MSCC)?

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.

Does §23.3(3) prohibit the committees from taking contributions from corporations or labor unions?

Because these continuing committees/political action committees are not listed as prohibited recipients in §23.3(3)(a) and are specifically included in §23.3(12), they are not prohibited from taking contributions from corporations, associations, and partnerships formed under chapters 347 to 360, RSMo. Because political action/continuing committees are excluded from the prohibition in §23.3(3) (a) and are authorized to receive contributions from unions in §23.3(12), these committees are authorized to receive contributions from labor organizations and unions.

Does the exception to the prohibition against committee-to-committee transfers articulated in §23.3(13) apply to these committees?

Because the HRCC and MSCC meet the definition of state house and state senate committees per political party and have been designated to the Commission as such, the prohibited committee transfers in §23.3(12) do not apply to these committees under the express exemption language of §23.3(13).

Summary of Analysis

Application of Contribution Limits

Do contribution limits articulated in §23.3(1) apply to contributions to the House Republican Campaign Committee (HRCC) and Missouri Senate Campaign Committee (MSCC)?

Article VIII, § 23.3(1) sets forth the following contribution limits to elect an individual to certain offices.

3. (1) Except as provided in subdivisions (2), (3) and (4) of this subsection, the amount of contributions made by or accepted from any person other than the candidate in any one election shall not exceed the following:

(a) To elect an individual to the office of governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, office of state senator, office of state representative or any other state or judicial office, two thousand six hundred dollars.

This limitation places prohibitions on any "person" who either makes or receives contributions, and places a "shall not exceed" limitation on their contribution activity. "Person" is defined in §23.7(19) to include committees.

The two committees referenced in your questions are continuing committees/political action committees.¹

Unlike candidate committees which have a specific purpose related to a candidate, continuing and political action committees can have multiple purposes as follows:

"Continuing committee", a committee of continuing existence which is not formed, controlled or directed by a candidate, and is a committee other than a candidate committee or campaign committee, whose primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter. "Continuing committee" includes, but is not limited to, any committee organized or sponsored by a business entity, a labor organization, a professional association, a trade or business association, a club or other organization and whose primary purpose is to solicit, accept and use contributions from the members, employees or stockholders of such entity and any individual or group of individuals who accept and use contributions to influence or attempt to influence the action of voters. Such committee shall be formed no later than sixty days prior to the election for which the committee receives contributions or makes expenditures; §23.7(6) (c).

¹ As noted in Commission opinion 2017.02.CF.002 the definitions of continuing and political action committees are substantially the same in §23.7. The Commission interprets these committees to be the same despite the fact that the constitutional provision refers to these committees in separate definitions. For the purposes of this Opinion, any references to either committee includes both.

"Political action committee", a committee of continuing existence which is not formed, controlled or directed by a candidate, and is a committee other than a candidate committee, political party committee, campaign committee, exploratory committee, or debt service committee, whose primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter. Such a committee includes, but is not limited to, any committee organized or sponsored by a business entity, a labor organization, a professional association, a trade or business association, a club or other organization and whose primary purpose is to solicit, accept and use contributions from the members, employees or stockholders of such entity and any individual or group of individuals who accept and use contributions to influence or attempt to influence the action of voters. Such committee shall be formed no later than sixty days prior to the election for which the committee receives contributions or makes expenditures. § 23.7 (20).

The Commission incorporates Commission Opinion 2017.02.CF.003.

A continuing committee/political action committee is created for multiple purposes, including supporting or opposing candidates and supporting or opposing ballot issues, even if the committee has not yet identified particular candidates or ballot measures to support or oppose. In addition, this type of committee is one "of continuing existence" and, therefore, may continue in operation beyond any one election cycle.

In order to satisfy the intent of the limitation, the contributing person must intend for the contribution to be used for the election of an individual to one of the enumerated offices. Therefore, the \$2,600 contribution limit per election presumptively does not apply to contributions received by a continuing committee unless a contribution to a continuing committee has been restricted or designated for a particular candidate. While the committee may ultimately expend money advocating for a specific individual during a campaign, the limitation specifically applies to "contributions made by or accepted from any person." §23.3(1). Thus, contributions made to enumerated candidates by a continuing committee/political action committee are subject to the \$2,600 limitation.

The language in §23.3(1), is similar to §130.032, RSMo (repeal effective December 31, 2006) which previously imposed contribution limits although in different amounts. While that law was in effect, previous Commission opinions also found that the contribution limits did not apply to contributions received by continuing committees, MEC No. 1995.01.102, <http://mec.mo.gov/Scanned/PDF/Opinions/116.pdf>, nor to campaign committees, MEC No. 1996.03.124, <http://mec.mo.gov/Scanned/PDF/Opinions/185.pdf>.

However, if a contribution received by a continuing committee, or a portion of that contribution, is restricted or for a particular candidate, the \$2,600 contribution limit per election applies because the contribution is received with the purpose of electing an individual candidate to office. This opinion is consistent with an earlier Commission Opinion, MEC No. 1995.10.156, <http://mec.mo.gov/Scanned/PDF/Opinions/149.pdf>.

§130.041.1(10), RSMo, instructs committees how to report contributions restricted or designated for a particular candidate.

Contributions from Corporations or Labor Organizations

Does §23.3(3) prohibit the committees from taking contributions from corporations or labor unions?

§23.3(3) (a), of the Missouri Constitution provides prohibitions on corporate contributions as follows:

It shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee, exploratory committee, political party committee or a political party; except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders.

§23.3(12) however, provides that political action committees/continuing committees are authorized to receive contributions from unions and "corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time..." .

Both political action committees and continuing committees are uniquely defined in §23.7 and specifically used in various other provisions of Article VIII, §23. Because they are not listed as prohibited recipients in §23.3(3)(a) and are specifically included in §23.3(12), political action/continuing committees are not prohibited from taking contributions from corporations, associations, and partnerships formed under chapters 347 to 360, RSMo.

§23.3(17) defines "labor organization" as:

[a]ny organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

§23 does not define "union" as that term is used in §23.3(12). Because political action/continuing committees are excluded from the prohibition in §23.3(3)(a) and are authorized to receive contributions from unions, the committees in your request are authorized to receive contributions from labor organizations and unions.

Prohibition against Committee-to-Committee Transfers

Does the exception to the prohibition against committee-to-committee transfers articulated in §23.3(13) apply to these committees?

§23.3(12) enumerates what types of entities may donate to political action/continuing committees and what types of contributions are proscribed. §23.3(12) also prohibits political action/continuing committees from receiving contributions from other political action/continuing committees, candidate committees, exploratory committees and debt service committees.

§23.3(13) enacts an exception to the prohibited committee contributions to other committees as follows:

(13) The prohibited committee transfers described in subdivision (12) of this subsection shall not apply to the following committees:

(a) The state house committee per political party designated by the respective majority or minority floor leader of the house of representatives or the chair of the state party if the party does not have majority or minority party status;

(b) The state senate committee per political party designated by the respective majority or minority floor leader of the senate or the chair of the state party if the party does not have majority or minority party status.

Because the HRCC and MSCC meet the definition of state house and state senate committees per political party and have been designated to the Commission as such, the prohibited committee transfers in §23.3(12) do not apply to these committees under the express exemption language of §23.3(13).

The Commission directs you to Opinions No. 2017.02.CF.005 and 2017.02.CF.006 also issued on this day for additional guidance that may relate to your questions.

Sincerely,



James Klahr
Executive Director



MISSOURI ETHICS COMMISSION
P.O. Box 1254
Jefferson City, MO 65102
www.mec.mo.gov
(573) 751-2020 / (800) 392-8660

James Klahr
Executive Director

March 8, 2017

Re: Advisory Opinion No. 2017.03.CF.009

At the March 8, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to §105.957, RSMo. The Commission receives complaints alleging violation of campaign finance provisions of Missouri law. This opinion is issued within the context of Missouri's laws governing such issues, and assumes the facts presented by you in your letter.

The question presented is:

Is an LLC with one corporate member/owner that has elected to be treated as a partnership and a disregarded entity under the IRC subject to the ban on corporate contributions? In other words, are contributions made by an LLC that has elected to be treated as a partnership attributed (i.e., do they flow-back) to its corporate member/owner?

Because a proposed contribution made by a single corporate member LLC is made up solely of corporate funds, it is the Commission's opinion that 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. Such proposed contributions which are made up solely of corporate funds flow-back to its corporate member/owner.

Supporting Analysis

In MEC Opinion No. 2017.02.CF.005, the Commission stated that 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. This request is a follow-up to that opinion, seeking clarity when an LLC with a single corporate member/owner elects to be treated as a partnership for IRS purposes.

As stated in Article VIII, §23.3(3)(a) and (b) provide prohibitions on corporate contributions as follows:

(3) (a) It shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee, exploratory committee, political party committee or a political party; except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders.

(b) The prohibition contained in subdivision (a) of this subsection shall not apply to a corporation that:

- (i) Is formed for the purpose of promoting political ideas and cannot engage in business activities; and
- (ii) Has no security holders or other persons with a claim on its assets or income; and
- (iii) Was not established by and does not accept contributions from business corporations or labor organizations.

§ 23.7, which contains definitions of terms used in §23, does not define "corporation."

§347.061.1, RSMo states that property transferred or otherwise acquired by an LLC becomes the property of the LLC. "A member has no interest in specific limited liability company property." §347.061.3, RSMo, states in particular:

- (1) Property is presumed to be owned by the limited liability company if it is acquired in the name of the limited liability company;
- (2) Property is presumed to be owned by the limited liability company if it is purchased with funds of the limited liability company even if it is acquired in the name of a member or other person; and
- (3) Property is presumed to be separate property of one or more members or other persons if it is acquired in the name or names of such person or persons without use of funds of the limited liability company even though the property was used for purposes of the business of the limited liability company.

Because the contribution made by a single corporate member LLC is made up solely of corporate funds, it is the Commission's opinion that an LLC with one corporate member/owner that has elected to be treated as a partnership and a disregarded entity under the IRC is subject to the ban on corporate contributions. Such proposed contributions which are made up solely of corporate funds flow-back to its corporate member/owner.

This opinion is consistent with 11 CFR 110.1 (e) which regulates federal contributions which prohibits any portion of a contribution made from profits of a corporation.

Sincerely,



James Klahr
Executive Director



MISSOURI ETHICS COMMISSION
P.O. Box 1254
Jefferson City, MO 65102
www.mec.mo.gov
(573) 751-2020 / (800) 392-8660

James Klahr
Executive Director

March 27, 2017

Re: Advisory Opinion No. 2017.03.CF.010

Dear

At the March 27, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to §105.957, RSMo. The Commission receives complaints alleging violation of campaign finance provisions of Missouri law. This opinion is issued within the context of Missouri's laws governing such issues, and assumes the facts presented by you in your letter:

The question presented and the Commission's opinion are as follows:

Art. VIII, Sec. 3(3)(a) states: "It shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee, exploratory committee, political party committee or a political party; except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders."

Art. VIII, Sec. 3(12) states: "Political action committees shall only receive contributions from individuals; unions; federal political action committees; and corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time, and shall be prohibited from receiving contributions from other political action committees, candidate committees, political party committees, campaign committees, exploratory committees, or debt service committees. However, candidate committees, political party committees, campaign committees, exploratory committees, and debt service committees shall be allowed to return contributions to a donor political action committee that is the origin of the contribution."

Art. VIII, Sec. 7(6)(d) states: "Connected organization", any organization such as a corporation, a labor organization, a membership organization, a cooperative, or trade or professional association which expends funds or provides services or facilities to establish, administer or maintain a committee or to solicit contributions to a committee from its members, officers,

directors, employees or security holders. An organization shall be deemed to be the connected organization if more than fifty percent of the persons making contributions to the committee during the current calendar year are members, officers, directors, employees or security holders of such organization or their spouses.

Therefore, in reading these provisions together, and assuming I am not concerned with a corporation exempted by Art. VIII, Sec. (3)(b))(i-iii), and noting the MEC equates Continuing Committees with Political Action Committees (PAC) see, AO 2017.02.CF.002:

- a. *May a labor organization or corporation make contributions to a political action committee to which they are not connected and did not establish, or does the MEC deem the exception in Art. VIII, Sec. 3(3)(a) to mean labor organizations and corporations can only make contributions from the "dues from members, officers, directors, employees or security holders" to PACs that are connected to or established by the labor organization or corporation in question?*
- b. *Is the reverse true? May a PAC connected to a specific labor organization or corporation as described in Art. VIII, Sec. 3(3)(a), or as described in Art. VIII, Sec. 7(6)(d), receive contributions from corporations or labor organizations which did not establish, and/or are not connected, to the PAC in question?*
- c. *May a labor organization or corporation only contribute to their own established PACs through "dues from members, officers, directors, employees or security holders" or is the language not so limiting since Art. VIII, Sec. 3(12) seems to indicate PACs can receive monies directly from labor organizations' or corporations' general treasuries as well?*
- d. *Is the reverse true, May a PAC established or connected to a labor organization or corporation receive contributions from the general treasuries of labor organizations or corporations that are not connected to and/or did not establish the PAC in question?*

Supporting Analysis

Art. VIII, §23.3(3)(a) and (b) provide prohibitions on corporate and labor organization contributions as follows:¹

(3) (a) It shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee, exploratory committee, political party committee or a political party; except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders.

¹ In 2017.02.CF.002, the Commission opined that continuing committees and political action committees are the same type of committee. Likewise, the Commission interprets "unions" and "labor organizations" to be the same type of entity despite the fact that the constitutional provision refers to these in separate subsections and the term "union" is not defined.

(b) The prohibition contained in subdivision (a) of this subsection shall not apply to a corporation that:

- (i) Is formed for the purpose of promoting political ideas and cannot engage in business activities; and
- (ii) Has no security holders or other persons with a claim on its assets or income; and
- (iii) Was not established by and does not accept contributions from business corporations or labor organizations.

§23.3(12) however, provides that political action committees/continuing committees are authorized to receive contributions from “unions” and “corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time...”

While both sections do not specifically reference the term “connected organization”, it is defined as follows:

any organization such as a corporation, a labor organization, a membership organization, a cooperative, or trade or professional association which expends funds or provides services or facilities to establish, administer or maintain a committee or to solicit contributions to a committee from its members, officers, directors, employees or security holders. An organization shall be deemed to be the connected organization if more than fifty percent of the persons making contributions to the committee during the current calendar year are members, officers, directors, employees or security holders of such organization or their spouses. Art. VIII, §23.7(6)(d) and §130.011(11), RSMo.

Once a connected organization is established and reported to the Commission on a statement of committee organization, the costs of establishing, administering or maintaining a committee, or the solicitation of contributions if solely directed to members, officers, directors, employees or security holders are not “contributions” or “expenditures” to the connected committee under Art. VIII, §23.7(8)(d) and §23.7(13)(e); and §130.011(12)(i)(d) and §130.011(16)(e)(e), RSMo.

Labor Organization and Corporate Contributions to Connected PACs

Art. VIII, §23.3(3)(a) creates various prohibitions on contributions from corporations and labor organizations, but authorizes the establishment of a “connected” political action/continuing committee (hereinafter “PAC”) which may accept contributions or dues from members, officers, directors, employees or security holders. It is the Commission’s opinion that because this section expressly authorizes specific types of individual contributions but does not specifically authorize the contributions from the entity’s treasury or funds, a corporation or labor organization may not contribute its own funds to its connected political action/continuing committee.

Labor Organization and Corporate Contributions to PACs Not Connected to the Labor Organization or Corporation

Art. VIII, §23.3(12), provides that PACs are authorized to receive contributions from "unions" and "corporations, associations, and partnerships formed under chapters 347 to 360, RSMo....Therefore, while labor organizations and corporations are limited from contributing funds to their connected committee, they may contribute to an unconnected PAC as long the contribution is authorized under §23.3(12).

Receipt of Contributions by a PAC which is Connected to a Corporation or Labor Organization

Art. VIII, §23.7(6)(d) states that "an organization shall be deemed to be the connected organization if more than fifty percent of the persons making contributions to the committee during the current calendar year are members, officers, directors, employees or security holders of such organization or their spouses." In addition, §23.3(12) authorizes political action committees/continuing committees to receive contributions from "unions" and "corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time..."

Given that the definition of a connected organization assumes that a connected committee may receive 49% of its contributions from other sources, and that the §23.3(12) specifically authorizes labor organization and certain corporations to contribute to PACs, it is the Commission's opinion that a connected PAC may receive contributions from other contributors, including corporations or labor organizations which did not establish, and/or are not connected, to the committee in question.

To the extent that a connected committee may seek to receive contributions from unconnected contributors, it may use committee funds to solicit contributions. However, a connected labor union or corporation may not use treasury or corporate funds to solicit funds from outside sources as those solicitations are contributions under Art. VIII, §23.7(7)(h).

Sincerely,



James Klahr
Executive Director