



MISSOURI ETHICS COMMISSION

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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