



MEC  
OPINION NO.

2002.07.106

**STATE OF MISSOURI**

MISSOURI ETHICS COMMISSION  
P. O. BOX 1254  
JEFFERSON CITY, MISSOURI 65102

573/751-2020  
1-800/392-8660

COPY

July 19, 2002

**NOTICE**

Anyone examining this advisory opinion should be careful to note that an opinion of the Missouri Ethics Commission deals only with the specific request to which the opinion responded and only as to the law as it existed at the date of the response and cannot be relied upon for any other purpose or in any other manner.

This is in response to your letter dated March 18, 2002, in which you requested an advisory opinion from the Missouri Ethics Commission.

In your letter, you asked the Commission to assume a state political party committee provides the following types of assistance to candidates or potential candidates:

- (a) Giving advice to the candidate on management of all aspects of his or her campaign;
- (b) Advising the candidate on dealing with the press and other media outlets;
- (c) Reviewing a candidate's plans and making suggestions for conducting a campaign;
- (d) Helping the candidate with photographs;
- (e) Helping the candidate with selection of vendors such as advertising media and political consultants.

You then pose three questions based on that assumption. Those questions are quoted below, followed by the Commission's response to each question.

**Question No. 1.** Please identify which, if any, of the activities listed above would constitute in-kind "contributions" within the meaning of section 130.011(12).

**Response No. 1.** An "in-kind contribution" is defined as a contribution made in a form other than money. Section 130.011(19), RSMo 2000. A "contribution", in turn, is defined in part as:

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, or for the support of any committee supporting or opposing candidates or ballot measures or for paying debts or obligations of any candidate or committee previously incurred for the above purposes. A contribution of anything of value shall be deemed to have a money value equivalent to the fair market value. (Section 130.011(12), RSMo)

The Commission assumes from the context of the list you provide that when referring to "helping" candidates with photographs or vendor selection you are referring to advice or suggestions on those items, rather than, for example, purchasing photographs or photographic equipment for a candidate or paying vendors for a candidate. The Commission also assumes that in each instance described in your list, the advice or suggestions are being provided to a candidate by a party official or a regular employee of the party and not by a professional consultant with whom the party has contracted for the purpose of providing advice to a candidate. Under those assumptions, it is the Commission's opinion that the advice or suggestions provided by the party would not constitute things having a fair market value and therefore would not be contributions within the meaning of section 130.011(12), RSMo 2000.

**Question No. 2.** For each item which the Commission would consider to be an in-kind contribution, please state the method by which the value of the in-kind contribution should be determined by the candidate.

**Response No. 2.** Because under the assumptions stated above in Response No. 1, the Commission does not consider the advice or suggestions identified in your letter to be in-kind contributions, no response to this question is necessary.

**Question No. 3.** In the event the aggregate total of in-kind contributions by a political party committee as a result of the kinds of activities listed above would equal in value the maximum amount of contribution permitted under section 130.032.4 for a given election, would the political party committee be required to discontinue providing the kinds of assistance outlined above for that election?

**Response No. 3.** Because under the assumptions stated above in Response No. 1 the Commission does not consider the advice or suggestions identified in your letter to be in-kind contributions, no response to this question is necessary.

Your letter then poses an additional assumption:

02.07.106

Assume that the same political party committee which is providing the kinds of services described above also makes expenditures to support a candidate to whom some (or all) of the services listed above are being provided. Also assume that the expenditures are made entirely independently by the political party committee and are made without coordination or cooperation or prior consent to the candidate.

You then pose an additional question, which is quoted below, followed by the Commission's response.

**Question No. 4.** Would these expenditures amount to "contributions" by the political party committee to the candidate under section 130.011(12) and therefore count toward the maximum amount which the political party committee may contribute to the candidate committee under section 130.032.4?

**Response No. 4.** The Commission has addressed related questions in MEC Opinion Nos. 96.06.135 and 96.01.110, copies of which are attached. In particular, the Commission has opined that expenditures by a political party committee for the benefit of a candidate do not constitute a contribution to the candidate 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." Opinion No. 96.06.135

Taken together, the assumptions stated in your letter pose the following situation: A political party makes expenditures that benefit a candidate. That political party committee has also provided one or more of the types of advice or suggestions to a candidate identified in connection with your Questions Nos. 1-3. But in providing those items of advice or suggestions, the political party committee has not engaged in any coordination or cooperation concerning the committee's expenditures for the benefit of the candidate and has not obtained the candidate's prior consent for those expenditures, with the result that the expenditures were "made entirely independently by the political party committee."

Consistent with Opinion No. 96.06.135, it is the opinion of the Commission that, in those circumstances, the political party committee's expenditures would not constitute a contribution to the candidate.

If you have any further questions, please feel free to contact this office.

Sincerely,

  
R. F. Connor  
Executive Director

RFC:bd



STATE OF MISSOURI

MISSOURI ETHICS COMMISSION  
P. O. BOX 1254  
JEFFERSON CITY, MISSOURI 65102

573/751-2020  
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July 12, 1996

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At the June 1, 1996 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

**1. Do the same answers apply to the Democratic State Committee as were issued in MEC Opinion No. 96.01.110 and posed by (the Missouri Republican Party) a political party committee?**

ANSWER: In response to this question, the Missouri Ethics Commission states that it has not changed its response as contained in MEC Opinion No. 96.01.110. However, the Commission draws your attention to question number 9 of that opinion. The response to that question assumed that there was no candidate for the political office as the word "candidate" is defined by section 130.011(3), RSMo.

**2. If the Republican State Committee makes expenditures for a media campaign against a specific Democratic candidate for statewide office, will "expenditures" by the Democratic State Committee which are not transferred to the candidate or to his or her "candidate committee" be considered to be a "contribution" to the Democratic candidate and included within the "contribution" limit specified in Section 130.032.5, RSMo, if the "expenditures" are made to oppose a possible Republican opponent of the Democratic candidate and the "expenditures" are made by the Democratic State Committee and not directed or controlled by the Democratic candidate?**

ANSWER: Expenditures made by the State Democratic Committee in support of a specific candidate are not considered contributions to that candidate if those expenditures were made by the State Democratic Committee and such 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 Buckley v. Valeo, 424 U.S. 1, 78 (1976).)

3. *If the Republican State Committee makes expenditures for a media campaign against a specific Democratic candidate for statewide office, will "expenditures" by the Democratic State Committee which are not transferred to the candidate or to his or her "candidate committee" be considered to be a "contribution" to the Democratic candidate and included within the "contribution" limit specified in Section 130.032.5, RSMo, if the "expenditures" are made in direct response to the Republican media campaign and in support of the Democratic candidate and the "expenditures" are made by the Democratic State Committee and not directed or controlled by Democratic candidate?*

ANSWER: The answer to this question has been answered in question number 2. If the expenditures made by the State Democratic Committee are made by the Committee, and the candidate has not requested the expenditures be made, the candidate does not direct or control the expenditures and the expenditures were not made with the cooperation of the candidate or with the express or implied consent of the candidate, they are not contributions to the candidate.

4. *The Democratic State Committee proposes to make "expenditures" in support of specific Democratic candidates for statewide office. The expenditures will not be transferred to a candidate for statewide office or to the "candidate committee" for any such candidate for statewide office. Instead, the funds to be expended and how they will be expended will at all times remain and be subject to the direction, control and determination of the Democratic State Committee and not the candidate.*

a. *Will the expenditures be considered as "contributions" of the Democratic State Committee to the candidate within the meaning of the "contribution" limit set forth in Section 130.032.5, RSMo, if they are made, directed and controlled by the Democratic State Committee and not the Democratic candidate?*

ANSWER: An expenditure is not a contribution to such a candidate so long as the expenditure is made by and directed or controlled by the State Democratic Committee, so long as the candidate and the State Democratic Committee do not cooperate on the expenditure, and so long as the candidate does not, expressly or impliedly, consent to the expenditure. The candidate cannot direct or control the expenditure, nor can the expenditure be made in cooperation with, or with the express or implied consent of, the candidate.

b. *Will the expenditures be considered as "contributions" by the Democratic State Committee to the candidate within the meaning of the "contribution" set forth in Section 130.032.5, RSMo, if the Democratic State Committee merely advises the candidate relative to the expenditures of funds in support of the candidate with, however, the Democratic State Committee retaining the decision making authority with respect to such expenditures at all times, and*

Page 3  
July 12, 1996

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96-06-135

*with the Democratic State Committee actually making the final determination as to the amount of such funds to be expended and how such funds will be expended with there being no participation by the candidate in the making of such final determinations?*

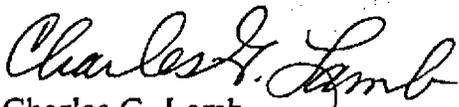
ANSWER: The Commission would examine each expenditure on an individual basis. For an expenditure to be independent and not a contribution to the candidate, such expenditure must be free from the direction, control, request, or influence of the candidate, either express or implied. The expenditure also cannot be made with the cooperation or consent of the candidate. If a candidate is advised of the proposed expenditure ahead of time, it might be construed to be an expenditure made either with the cooperation or implied consent of that candidate.

*5. The Democratic State Committee proposes to make "expenditures" in support of a slate of or multiple Democratic candidates for multiple public offices. The expenditures will not be transferred to any individual candidate or the "candidate committee" for any individual candidate. Instead, the funds to be expended and how they will be expended will at all times remain beyond the direction or control of any individual candidate for public office. Will such expenditures be considered as "contributions" to any individual candidate?*

ANSWER: It is the traditional roles of political parties to support a list or slate of candidates of the party. As previously stated, so long as the expenditure is not directed, controlled, requested or influenced by such candidate, and as long as it is made without the cooperation or consent of the candidate, such expenditure is not a contribution to that candidate.

If you have any further questions, please feel free to contact this office.

Sincerely,



Charles G. Lamb  
(Acting) Administrative Secretary

MCR:bd

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MISSOURI ETHICS COMMISSION  
P.O. BOX 1254  
JEFFERSON CITY, MISSOURI 65102

OPINION NO.

96.01.110

ATTACHMENT TO 3751-2020  
MEC OPINION NO. 800392-8660

02.07.106

COPY

February 5, 1996

At the January 23, 1996 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is in response to your questions:

1. Assume that a political party committee makes expenditures to support a candidate of the same party. Also assume that the expenditures are made entirely independently by the political party committee and are made without prior knowledge on the part of the candidate and without coordination or cooperation or the prior consent of the candidate. *Would the expenditures amount to "contributions" by the political party committee to the candidate under the disclosure law and, therefore, count toward the maximum amount which the political party committee may contribute to the candidate?*

**ANSWER:** Under the specific fact situation set forth, the Commission is of the opinion that the above expenditure would not be a contribution to the candidate and would not count against the contribution limits.

2. Assume that a political party committee makes expenditures seeking to defeat a candidate of another party. Also assume that the expenditures are made entirely independently without the prior knowledge of any candidate of the party which makes the expenditure and without any cooperation or coordination with the candidate of that party. *Would the expenditures made by the political party committee amount to "contributions" under the disclosure law to the candidate of the political party committee which is making the expenditure?*

**ANSWER:** The Commission believes this question is answered in the response to question number 1.

Page 2  
February 5, 1996

03.07.106

96.01.110

3. Assume that a political party committee makes expenditures for a media campaign against a specific candidate of another political party. Also assume that these expenditures are made without any communication, coordination, or previous knowledge on the part of the candidate of the political party committee which is making the expenditures. Would such expenditure be considered, ipso facto, to be coordinated with those of its own nominee and therefore not allowable as independent expenditures?

**ANSWER:** The Commission believes this question is answered in the response to question number 1.

4. Would the expenditures made by the political party committee, in question 3 above, constitute "contributions" to the candidate of the political party committee which is making the expenditures?

**ANSWER:** From the facts presented in this question, the Commission is of the opinion they would not.

5. Please identify the factors which the Ethics Commission would look to in determining whether expenditures should be considered as "independent expenditures" and therefore not as "contributions" by the person which makes the expenditures to a candidate who benefits from such expenditures.

**ANSWER:** The term "independent expenditure" is not a term that is defined by statute. The Missouri Ethics Commission will use normal methods of construction to interpret what is an independent expenditure and will make this determination on a case-by-case basis.

6. Under the circumstances described in question 3 above, would the requirement that such expenditures not be coordinated with the political party committee's own nominee prevent all communications between the party and the nominee?

**ANSWER:** Under the circumstances described in your letter, the Commission is of the opinion it would not.

7. If the answer to question 6 above is "no", please identify the forms of communications which would be allowed and those which would not be allowed in order for the expenditures to constitute independent expenditures on the part of the political party committee and therefore not constitute "contribution" to the candidate.

**ANSWER:** The Missouri Ethics Commission cannot describe each and every form of communication which would be allowed, nor those which would not be allowed, to a candidate and/or a candidate

Page 3  
February 5, 1996

02.07.106

committee. The Commission is of the opinion that expenditures that are independent must be independent as that word is construed in normal communications.

8. Under the circumstances described in question 3 above, would the political party committee be found, ipso facto, to be coordinating such expenditures with its own nominee if the party and the nominee were using the same vendors for any of the following services:

- (a) Direct mail
- (b) Telemarketing
- (c) Polling
- (d) Campaign consulting
- (e) Media consultation, or
- (f) All of the above

ANSWER: From the question presented, the Commission is of the opinion that it would not. Just because the same vendor is used, does not necessarily cause a problem with independent expenditures. The facts in each case will dictate whether or not the expenditure is independent.

9. If a political party committee makes expenditures against a candidate of the other political party at a time when no one has filed for nomination for such office for the party making the expenditure, will that, ipso facto, be considered an independent expenditure by the political party which makes the expenditure and therefore not a "contribution" to any particular candidate?

ANSWER: The Commission is of the opinion that such an expenditure would not amount to or be a contribution.

10. If the answer to question 9 above is "no", would the fact that the expenditures are made at a time when no one has filed for nomination for the party making the expenditure be a factor considered by the Ethics Commission in determining whether such expenditures were independent expenditures and therefore not "contributions" to a candidate of that same political party?

ANSWER: The Commission declines to further elaborate on the answer to number 9 above.

11. If a political party committee makes expenditures against a candidate of the other political party at a time when multiple candidates have filed for nomination for such office for the party making the expenditure, will that, ipso facto, be considered an independent expenditure by the political party and therefore not a "contribution" to any of the candidates of the political party which made the expenditures?

Page 4  
February 5, 1996

02.07.106

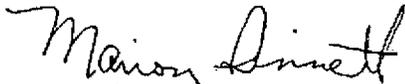
**ANSWER:** The expenditures must be independent in nature and will be determined on a case-by-case basis.

12. *If the answer to question 11 above is "no", would the fact that multiple candidates have filed for nomination for the same office be a factor to be considered by the Ethics Commission in determining whether such expenditures were independent and therefore not "contributions" to one or more candidates of the political party making the expenditure?*

**ANSWER:** The determination will be made on a case-by-case basis.

If you have any further questions, please feel free to contact this office.

Sincerely,



Marion N. Sinnett  
Administrative Secretary

MNS:bd

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