



MEC
OPINION NO.

2004.03.100

COPY

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

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

March 15, 2004

Your request for an opinion was discussed at the March 11, 2004 meeting of the Missouri Ethics Commission. The following is the Commission's response to your question:

When a person who is a candidate for public office withdraws from that candidacy, then nearly a year later transfers the funds from his candidate committee to a continuing committee, and then becomes a candidate for a new office, is that continuing committee prohibited from spending the funds from the first candidacy on behalf of the same candidate for the second candidacy?

The Commission stated that provided the candidate does not have any consent, coordination or control over any expenditure, the expenditure is not a contribution. This committee is not prohibited from spending the money on whomever they chose. MEC Op. Nos. 96.01.110 and 96.06.135 are attached.

Sincerely,

R. F. Connor
Executive Director

RFC:bd
Attachment

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.



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

OPINION NO.

1996.01.110

ATTACHMENT NO. 751-2020
MEC OPINION NO. 392-8660

04.03.100

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

04.03.100

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

04.03.100

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

ATTACHMENT TO
MEC OPINION NO

OPINION NO.

96.01.110

04.03.100

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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MEC
OPINION NO.

1996.06.135

STATE OF MISSOURI

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

573/751-2020

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ATTACHMENT TO
MEC OPINION NO.

04.03.100

July 12, 1996

COPY

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).)

Page 2
July 12, 1996

04.03.100

96.06.135

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

04.03.100

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?

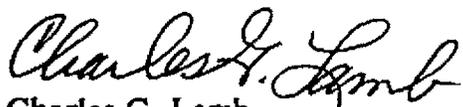
ANSWER: The Commission would examine each expenditure on an individual basis. For an expenditure to be independent and not a contribution to the candidate, such expenditure must be free from the direction, control, request, or influence of the candidate, either express or implied. The expenditure also 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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