



MISSOURI ETHICS COMMISSION

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Julie A. Allen
Executive Director

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Opinion No. 2010.08.CF.004

At the August 16, 2010 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

I am the Treasurer or Deputy Treasurer of multiple committees.

I pose the following questions:

- 1. In SB 844 (TAFP 2010), Section 130.031(13) prohibits Political Action Committees (PACs) from receiving "contributions" from PACs and other committees. May a PAC receive the proceeds of an expenditure from another committee if that expenditure is payment at fair market value (FMV) for goods or services provided by the PAC? Under such circumstances the expenditure by the committee and the FMV of the goods or services provided by the PAC net to zero. Examples of such transactions could be a PAC conducting a door-to-door canvas as a vendor to a campaign committee or a PAC selling surplus office equipment to another PAC.*
- 2. Would the transaction described in Q. 1 be reported as a simple expenditure by the paying committee and a miscellaneous receipt by the receiving PAC?*

§130.031.13, RSMo, effective August 28, 2010 prohibits political action committees from receiving contributions from other political action committees, candidate committees, political party committees, campaign committees, exploratory committees, or debt service committees. Contributions include both monetary and in-kind contributions.

In your example, you state that examples of the "proceeds of an expenditure" from a committee include payment for goods or services, such as conducting a door-to-door canvas as a vendor or a PAC selling surplus office equipment to another PAC. The Commission therefore assumes that a PAC (PAC A) is purchasing a good from another PAC or paying for a service at fair market value for another PAC (PAC B). This would be similar to a business transaction by a PAC with a private purchaser or vendor.

Chapter 130 provides very general definitions of contributions and expenditures. For example,

§130.011(16), RSMo defines an expenditure as:

- 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 or for the support of any committee which in turn supports or opposes any candidate or ballot measure or for the purpose of paying a previously incurred campaign debt or obligation of a candidate or the debts or obligations of a committee;
- a payment, or an agreement or promise to pay, money or anything of value, including a candidate's own money or property, for the purchase of goods, services, property, facilities 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 or for the support of any committee which in turn supports or opposes any candidate or ballot measure or for the purpose of paying a previously incurred campaign debt or obligation of a candidate or the debts or obligations of a committee.

An expenditure of anything of value is deemed to have a money value equivalent to the fair market value. Because PAC A is paying PAC B for both goods and services as a business transaction at fair market value, PAC A would report the transaction as an expenditure to PAC B under the requirements of §130.041.1(4), RSMo.

§130.011. (12), RSMo defines a contribution 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...

The statute includes examples of contributions, including:

- Payment by any person, other than a candidate or committee, to compensate another person for services rendered to that candidate or committee;
- Receipts from the sale of goods and services, including the sale of advertising space in a brochure, booklet, program or pamphlet of a candidate or committee and the sale of tickets or political merchandise;
- Receipts from fund-raising events including testimonial affairs;
- Any loan, guarantee of a loan, cancellation or forgiveness of a loan or debt or other obligation by a third party, or payment of a loan or debt or other obligation by a third party if the loan or debt or other obligation was contracted, used, or intended, in whole or in part, for use in an election campaign or used or intended for the payment of such debts or obligations of a candidate or committee previously incurred, or which was made or received by a committee;
- Funds received by a committee which are transferred to such committee from another committee or other source, except funds received by a candidate committee as a transfer

of funds from another candidate committee controlled by the same candidate but such transfer shall be included in the disclosure reports;

- Facilities, office space or equipment supplied by any person to a candidate or committee without charge or at reduced charges, except gratuitous space for meeting purposes which is made available regularly to the public, including other candidates or committees, on an equal basis for similar purposes on the same conditions;
- The direct or indirect payment by any person, other than a connected organization, of the costs of establishing, administering, or maintaining a committee, including legal, accounting and computer services, fund raising and solicitation of contributions for a committee;

While the statute is very inclusive, the purpose of the payment must be to support or oppose a candidate or ballot issue. In the scenario presented, while the business transaction may have the indirect purpose to support or oppose a candidate or ballot issue, the primary purpose is to conduct a business transaction in which PAC A serves as the purchaser of goods or services. To the extent that the transaction is conducted according to the fair market value of the good or service, the transaction would be reported as a miscellaneous receipt by PAC B.

Any value greater than fair market value would be an in-kind contribution and would fall within the prohibition of §130.031.13, RSMo, effective August 28, 2010. This is supported by §130.011. (12)(g), RSMo which states that “facilities, office space or equipment supplied by any person to a candidate or committee without charge or at reduced charges” is a contribution.

The Commission cautions PAC A and PAC B to maintain adequate records to support the fair market value of the transaction. The fair market value must be clearly and easily ascertained. Because any value of goods or services over fair market value in this example is considered an in-kind contribution, it may be difficult in many situations to differentiate between a service or good valued at fair market value, and a contribution.

Unlike a private vendor or purchaser of goods, a political action committee which serves as a vendor or purchaser has specific reporting requirements and prohibitions under Chapter 130. Both committees must ensure that the fair market value assigned to goods and services are the same as for a private vendor or purchaser.

3. In SB 844 (TAFP 2010), Section 130.031(13) allows PACs to receive contributions from corporations, associations and partnerships formed under chapters 347 to 360. Is a foreign corporation holding a Certificate of Authority under chapters 347 to 360 a corporation formed under chapters 347 to 360?

§130.031.13, RSMo, effective August 28, 2010 reads as follows:

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, 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.

Provisions governing foreign corporations holding a certificate of authority can be found in three of the chapters listed in §130.031.13, RSMo. 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.

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.

Because §130.031.13, RSMo states that Political Action Committees shall receive contributions from corporations formed under those chapters, and because the legislature has expressly stated that foreign corporations shall have the same rights and privileges as domestic corporations, it is the Commission's opinion, effective August 28, 2010, PACS can receive contributions from foreign corporations holding valid certificates of authority.

Sincerely,



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