



MISSOURI ETHICS COMMISSION

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Julie A. Allen

Executive Director

February 14, 2012

Opinion No. 2012.02.CF.001

At the February 13, 2012 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

Is a transfer of funds, or an unconditional gift, by an individual's state candidate committee to a Legal Defense Trust Fund ("LDTF"), a not for profit entity established to pay the legal expenses incurred by the same individual's federal candidate's committee in the defense of commercial litigation to which the federal committee was subjected, a permissible use of campaign contributions pursuant to either §130.033 or §130.034? The individual is not going to seek re-election.

This opinion is issued within the context of Missouri's campaign finance law pursuant to Chapter 130, and assumes the facts presented by you in your letter. The following additional facts and assumptions have been provided for the Commission's consideration:

The litigation was commercial litigation filed against the federal committee for violation of laws not related to elections or holding of elective office. There was no allegation of violation of federal campaign finance laws and there is no direct financial liability by the candidate. The federal campaign received an advisory opinion from the Federal Elections Commission stating that a separate legal defense fund could be established to receive donations from individuals, political committees, corporations and labor organizations to defray the committee's legal costs. The FEC ruled, consistent with past opinions and its regulations that the amounts received and disbursed by the fund would not be "contributions" or "expenditures" because the committee was required to defend itself in a civil lawsuit, and therefore, the donated legal services were not to influence the election to federal office under the federal definition. The legal defense trust fund was formed on behalf of the federal committee, and solely for legal fees to defend and settle the lawsuit. The trust fund will be dissolved once all legal fees are paid and no monies will be returned to the federal committee.

Legal fees are specifically recognized by Chapter 130 in a number of ways. For example, Chapter 130 recognizes that the payment by any person for legal fees to establish, administer or maintain a committee is considered a contribution. §130.011(11), RSMo. Such payments by a committee are considered expenditures under §130.011(15), RSMo. §130.033, RSMo, states that any reasonable attorney's fees accrued by a person who is the subject of a complaint which are used in defending such person in any matter resulting in an investigation arising from holding or running for public office may be paid out of such person's committee.

§130.034.1 RSMo states that contributions shall not be converted to personal use. Subsection 2 then states that contributions may be used for any purpose allowed by law, including, but not limited to:

- (1) Any ordinary expenses incurred relating to a campaign;
- (2) Any ordinary and necessary expenses incurred in connection with the duties of a holder of elective office;
- (3) Any expenses associated with the duties of candidacy or of elective office pertaining to the entertaining of or providing social courtesies to constituents, professional associations, or other holders of elective office;
- ...
- (5) To contribute to a political organization or candidate committee as allowed by law;
- ...
- (7) To make an unconditional gift which is fully vested to any charitable, fraternal or civic organizations or other associations formed to provide for some good in the order of benevolence, if such candidate, former candidate or holder of elective office or such person's immediate family gain no direct financial benefit from the unconditional gift;

In Opinion 1995.01.101, the Commission stated that candidate committee funds could not be donated to a legal defense fund formed to pay legal fees accrued during an impeachment proceeding relating to an officeholder's misconduct in office. The Commission stated that contributions used in that manner would be for personal use prohibited by §130.034, RSMo. The Commission stated that payments for legal fees by an officeholder must be used for holding office.

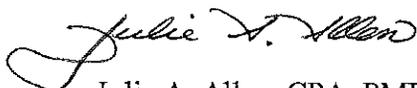
In Opinion 1997.11.107, the Commission stated that an existing office holder could not pay legal fees from a candidate committee to defend a lawsuit based on a recall petition for removal from office. The recall petition against an existing office holder could be filed for misconduct in office, incompetence or failure to perform duties prescribed by law. The Commission stated defending against a recall is not an "ordinary and necessary" expense of holding office.

Recently, the Commission stated in Opinion 2010.06.CF.001 that candidate contributions could not be used to pay legal expenses for the offense purpose of challenging an opponent in an election because the opponent did not meet the requirement of residing in the county for one year. The fees were not "ordinary" under §130.034, RSMo.

In Opinion 2011.06.CF.004, the Commission stated that candidate committee contributions may be used to pay legal fees in litigation challenging the election authority's disqualification of a candidate following the candidate's failure to file a personal financial disclosure form as required by law. While not directly covered by §130.033, RSMo, payment of legal fees in the current situation, when the action arose from the failure to file a statement with the Commission, is an action with a direct relationship back to the Commission's notification of the election authority.

In this request, the contributions from the state committee to the legal defense fund would be to pay legal fees incurred against the candidate's federal committee. While the candidate/office holder is not personally liable, the candidate will receive an indirect benefit for the relief of legal fees in settlement of a lawsuit against a federal committee. The contributions will not be used for ordinary expenses incurred relating to a campaign, or ordinary and necessary expenses incurred in connection with the duties of a holder of elective office. The unconditional gift does not fit within the meaning of §130.034.2(7) RSMo which authorizes unconditional gifts to "charitable, fraternal or civic organizations or other associations formed to provide for some good in the order of benevolence." Therefore, there is no specific provision in Chapter 130 which authorizes the use of state contributions in this manner.

Sincerely,



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Executive Director

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