



**MISSOURI ETHICS COMMISSION**

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Julie A. Allen  
Executive Director

July 2, 2012

Opinion No. 2012.07.CF.003

Dear

At the July 2, 2012 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

**Question 1.** *Does Missouri law permit the non-profit corporation to establish and register a political committee to accept contributions from individuals designated for Missouri candidates?*

Under Missouri law, a corporation may establish a committee for the purpose of accepting contributions from individuals designated for Missouri candidates. A Missouri "continuing committee" includes, but is not limited to:

any committee organized or sponsored by a business entity ... and whose primary purpose is to solicit, accept and use contributions from the members, employees or stockholders of such entity and any individual or group of individuals who accept and use contributions to influence or attempt to influence the action of voters.

§ 130.011(10), RSMo.

Such a continuing committee "shall be formed no later than sixty days prior to the election for which the committee receives contributions or makes expenditures." § 130.011, RSMo.

Note that Missouri law prohibits contributions from being made or accepted "directly or indirectly, in a fictitious name, in the name of another person, or by or through another person in such a manner as to conceal the identity of the actual source of the contribution." § 130.031.3, RSMo.

Every person who acts as an agent for a committee in receiving contributions for that committee shall, on request of that committee's treasurer or candidate, but in any event within five days after any such action, render to the candidate, committee treasurer or deputy treasurer a detailed

account thereof, including the names, addresses, dates, exact amounts and any other details required by the candidate, treasurer or deputy treasurer to comply with Chapter 130, RSMo. § 130.036.1, RSMo.

Notwithstanding the provisions of Section 130.021.4, RSMo, an individual, trade or professional association, business entity, or labor organization that acts as an agent for a committee in receiving contributions may deposit contributions received on behalf of the committee to the agent's account within a financial institution within Missouri, for purposes of facilitating transmittal of the contributions to the candidate, committee treasurer or deputy treasurer. Such contributions shall not be held in the agent's account for more than five days after the date the contribution was received by the agent, and shall not be transferred to the account of any other agent or person, other than the committee treasurer. § 130.036.1, RSMo.

**Question 2.** *May the state continuing committee collect these contributions for each candidate as designated by the donors, and distribute these contributions to each candidate as a contribution from the state continuing committee as long as all required original source contributor information accompanies the contribution and is reported pursuant to § 130.041.1(10), RSMo? Each individual contributor will be identified and reported on the state continuing committee's reports. Should the candidates also report the individual contributors or do they simply report the contribution amount as a single contribution from the state continuing committee to each candidate?*

A state continuing committee may act as an agent in collecting contributions restricted or designated for particular candidates. Due to the similarity of the issue and reporting requirements, the committee should follow the approach set forth in the Federal Election Commission's advisory opinion regarding "earmarked contributions," FEC Op. 2012-03 (March 1, 2012). Under that approach, because the continuing committee does not actually use the contribution or maintain any direction or control over the contribution, the continuing committee should report the contribution as a "miscellaneous receipt," and when the funds are transferred to the candidate committee, the continuing committee should report that as a "miscellaneous expenditure." The continuing committee must report additional information as set forth below. The candidate committee will report the contribution as a contribution received. Again, note that Missouri law prohibits contributions from being made or accepted "directly or indirectly, in a fictitious name, in the name of another person, or by or through another person in such a manner as to conceal the identity of the actual source of the contribution." § 130.031.3, RSMo.

#### **I. How the continuing committee should report receipt of the funds.**

If the continuing committee places these funds in its own official depository account, it should report them as "miscellaneous receipts" in the Missouri Report Summary page, with an itemization of the information required by Section 130.041.1(10), RSMo, in the "Addendum Statement."

A continuing committee may deposit funds that are restricted or designated for a particular candidate into its official depository account for purposes of facilitating transmittal of those funds to the candidate, as described at Section 130.036.1, RSMo. Because those funds are restricted or designated for a particular candidate, the continuing committee should report those

funds as a “miscellaneous receipt” rather than a “contribution” to the continuing committee. The continuing committee must report the receipt of those funds in the addendum statement as follows:

Each committee that receives a contribution which is restricted or designated in whole or in part by the contributor for transfer to a particular candidate, committee or other person shall include a statement of the name and address of that contributor in the next disclosure report required to be filed after receipt of such contribution, together with the date and amount of any such contribution which was so restricted or designated by that contributor, together with the name of the particular candidate or committee to whom such contribution was so designated or restricted by that contributor and the date and amount of such contribution.”

§ 130.041.1(10), RSMo.

## **II. How the continuing committee should transfer the funds to the candidate committee.**

The continuing committee must transfer the funds, along with all required information, to the candidate committee within five days. *See* MEC Opinion 2010.08.CF.003 (Aug. 23, 2010) (Summarizing, in the last paragraph, the duties of an agent in receiving contributions).

Any individual or entity acting as an agent for a committee in receiving contributions shall not hold the contribution in the agent’s account for more than five days after the date the contribution was received by the agent. § 130.036.1, RSMo. Within those same five days, or earlier if requested by the candidate committee, the agent must deliver a “detailed account” of the contribution, including the names, addresses, dates, exact amounts and any other details required by the candidate, treasurer or deputy treasurer to comply with the requirements of Chapter 130, RSMo. § 130.036.1, RSMo. The “detailed account” must include, among other information, the agent’s own name and address and the name and address of the actual source of each contribution. § 130.031.3, RSMo. It must also include the employer (or occupation of a contributor who is self-employed) of every person who contributed to the candidate committee more than \$100 in aggregate, and a description of any contractual relationship over \$500 between the contributor and the state (or political subdivision if the candidate is seeking election to a political subdivision). § 130.041.1(3)(a), RSMo.

## **III. How the continuing committee should report the transfer of funds on its campaign finance reports.**

When the funds are sent to the candidate committee, the continuing committee should report this in the “Miscellaneous Disbursement not Reported Elsewhere” in the Missouri Report Summary page, with an itemization of the information required by Section 130.041.1(10), RSMo, in the “Addendum Statement.”

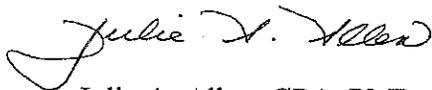
Continuing committees must report by a separate listing by full name and address every committee "for which a transfer of funds or a contribution in any amount has been made during the reporting period, together with the date and amount of each such transfer or contribution." § 130.041.1(8), RSMo. To avoid making the transfer "in a manner so as to conceal the identity of the actual source of the contribution," which would violate Section 130.031.3, RSMo, the continuing committee should include in the addendum statement "the name and address of that contributor ... together with the date and amount of any such contribution which was so restricted or designated by that contributor, together with the name of the particular candidate or committee to whom such contribution was so designated or restricted by that contributor and the date and amount of such contribution." § 130.041.1(10), RSMo.

#### **IV. How the candidate committee should report the contribution.**

The candidate committee, when it receives the transfer from the continuing committee, should report the contributions individually by original contributor by listing them in the "Itemized Contributions Received" report, which will be summarized on the "All Monetary Contributions Received" in the Missouri Report Summary page. In the "Addendum Statement," the candidate committee should then list, for each contribution transferred via continuing committee, the name of the continuing committee through which each contribution was made. The candidate committee should report the entire contribution received then report an expenditure to the appropriate entity for any administrative fees collected.

Candidate committees must report by a separate listing by full name and address every committee "from which a transfer of funds or a contribution in any amount has been received during the reporting period, together with the date and amount of each such transfer or contribution." § 130.041.1(9), RSMo. To comply with this requirement and avoid receiving a contribution "in a manner so as to conceal the identity of the actual source of the contribution," which would violate Section 130.031.3, RSMo, the candidate committee should report contributions as coming from the actual source of the contribution, and not the pass-through continuing committee that acted as an agent to receive the contribution. To avoid allegations of concealment, the candidate committee should also disclose the continuing committee's involvement in facilitating the contribution.

Sincerely,



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Executive Director