



MISSOURI ETHICS COMMISSION
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James Klahr
Executive Director

March 8, 2017

Re: Advisory Opinion No. 2017.03.CF.009

At the March 8, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to §105.957, RSMo. The Commission receives complaints alleging violation of campaign finance provisions of Missouri law. This opinion is issued within the context of Missouri's laws governing such issues, and assumes the facts presented by you in your letter.

The question presented is:

Is an LLC with one corporate member/owner that has elected to be treated as a partnership and a disregarded entity under the IRC subject to the ban on corporate contributions? In other words, are contributions made by an LLC that has elected to be treated as a partnership attributed (i.e., do they flow-back) to its corporate member/owner?

Because a proposed contribution made by a single corporate member LLC is made up solely of corporate funds, it is the Commission's opinion that an LLC with one corporate member/owner that has elected to be treated as a partnership and a disregarded entity under the Internal Revenue Code is subject to the ban on corporate contributions. Such proposed contributions which are made up solely of corporate funds flow-back to its corporate member/owner.

Supporting Analysis

In MEC Opinion No. 2017.02.CF.005, the Commission stated that to the extent that a Missouri LLC is an "eligible entity" and elects to be classified as a corporation under the federal tax code, it is considered a "corporation" for purposes of §23 of the Missouri Constitution. This request is a follow-up to that opinion, seeking clarity when an LLC with a single corporate member/owner elects to be treated as a partnership for IRS purposes.

As stated in Article VIII, §23.3(3)(a) and (b) provide prohibitions on corporate contributions as follows:

(3) (a) It shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee, exploratory committee, political party committee or a political party; except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders.

(b) The prohibition contained in subdivision (a) of this subsection shall not apply to a corporation that:

- (i) Is formed for the purpose of promoting political ideas and cannot engage in business activities; and
- (ii) Has no security holders or other persons with a claim on its assets or income; and
- (iii) Was not established by and does not accept contributions from business corporations or labor organizations.

§ 23.7, which contains definitions of terms used in §23, does not define "corporation."

§347.061.1, RSMo states that property transferred or otherwise acquired by an LLC becomes the property of the LLC. "A member has no interest in specific limited liability company property." §347.061.3, RSMo, states in particular:

- (1) Property is presumed to be owned by the limited liability company if it is acquired in the name of the limited liability company;
- (2) Property is presumed to be owned by the limited liability company if it is purchased with funds of the limited liability company even if it is acquired in the name of a member or other person; and
- (3) Property is presumed to be separate property of one or more members or other persons if it is acquired in the name or names of such person or persons without use of funds of the limited liability company even though the property was used for purposes of the business of the limited liability company.

Because the contribution made by a single corporate member LLC is made up solely of corporate funds, it is the Commission's opinion that an LLC with one corporate member/owner that has elected to be treated as a partnership and a disregarded entity under the IRC is subject to the ban on corporate contributions. Such proposed contributions which are made up solely of corporate funds flow-back to its corporate member/owner.

This opinion is consistent with 11 CFR 110.1 (e) which regulates federal contributions which prohibits any portion of a contribution made from profits of a corporation.

Sincerely,



James Klahr
Executive Director