



MISSOURI ETHICS COMMISSION
P.O. Box 1254
Jefferson City, MO 65102
www.mec.mo.gov
(573) 751-2020 / (800) 392-8660

James Klahr
Executive Director

April 28, 2017

Re: Advisory Opinion No. 2017.04.CF.012

Dear

At the April 28, 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:

As a candidate for State Representative for the August 2018 primary, I would like to request that the MEC issue a new advisory opinion regarding the issue of accepting contributions from individuals for both the primary and general election simultaneously. The advisory opinion that from 1996, MEC No. 1996.06.13, involved a statute that is no longer in effect. I believe a new opinion is needed regarding the new Constitutional amendment in order to provide clarity for both candidates and their supporters.

The 1996 advisory opinion, MEC No. 1996.06.131 appears to address whether a continuing committee can give contributions for a primary and a general election at the same time, not whether a non-committee donor can do so. Under federal law, individual donors are allowed to make simultaneous contributions for primary and general elections, and federal candidates are able to properly accept and record those contributions. Successful and unsuccessful candidates understand and abide by the same law. There is no reason that candidates for Missouri elections would not be able to do so as well.

Eligible candidates may receive contributions up to \$2,600 from any person in the period leading up to the primary election, and candidates running in the general election may receive \$2,600 from that same person in the period following the primary election to the general election. Candidates in a primary election may not receive simultaneous contributions from the same

contributor contributions up to \$5,200 for the primary and general election in the period leading to the primary election.

Supporting Analysis

Article VIII, § 23.3(1), of the Missouri Constitution provides a contribution limit of \$2,600 from any person, other than the candidate, in any one election to elect an individual to the Missouri state offices of:

- Governor
- Lieutenant Governor
- Secretary of State
- State Treasurer
- State Auditor
- Attorney General
- State Senator
- State Representative
- Other State Office
- State Judicial Office

Article VIII, §23.7(11) states that a primary election and the succeeding general election shall be considered separate elections.¹

As noted in the request, when previous contribution limits were in place under §130.032, RSMo (repealed), the Commission stated that a continuing committee could not give more than the maximum amount that applied to each election, and therefore, the committee could not give a combined contribution for a primary and general election at one time. In addition, the Commission looked to §130.036.2, RSMo which states that a contribution is considered received and accepted on the date received, with some exceptions. *See* MEC No. 1996.06.131, <http://mec.mo.gov/Scanned/PDF/Opinions/189.pdf>.

The request references Federal Election Commission Rules for contribution limits in general elections, which authorizes federal candidates to accept contributions for a primary and general election at one time. The FEC has detailed rules which require a candidate who loses or withdraws from a primary race to refund, redesignate or reattribute the general election contributions within 60 days of the primary or the date that the candidate publicly withdraws from the primary race. *See e. g.* 11 CFR 110.1(b)(3) and 11 CFR 110.2(b)(5). Federal candidates must adopt an accounting system to distinguish between contributions made for the primary election and those made for the general election, 11 CFR 102.9(e). The federal candidate may not use money accepted for the general election to repay primary election debt, and are cautioned to have sufficient cash on hand to repay those contributions. AO 1986-17. These are but a few of the regulations in place concerning acceptance of contributions for federal elections.

¹ "Person" is defined in Art. VIII, § 23.7(1). The identical definition is contained in §130.011(22), RSMo.

In the 2014, there were 724 candidate committees registered with the Commission for the August primary election and 508 registered for the general election for state level elections. In 2016, there were 548 candidate committees registered with the Commission for the August primary election and 369 registered for the general election for state level elections.² Chapter 130 of the Missouri Revised Code contains specific statutory direction for receipt and reporting by Missouri committees. These reporting provisions require candidate committees to file reports tied to the applicable election cycle whether the primary election or general election. For example, §130.041.2(1), RSMo contains the election cycles for aggregating contributions, and requires designation of contributions for primary and general elections, and §130.046.4, RSMo gives statutory direction for cumulative reporting for receipts and disbursements for a candidate committee per election cycle. Under Article VIII, §23.7 and §130.011(9), RSMo, the committee for an unsuccessful candidate must terminate the later of either 30 days after the general election or upon the satisfaction of all committee debt after the general election. §130.021.5, RSMo authorizes a candidate to amend a statement of committee organization to declare a new future office sought, which may again be subject to contribution limits.

The Commission relies on the plain wording of Article VIII, §23 and Chapter 130 of the Missouri Revised Code to state that contributions must be received in the election cycle the candidate is running. Therefore, eligible candidates may receive contributions up to \$2,600 from any person in the period leading up to the primary election, and candidates running in the general election may receive \$2,600 from that same person in the period following the primary election to the general election. Candidates in a primary election may not receive simultaneous contributions from the same contributor exceeding \$2,600 for the primary and general election in the period leading to the primary election.

Sincerely,



James Klahr
Executive Director

² Debt Service committees under §130.037, RSMo are included in these totals.