



MISSOURI ETHICS COMMISSION
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James Klahr
Executive Director

July 14, 2017

Re: Advisory Opinion No. 2017.07.CF.014

Dear _____

At the July 14, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

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.

Based on the questions posed, this opinion is issued with the assumption that both LLC's are corporations subject to the provisions of Article VIII, §23 of the Missouri Constitution.

Opinion

The questions presented and the Commission's opinion are as follows:¹

Is a PAC not connected to an organization when its monetary contributions are from a corporation's general treasury, not a corporation's officers, employees, their spouses, et. al?

If yes, does it therefore follow that a PAC funded 100% by a corporation's general treasury funds is therefore not deemed to be not connected to an organization?

If yes, may that PAC which does not have a connected organization receive unlimited contributions from corporation A's treasury?

If yes, may that PAC which does not have a connected organization receive unlimited contributions from corporation A and corporation B's respective treasuries in any amount?

Analysis

¹ While the questions discuss corporate funds, guidance given may also be applicable to labor organizations (unions) to the extent the provisions also apply to them.

Art. VIII, §23 provides limitations on corporate and labor organization (union) contributions to certain committees, and it also specifically allows corporations and unions to establish and contribute to political action committees/continuing committees (hereinafter “PACs”).

Specifically, Art. VIII, §23.3(3)(a) and (b) provide prohibitions on corporate and labor organization contributions as follows:²

(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.

§23.3(12), however, provides PACs are authorized to receive contributions from “unions” and “corporations, associations, and partnerships...”

The Commission discussed the application of both sections as they relate to corporate and union contributions to PACs in MEC No. 2017.03.CF.010. The Commission stated that a corporation or labor organization may not contribute its own funds to its connected PAC, but that it may contribute direct corporate or union funds to an “unconnected” PAC.

<http://mec.mo.gov/Scanned/PDF/Opinions/483.pdf>

The Commission also noted that given that the definition of a connected organization assumes that a connected committee may receive contributions from other sources, and that §23.3(12) specifically authorizes labor organizations and certain corporations to contribute to PACs, a connected PAC may receive contributions from other contributors, including corporations or labor organizations which did not establish, and/or are not connected, to the committee in question.

² In 2017.02.CF.002, the Commission opined that continuing committees and political action committees are the same type of committee. Likewise, the Commission interprets “unions” and “labor organizations” to be the same type of entity despite the fact that the constitutional provision refers to these in separate subsections and the term “union” is not defined.

To the extent that a committee's connected organization may solicit contributions from contributors who are not members, officers, directors, employees or security holders of such organization or their spouses, it may use committee funds to solicit those contributions. However, a connected labor union or corporation may not use treasury or corporate funds to solicit funds from outside sources as those solicitations are contributions under Art. VIII, §23.7(7)(h).

Corporate PACs established under Art. VIII, §23.3(3)

Art. VIII, §23.3(3)(a) does not specifically reference the term "connected organization", but does indicate that a corporation may "establish" a PAC.

In Missouri, organizations (including corporations) identify the certain PACs for which they provide support by identifying themselves as connected organizations on a statement of committee organization. Both the Missouri Constitution and Chapter 130, RSMo, define a "connected organization" as follows:

any organization such as a corporation, a labor organization, a membership organization, a cooperative, or trade or professional association which expends funds or provides services or facilities to **establish, administer or maintain** a committee or to solicit contributions to a committee from its members, officers, directors, employees or security holders. An organization shall be deemed to be the connected organization **if more than fifty percent of the persons making contributions to the committee during the current calendar year are members, officers, directors, employees or security holders of such organization or their spouses.** Art. VIII, §23.7(6)(d) and §130.011(11), RSMo. (emphasis added).

In Missouri, contributions can be either monetary or in-kind. An in-kind contribution is defined as "a contribution...in a form other than money." Art. VIII, §23.7(16) and §130.011(19), RSMo. For example, services provided by a corporation on behalf of a committee is an in-kind contribution to the committee.

Once a PAC reports a connected organization to the Commission on its statement of committee organization, the costs of establishing, administering or maintaining a committee, or the solicitation of contributions if solely directed to members, officers, directors, employees or security holders of such organization or their spouses are not "contributions" or "expenditures" to the connected committee under Art. VIII, §23.7(8)(d) and §23.7(13)(e); and §130.011(12)(i)d. and §130.011(16)(e)e., RSMo. Because the corporation is serving as a connected organization, there is no violation of Art. VIII, §23.3(3)(a), as interpreted in MEC No. 2017.03.CF.010 because the costs of establishing, administering or maintaining the PAC, and the solicitation of its members, officers, directors, employees or security holders, are not contributions.

A corporation may become a connected organization one of two ways. It may choose the status of a "connected organization" by establishing, administering or maintaining a committee. Regardless of the above, at the point that more than 50% of the committee's contributors during the current calendar year, whether the contributions were monetary or in-kind, are from

members, officers, directors, employees or security holders of such organization or their spouses, it is deemed a connected organization by law.

In MEC No. 2003.01.100, the Commission stated that a corporation that makes more than 50% of contributions to a committee is not deemed a connected organization.³ The Commission looked to the definition of a connected organization for guidance under the limited facts given. <http://mec.mo.gov/Scanned/PDF/Opinions/353.pdf>.

Corporate Contributions to PACs established under §23.3(12)

The Missouri Constitution clearly authorizes corporate contributions to PACs under Art. VIII, §23.3(12). Therefore a corporation can make a direct contribution to a PAC in which it is not a connected organization.

Current Questions

With this additional guidance, the following are the responses to the specific questions posed:

Is a PAC not connected to an organization when its contributions are from a corporation's general treasury, not a corporation's officers, employees, their spouses, et. al?

The question does not state whether the contributions are all monetary or if the corporation is supporting the PAC. Under the legal definition of "connected organization", if the corporation establishes, administers or maintains a committee; or if more than 50% persons making contributions (whether monetary or in-kind) are from members, officers, directors, employees or security holders of such organization or their spouses in a particular calendar year, then the organization is deemed connected.⁴

Assuming the corporation does not expend funds or provide services or facilities to **establish, administer or maintain** a committee or solicit contributions to a committee from its members, officers, directors, employees or security holders under the facts provided, it is not a connected organization.

If yes, does it therefore follow that a PAC funded 100% by a corporation's general treasury funds is therefore deemed to be not connected to an organization?

As stated above, according to the definition of a connected organization, a PAC that is funded with 100% of its monetary contributions by a corporation's general treasury funds cannot be "deemed" to be a "connected organization." However, the PAC can be connected if the corporation is expending funds to establish, administer and maintain the committee, or to solicit officers, directors, employees or security holders of such organization.

³ At the time of the opinion, there was no prohibition on corporate contributions in Missouri.

⁴ A corporation should assess each year the percentage of contributors who are members, officers, directors, employees or security holders or their spouses.

A corporation which seeks to contribute to a PAC as allowed by Art. VIII, §23.3(12) must ensure that its actions do not run afoul of Art. VIII, §23.3(3)(a) in that it must not "establish" the PAC by meeting the definition of a connected organization.

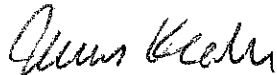
If yes, may that PAC which does not have a connected organization receive unlimited contributions from corporation A's treasury?

A corporation which seeks to contribute unlimited contributions to a PAC may not be connected. Assuming the corporation has not established the PAC and is not serving as a connected organization, it may make unlimited monetary contributions from the corporate treasury.

If yes, may that PAC which does not have a connected organization receive unlimited contributions from corporation A and corporation B's respective treasuries in any amount?

The answer is the same as above. So long as neither corporation is "connected" by the definition cited above, it may make unlimited monetary contributions to that PAC.

Sincerely,



James Klahr
Executive Director