



MISSOURI ETHICS COMMISSION

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Final Action: MEC No. 18-0073-I Missouri Senate Conservatives Fund, Senate Conservatives Fund, Missouri Alliance for Freedom-Grace River PAC, US Term Limits Inc., James Thomas III , Jeffrey Roe, and Herzog Contracting Corp.

Date: November 13, 2018

The Missouri Ethics Commission took final consideration of the complaint filed against Missouri Senate Conservatives Fund, Senate Conservatives Fund, Missouri Alliance for Freedom-Grace River PAC, James Thomas, Jeffrey Roe, Herzog Contracting Corp., and US Term Limits, Inc. at its November 13, 2018 meeting.¹

The complaint filed with the Commission included a variety of allegations, including that contributions made to Missouri PACs with a common treasurer, James Thomas III were made to conceal the identity of the source and recipient of the contributions, and to avoid the \$2,600 contribution limits to candidates for the Missouri General Assembly in the August 2018 primary election. The complaint also alleged that campaign management services provided by companies owned or controlled by Jeffrey Roe to the Missouri PACs as well as candidates supported by those PACs were coordinated in such a way as to also constitute contributions to the candidates.²

Since 1996, the Commission's guidance through advisory opinions has been that if a committee makes expenditures on behalf of a candidate with "prior knowledge on the part of the candidate" and with "coordination or cooperation or the prior consent of the candidate" then the candidate is required to report expenditures by the committee as in-kind contributions.³ Expenditures made in support of a specific candidate are not considered contributions to that candidate if those expenditures were not requested to be made by, directed, or controlled by, or made in cooperation with, or made with the express or implied consent of the candidate.⁴

While the Federal Election Commission (FEC) has adopted rules defining coordination to include activities by a common vendor, Missouri to date has no such law.⁵ Early Commission opinions recognized for example, the ability of a candidate and state party committee to use common vendors without necessarily resulting in coordination, and that "the facts in each case will dictate whether or not the expenditure is independent."⁶

¹ On September 6, 2018, the Commission dismissed the complaint against Tony Luetkemeyer. Because he was a successful candidate in the August 6, 2018 Primary Election, the Commission was required to consider the complaint against him within 15 days of receipt.

² The companies included Axiom Strategies, Ax Media, and Remington Research Group. Axiom Strategies is now owned by Garrison Management Group, LLC.

³ MEC Nos. 1996.01.110; 1996.06.135 and MEC No. 2017.09.CF.018

⁴ MEC No. 1996.01.110

⁵ 11 CFR §109.20 and §109.21

⁶ MEC No. 1996.01.110 and MEC No. 2002.07.106

Allegation Against US Term Limits, Inc. (USTL) and Missouri Senate Conservatives Fund (MSCF)

The complaint alleged that USTL should have been required to register as a Missouri committee and disclose the identity of its donor(s). The complaint alleged that USTL made earmarked contributions to MSCF to be utilized in support of Tony Luetkemeyer, a Republican candidate for State Senate, District 34, or in opposition to his opponent, Harry Roberts, and that USTL knew its contributions would be used to support Luetkemeyer. The contributions from USTL were made to MSCF on June 28, 2018, July 9, 2018 and July 27, 2018. On October 26, 2018, the Commission dismissed complaint 18-0069-I against USTL which considered a similar set of facts.

As with complaint 18-0069-I, USTL provided evidence that it received no funds from any donor bearing instructions or with an agreement to use those funds in a particular Missouri race. USTL retained full discretion to decide where and how to spend its funds. It also produced evidence that it provided no instructions or entered into any agreement regarding how contributions it made to MSCF would be spent.

Allegation Against Herzog Contracting Corp (Herzog), the Missouri Alliance for Freedom-Grace River PAC (Grace River), and Missouri Senate Conservatives Fund

The complaint alleged that Herzog Contracting Corp. made an earmarked contribution to Grace River PAC to be used in support of Tony Luetkemeyer in the August primary election. It further alleged that Grace River PAC, through its common treasurer, James Thomas III, passed that contribution to MSCF in a manner to conceal Herzog's identity, and that the contribution was coordinated in such a way to constitute a contribution to Tony Luetkemeyer in violation of the \$2,600 contribution limit to candidates.

The investigation showed that Herzog made a contribution in the amount of \$99,978.72 to Grace River in March 2018 which was not discovered by the PAC until July 2018. The contribution was reported by the PAC as received on July 13, 2018 on its 8 Day Before Primary Report. On the same report, Grace River reported a contribution in the amount of \$100,000 to MSCF on July 24, 2018.

While Herzog was the sole contributor to Grace River during this time, MSCF's money on hand included other contributions, and it made contributions to two other committees and made other expenditures during this time.⁷ The timing of the contribution, as well as the other activity by MSCF did not support the allegation that the \$100,000 contribution from Grace River to MSCF was the same \$99,978.72 originally contributed by Herzog.

⁷ James Thomas III is also the treasurer of the two other committees: Missouri Federation for Children PAC and Team Justin.

Allegation against Missouri Senate Conservatives Fund (MSCF) relating to Luetkemeyer for Senate

The complaint alleged that Axiom companies coordinated mailer activities for the Luetkemeyer campaign. Both MSCF and Luetkemeyer for Senate were working with Axiom or one of its related companies. Luetkemeyer for Senate used campaign consulting services but did not produce any mailers. MSCF produced mailers supporting Luetkemeyer's candidacy. As further evidence of coordination, the complaint alleged that Luetkemeyer's campaign message, as quoted in a July 22, 2018 newspaper article, was similar to the message found in the mailers produced by MSCF.

MSCF identified itself as an independent expenditure committee, and reported direct expenditures in support of Tony Luetkemeyer and in opposition to Harry Roberts, on the July 2018 Quarterly Report, the 8 Day Before Election Report, and 24 Hour Expenditure Reports filed up to the date of the primary election.⁸

During the investigation, Axiom provided a copy of its internal firewall policy that prohibits communication between consultants working for candidates and independent expenditure committees. A list of Axiom consultants who worked on MSCF's activities did not include names of Axiom consultants who worked on Luetkemeyer for Senate activities. Sufficient evidence was not found, under the guidance of Commission past opinions, to support the allegation that the Axiom internal firewall policy was violated resulting in the coordination of campaign activity conducted on behalf of Luetkemeyer for Senate and MSCF, or that MSCF independent expenditures actually constituted contributions to Luetkemeyer for Senate.

Allegation Against Jeffrey Roe and Senate Conservatives Funds (SCF)

The complaint alleged that Jeffrey Roe made an earmarked contribution of \$25,000 to SCF on July 25, 2018. The complaint further alleged that SCF coordinated its activities with Chester Victory Fund, the candidate committee in support of Mik Chester, a candidate for State Representative, District 9 in the August 6, 2018 Primary Election.

SCF, registered with the Commission on June 6, 2018, also identified itself in the investigation as an independent expenditure committee that does not receive designated or restricted contributions. Campaign finance reports filed by SCF show that in the primary election, it received the \$25,000 contribution from Roe and a \$5,000 contribution from the Missouri Federation for Children PAC. SCF made expenditures in the primary election in the amount of \$24,498 to Axiom or a related company, Ax Media. All expenditures reported to Axiom for mailers and media buys included a Direct Expenditure Report on which SCF reported the monies were spent to either support Chester and/or oppose Sheila Solon, another Republican candidate in the primary.

⁸ MSCF reported contributions to other PACs on its 8 Day Before Primary Election Report and a 24 Hour Expenditure Report filed July 31, 2018.

While Roe was a member of SCF's Axiom consultant team, he was not disclosed as a member of Chester's consultant team. Chester's Axiom team leader did not report to Roe. The investigation again failed to produce sufficient evidence that these activities were coordinated in such a way to constitute a contribution to Chester Victory Fund,

From the facts presented, the Commission found no reasonable grounds exist to support a violation of Chapter 130, RSMo, and dismissed the complaint.

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