



## MISSOURI ETHICS COMMISSION

P.O. Box 1254

Jefferson City, MO 65102

[www.mec.mo.gov](http://www.mec.mo.gov)

(573) 751-2020 / (800) 392-8660

Julie A. Allen  
Executive Director

July 1, 2011

Opinion No. 2011.06.CF.004

At the June 24, 2011 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

*Mindful of 2010.06.Cf.001, I request an advisory opinion regarding legal fees incurred by a candidate in challenging the Missouri Secretary of State's disqualification of a candidate following the candidate's failure to file a personal financial disclosure form as required by law.*

*In spring of 2010, I was disqualified from the ballot for failure to file a personal financial disclosure form as required by law. I challenged the disqualification in court, with the advice of counsel that legal fees are commonly paid by the candidate's committee. The legal challenge was unsuccessful and I amended my candidate committee with the intention to file for office during a future election.*

*As an unsuccessful candidate, my candidate committee has been terminated, and a new candidate committee for the future election has been filed. The outstanding legal fees remain, incurred during the last election, and I would like to file a debt service committee to pay this legal bill. I request an opinion advising me of the appropriateness of this course of action so that I may pay this legal bill.*

This opinion is issued within the context of Missouri's campaign finance law pursuant to Chapter 130, and assumes the facts presented by you in your letter. Your request raises a number of issues.

### **Formation of Debt Service Committee**

Under §130.011(5), RSMo, the candidate committee for a candidate who was not elected must terminate the later of thirty days after the general election or upon satisfaction of all committee debt after the election. According to §130.037, RSMo candidates who report outstanding obligations on their 30 Day After Election Report in excess of moneys on hand may convert their committee to a debt service committee. Contributions received by that committee may only be used to retire previously incurred debt of that committee. In MEC opinion 2001.04.100, the Commission stated that a debt service committee must be formed at that time. *See also*, 2000.09.102.

You state that you have terminated your candidate committee in support of your candidacy at issue. There is no mechanism in Chapter 130 to form a debt service committee to pay a previously incurred debt when a debt service committee was not formed as authorized by §130.037, RSMo. A candidate committee formed in support of future candidacy is formed to receive contributions or make expenditures on behalf of that candidacy. *See* §130.011(5), RSMo. The new committee may not raise contributions to pay previously incurred debt of a former committee. For these reasons, you may not form a debt service committee to pay your previously incurred debt and your question regarding whether committee funds can be used is moot.

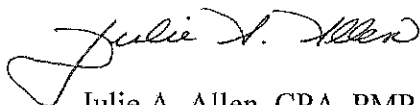
### **Payment of legal fees**

Because the issue is a matter of general interest, the Commission will address this issue under the narrow circumstances of a candidate who incurs legal fees to challenge a disqualification based upon the failure to file a personal financial disclosure statement with the Commission. In your request you state that you challenged the disqualification in court, with the advice of counsel that legal fees are commonly paid by the candidate's committee. This opinion is issued only in terms of the law relating to the use of contributions to pay legal fees and has no opinion regarding your statement that you acted on advice of counsel.

§130.034.2(1), RSMo states contributions received by candidates may be used for any "ordinary" incurred expense relating to a campaign. Legal fees are specifically recognized by Chapter 130 in a number of ways. For example, Chapter 130 recognizes that the payment by any person for legal fees to establish, administer or maintain a committee is considered a contribution. §130.011(11), RSMo. Such payments by a committee are considered expenditures under §130.011 (15), RSMo. §130.033, RSMo states that any reasonable attorney's fees accrued by a person who is the subject of a complaint which are used in defending such person in any matter resulting in an investigation arising from holding or running for public office may be paid out of such person's committee. While not directly covered by §130.033, RSMo, payment of legal fees in the current situation, when the action arose from the failure to file a statement with the Commission, is an action which has a direct relationship back to the Commission's notification of the election authority.

For these reasons, it is the Commission's opinion that candidate committee contributions may be used to pay legal fees in litigation challenging the election authority's disqualification of a candidate following the candidate's failure to file a personal financial disclosure form as required by law.

Sincerely,



Julie A. Allen, CPA, PMP  
Executive Director