



MISSOURI ETHICS COMMISSION  
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James Klahr  
Executive Director

February 10, 2017

**Re: Advisory Opinion No. 2017.02.CF.005**

Dear

At the February 10, 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 a contribution from a Limited Liability Company (LLC) a contribution from a "corporation" under Amendment 2?*

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. The same holds true for a foreign LLC to the extent it is an "eligible entity" and elects to be treated as a corporation by the Internal Revenue Service, or has publicly-traded shares.

It is recommended that Missouri committees make every effort to receive appropriate documentation from an LLC regarding its current elected tax status at the time a contribution is received. A contribution returned within 10 business days of receipt is not considered accepted by a committee.

Article VIII, §23 became effective on December 8, 2016 and it is possible that Missouri committees received contributions from LLC's prior to the date of this opinion. The Commission considers this interpretation effective on the date of this opinion and therefore applicable to contributions received on or after this date of February 10, 2017.

### Supporting Analysis

Article VIII, § 23 makes various references to “corporations” with both prohibitions on direct contributions from corporations to certain campaign finance committees, and authority to make contributions to continuing committees/political action committees. § 23.7, which contains definitions of terms used in §23, does not define “corporation.”<sup>1</sup>

§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.

§23.3(12) however, provides that political action committees/continuing committees are authorized to receive contributions from “corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time...”

§23.3(16)(c) prohibits campaign committees, candidate committees, continuing committees, exploratory committees, political party committees and political parties from receiving contributions from foreign corporations “that do not have authority to transact business in the state of Missouri pursuant to Chapter 347.”

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<sup>1</sup> As noted in Commission opinion 2017.02.CF.002 the definitions of continuing and political action committees are substantially the same in §23.7. The Commission interprets these committees to be the same despite the fact that the constitutional provision refers to these committees in separate definitions. For the purposes of this Opinion, any references to either committee includes both.

## Chapter 347

§23 (12) makes specific reference to Chapter 347 of the Missouri Revised Code -- the "Missouri Limited Liability Company Act." §347.010, RSMo. In Missouri, an LLC is a hybrid business entity, having attributions of both a corporation and a partnership. *Hibbs v. Berger*, 430 S.W.3d 296, 313 (Mo. App. E.D. 2014). In addition, Missouri allows its LLCs to make tax elections. §347.081.1(8), RSMo. A Missouri limited liability company's classification for federal income tax purposes also applies to its Missouri state taxes, §347.186, RSMo. It is also possible that a Missouri committee may receive a contribution from a "foreign limited liability company", as defined in §347.015 (9), RSMo, as "a limited liability company formed under the laws of any jurisdiction other than the state of Missouri."

Due to the hybrid nature of a Missouri limited liability company and the fact that a Missouri committee may receive a contribution from a foreign limited liability company registered in another state, the Commission has looked to persuasive authority in other jurisdictions to determine whether it is appropriate to consider an LLC a "corporation" for purposes of Article VIII, §23 of the Missouri Constitution.

### FEC [Federal Election Commission] Regulations

The Federal Election Campaign Act generally prohibits corporations and labor organizations from using their general treasury funds to make contributions or expenditures in connection with federal elections with some exceptions. 52 U.S.C. §30118(a). Under FEC [Federal Election Commission] regulations, a limited liability company (LLC) may be treated as a corporation, depending upon its tax status." See 11 C.F.R 110.1(g) as follows:

#### **§ 110.1 Contributions by persons other than multicandidate political committees (52 U.S.C. 30116(a)(1)).**

##### **(g) Contributions by limited liability companies ("LLC") -**

- (1) Definition.** A limited liability company is a business entity that is recognized as a limited liability company under the laws of the State in which it is established.
- (2)** A contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service pursuant to 26 CFR 301.7701-3, or does not elect treatment as either a partnership or a corporation pursuant to that section, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e).
- (3)** An LLC that elects to be treated as a corporation by the Internal Revenue Service, pursuant to 26 CFR 301.7701-3, or an LLC with publicly-traded shares, shall be considered a corporation pursuant to 11 CFR Part 114.
- (4)** A contribution by an LLC with a single natural person member that does not elect to be treated as a corporation by the Internal Revenue Service pursuant to 26 CFR 301.7701-3 shall be attributed only to that single member.

(5) An LLC that makes a contribution pursuant to paragraph (g)(2) or (g)(4) of this section shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed, and affirm to the recipient committee that it is eligible to make the contribution.

Therefore, for purposes of federal campaign finance reporting, an LLC that elects to be treated as a corporation by the Internal Revenue Service (IRS) or that has publicly traded shares will be treated as a corporation.

#### **LLC Status as a Corporation**

Similar to federal law, as stated above, Chapter 347 authorizes a Missouri LLC to make tax elections. This includes elections for both federal and state tax purposes.

It is therefore the Commission's opinion 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 Art. VIII §23 of the Missouri Constitution. The same holds true for a foreign LLC to the extent it is an "eligible entity" and elects to be treated as a corporation by the Internal Revenue Service, or has publicly-traded shares.

#### **Art. VIII, §23 Required Documentation**

§23.5 creates civil liability for persons who knowingly and willfully accept or make contributions in violation of §23.3 of the article. §23.6 creates misdemeanors for any person who purposely violates the provisions of §23.3.

§130.036, RSMo contains recordkeeping requirements for Missouri campaign finance committees, and provides for a window of ten (10) business days for a committee to return a contribution before it is considered accepted and received. §130.036.2, RSMo.

It is recommended that Missouri committees make every effort to receive appropriate documentation from an LLC regarding its current elected tax status at the time a contribution is received. A contribution returned within 10 business days of receipt is not considered accepted by a committee.

#### **Effective Date of this Opinion**

Article VIII, §23 became effective on December 8, 2016 and it is possible that Missouri committees received contributions from LLC's prior to the date of this opinion. The Commission considers this interpretation effective on the date of this opinion and therefore applicable to contributions received on or after this date of February 10, 2017.

Sincerely,

  
James Klahr  
Executive Director