



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

James Klahr  
Executive Director

September 20, 2017

---

**Re: Advisory Opinion No. 2017.09.CF.018**

Dear

At the September 20, 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.

As the questions presented address Missouri candidate committees and continuing committees or political action committees, a general framework of the law is first presented.

**Background of Missouri Committees**

Missouri campaign finance committees are defined in both §130.011, RSMo as well as Article VIII, §23.7 of the Missouri Constitution. In addition, past Commission advisory opinions have discussed interactions between Missouri candidates and these committees.

A candidate committee is defined as "a committee which shall be formed by a candidate to receive contributions or make expenditures in behalf of the person's candidacy..." Art. VIII, §23.7(6)(b) and §130.011(9), RSMo. Both the constitution and statutes contain identical definitions and state that "[a]ny candidate for elective office shall have only one candidate committee for the elective office sought, which is controlled directly by the candidate for the purpose of making expenditures."

Unlike a candidate committee which has a specific purpose related to a candidate, continuing and political action committees can have multiple purposes as follows:

“Continuing committee”, a committee of continuing existence which is not formed, controlled or directed by a candidate, and is a committee other than a candidate committee or campaign committee, whose primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter.” Art VIII, §23.7(6)(c) and §130.011(10), RSMo.<sup>1</sup>

In past opinions, the Commission has discussed candidate solicitations and fundraising for campaign finance committees, separate from their candidate committee. In MEC No. 1995.09.142, the Commission was asked whether a candidate can solicit funds for a continuing committee, if, at some later date, the activities of that continuing committee might directly or indirectly benefit that candidate. The Commission responded:

“The actions of a candidate or several candidates raising money for a continuing committee does not automatically stop the committee from supporting the candidate. The continuing committee must be a true continuing committee and not established solely for the benefit of a specific candidate, nor can the committee be formed, controlled or directed by a candidate. “

In MEC No. 2000.07.101 the Commission was similarly asked if it was permissible for a candidate to raise money for a political party committee and then request contributions from those same political party committees up to the amount of the contribution limit in place for the candidate at that time. The Commission stated:

“There is no prohibition on candidates raising money for political party committees, nor is there a general prohibition against a candidate’s requesting contributions from political party committees where the candidate has solicited contributions for the political party committee. However, candidates must be mindful of the prohibitions of section 130.031.3, RSMo. In that vein, contributions made to or accepted from political party committees cannot be made in such a manner as to conceal the identity of the actual source of the contribution. For example, candidates cannot request contributions be made to political party committees with the express purpose of passing those contributions through the committee to the candidate.”

In MEC No. 2003.07.104, the Commission stated that committee treasurers direct or control committees by nature of their duties set forth in §130.021, RSMo. Other persons who have the potential to have their direction or ideas carried out by the committee also appear to have the ability to direct or control the committee even if those ideas are not ultimately carried out.

---

<sup>1</sup> Art. VIII, §27.7(20) also contains the definition of a political action committee. 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.

In MEC No. 2004.03.100, the Commission largely discussed independent expenditures by continuing committees, stating that an expenditure by a continuing committee is not a contribution provided the candidate does not have consent, coordination or control over the expenditure. The Commission cited MEC No 1996.01.100. Recently in MEC No. 2017.02.CF.004, the Commission again discussed the differences between contributions and independent expenditures, citing earlier opinions stating that expenditures are not contributions if the expenditures were not requested to be made by, directed or controlled by, or made in cooperation, or made with the consent of the candidate. The Commission also referenced MEC No. 1996.06.135 and *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 360 (2010) (“By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate.” See *Buckley v. Valeo*, 424 U.S. 1, 46 (1976)).

---

With the law and past guidance in mind, the following is a response to your specific questions:

**Candidate Fundraising and Contributions from Continuing Committees**

*(1) May a candidate for elected office or a current elected official appear at a fundraising event or activity as a special guest for a continuing committee/PAC?*

*(1a) If the answer is yes to the previous question does the answer change if the continuing Committee/PAC eventually provides either monetary or in-kind support for that candidate?*

*Under both of these scenarios the candidate nor their spouse controls the committee.*

**Example (1)**

*The continuing committee/PAC hosts a fundraiser to solicit funds in support of its activities. The continuing committee/PAC sends out an invitation to its list stating that there will be a fundraiser and that a statewide elected official will be in attendance to make remarks on the current affairs of the State of Missouri. The statewide elected official attends the fundraiser and gives remarks.*

*Under this example, referring back to question 1, is the statewide elected official's activity permissible?*

**Example (1a)**

*The continuing committee/PAC hosts a fundraiser to solicit funds in support of its activities. The continuing committee/PAC sends out an invitation to its list stating that there will be a fundraiser and that a statewide elected official will be in attendance to make remarks on the current affairs of the State of Missouri. The statewide elected official attends the fundraiser and gives remarks. Then at a later time the continuing committee/PAC determines that the statewide election official's activities are beneficial to and meet the criteria of continuing committee and decide to send a contribution that is compliant with all limitations to the statewide elected official.*

*Under this example, referring back to question 1a, is the activity of continuing committee/PAC permissible? Is the activity of the statewide elected official in receiving the contribution permissible?*

*(2) May a candidate for elected office or current elected official solicit monetary and/or in-kind contributions to the continuing committee/PAC? Under this scenario the candidate or elected official does not control the continuing committee and would only be assisting the efforts of the continuing committee/PAC under the belief the continuing committee/PAC is aligned with their beliefs.*

*(2a) If the answer to question 2 is yes does the response change if the continuing committee/PAC at a later time but within the election cycle makes either an in-kind and/or monetary contribution to the candidate or elected official?*

*(2b) Does the answer change if the continuing committee/PAC at a later time but within the election cycle makes an independent expenditure (which is an expenditure not coordinated with the candidate and therefore not a contribution) in support of the candidate or elected official?*

Both sets of questions provided above represent that the candidate, spouse, or elected official (assumed to be a candidate) do not control the continuing committee/PAC

These questions are substantially similar to those raised in MEC No. 1995.09.142 and MEC No. 2000.07.101. Nothing in Chapter 130 or the Missouri Constitution prohibits a candidate from appearing at a fundraising event, or from fundraising on behalf of the committee. However, candidates, continuing committees/PACs and contributors must be aware of the following:

- 1) Given the requirement that a candidate have only one committee for the office sought, the continuing committee must not be formed, controlled or directed by a candidate and therefore act as a second candidate committee for that candidate. A candidate who solicits contributions for a committee which the candidate knows will ultimately support the candidate (or perhaps a continuing committee/PAC that bears the candidate's name) must ensure that the committee is a true continuing committee/PAC.
- 2) As stated in the earlier opinions, the continuing committee/PAC can make contributions to the candidate which it supports subject to any contribution limits which may apply to that candidate. However, any contribution it receives which is restricted or designated for the candidate is subject to the contribution limits that apply to that candidate from the contributor. See MEC No. 2017.02.CF. 003.
- 3) Art VIII, §23.3(3)(a) prohibits candidates from accepting contributions from corporations or labor organizations, and Art VIII, §23.3(4) prohibits a candidate committee from accepting contributions or making contributions to another candidate committee, including a federal candidate committee.
- 4) Contributions cannot be made or accepted, directly or indirectly, in a fictitious name, in the name of another person, or by or through another person in such a manner as to

conceal the identity of the actual source of the contribution or the actual recipient. Any person who receives contributions for a committee shall disclose to that committee's treasurer the name and address of the actual source of each contribution such person has received for that committee. Art. VIII, §23.3(7); §130.031.3, RSMo.

For example, a candidate subject to a contribution limit of \$2,600 under Art. VIII, §23.3(3)(1)(a) solicits a contribution on behalf of the continuing committee/PAC from a contributor who made such a contribution to that candidate, which is then restricted or designated for that candidate. To the extent the candidate solicits a contribution to the continuing committee/PAC with the understanding or representation that the continuing committee will pass that contribution on to the candidate, the candidate is soliciting contributions in excess of the contribution limit from that contributor, and in such a way that suggests the contribution is being made through the PAC to conceal the actual source of the contribution.

Similarly, Art VIII, §23.3(3)(a) prohibits a candidate committee from accepting contributions from corporations or labor organizations, and Art VIII, §23.3(4), prohibits a candidate committee from accepting contributions or making contributions to another candidate committee, including a federal candidate committee. Given these prohibitions as well as Art. VIII, §23.3(7) and §130.031.3, RSMo cited above, candidates should not solicit contributions on behalf of a continuing committee/PAC which they could not themselves accept in such a way that represents that the continuing committee/PAC will then make that contribution to the candidate.<sup>2</sup>

The continuing committee/PAC may make independent expenditures. However, the candidate and committee must ensure that the expenditures are truly independent and do not constitute contributions to the candidate in that the expenditures are not requested to be made by, directed or controlled by, or made in cooperation, or with the consent of the candidate. To the extent that a candidate may also be fundraising or soliciting contributions for a continuing committee/PAC, the candidate and committee must make efforts to ensure that the committee's expenditures remain independent of the candidate.

*(3) Under advisory opinion No. 2017.07.CF.014 if a Corporation, Union or LLC does not establish, administer or maintain the committee then it is not a connected organization. Is it therefore permissible for the spouse of a Shareholder, Board member, Partner, Executive Officer, LLC Managers or LLC Members, as defined under Missouri Corporation statutes, that has no connection and is not employed by said Corporation, Union or LLC to establish and act as treasurer for a non-connected continuing committee/PAC? Subsequently could that continuing committee/PAC receive funds from the general treasury of a corporation where the spouse of the continuing committee/PAC treasurer is a Shareholder, Board member, Partner, Executive Officer, LLC Manager or LLC Member as defined under Missouri Corporation statutes?*

---

<sup>2</sup> Contributions from continuing committees/ PACs for state candidates listed in Art VIII, §23.3(1)(a) are subject to the \$2,600 limit, however, candidates for local and other elections are not subject to the limit. There are no limits on independent expenditures regardless of the office targeted by the expenditures.

Art. VIII, §23.3(3)(a) provides prohibitions on corporate and labor organization contributions as follows:<sup>3</sup>

(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.

Art. VIII, §23.3(12), however, provides PACs are authorized to receive contributions from “unions” and “corporations, associations, and partnerships...”. Thus, Art. VIII, §23 specifically banned direct corporate contributions to certain committees, but also authorized some corporate contributions to certain PACs. As discussed in both MEC Opinion Nos. 2017.03.CF.010 and 2017.07.CF.014, the Commission opined that corporate contributions cannot be made to a PAC the corporation controls, i.e. serves as connected organization.

As noted in MEC Opinion No. 2017.07.CF.014, under the definition of connected organization under Art. VIII, §23.7(6)(d) and §130.011(11), RSMo, 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.

Chapter 130 recognizes the important duties of a treasurer, throughout, including §130.021, RSMo and §130.058, RSMo. The definition of a connected organization includes the contributions from spouses of relevant corporate members, and 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.

Given the above prohibitions included in the Missouri constitution, and the important role of treasurers for committees, it is the Commission’s opinion that a continuing committee/PAC may not receive funds from the general treasury of a corporation where the treasurer of the continuing committee/PAC treasurer is the spouse of a shareholder, board member, partner, executive officer, LLC Manager or LLC Member as defined under Missouri Corporation statutes. This is regardless of whether the spouse actually contributes monetarily to the committee.

*(4) May a continuing committee/PAC hold annual (or more frequent) scheduled meetings where the committee’s Treasurer and/or committee’s Board receive input from donor’s to the committee regarding long term strategy for the committee’s activities, including but not limited to changes in campaign finance law, potential recipients of donations from the continuing*

---

<sup>3</sup> 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.

*committee/PAC, planning of activities for continuing committee/PAC so that it may raise funds to carry out its objectives?*

*(4a) Does the answer change if continuing committee/PAC Treasurer and or continuing committee/PAC Board would not be bound by the recommendations of donors to the continuing committee/PAC?*

*(4b) Does the answer change if the continuing committee/PAC Treasurer and/or Board are bound by the recommendations of donors to the continuing committee/PAC? Under this scenario does receiving recommendations from donors meet the definition of “establish, administer or maintains” thereby making continuing committee/PAC a connected organization?*

*(4c) If the answer is yes to 4b, would the answer be different if the continuing committee/PAC Treasurer and/or Board independently vote at an annual meeting that continuing committee/PAC shall take recommendations from their donors as to the proper activities of the continuing committee/PAC to ensure compliance with the goals and guidelines of the continuing committee/PAC?*

As outlined above, the answer to this question begins with the premise that the Missouri Constitution specifically bans direct corporate contributions to certain committees, but also authorizes some corporate contributions to certain PACs. In addition, the Commission has opined that the authority in Art. VIII, §23.3(3)(a) for a corporation or labor organization to establish a continuing committee/PAC has some limitations, including the acceptance of corporate or labor organization direct treasury funds.

Nothing in Chapter 130 or the Missouri Constitution limits the extent to which contributors may provide some input or advice into the potential recipients or activities of the continuing committee/PAC. The Commission cannot opine on every possible activity. The key for any continuing committee/PAC is to ensure that its activities do not violate Art. VIII, §23.3(3)(a) in that the continuing committee/PAC is not actually established by the corporation or labor organization. While the definition of a connected organization is instructive, the additional fact that the continuing committee/PAC may take advice or recommendations but not be bound by donors suggests that the corporation or labor organization has not “established” the continuing committee/PAC. As the question suggests, a continuing committee/PAC may set forth an independent structure, including whether or not it will receive recommendations from donors.

*(5) May an out-of-state Political Action Committee contribute monetary or in-kind contributions to continuing committee/PAC*

*(5a) If the answer to question 6 is Yes, does the Out-of-State PAC need to file with the MEC and file appropriate reports?*

*(5a-1) Does the amount of contribution from an out-of-state PAC impact when the reporting requirements take effect?*

Art. VIII. §23.3(12) states that

“Political action committees shall only receive contributions from individuals; unions; federal political action committees; and corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time, and shall be prohibited from receiving contributions from other political action committees, candidate committees, political party committees, campaign committees, exploratory committees, or debt service committees...”.

---

Art. VIII. §23.3 (11) states,

“No candidate or committee in this state shall accept contributions from any out-of-state committee unless the out-of-state committee from whom the contributions are received has filed a statement of organization pursuant to section 130.021, RSMo, as amended from time to time, or has filed the reports required by sections 130.049 and 130.050, RSMo, as amended from time to time, whichever is applicable to that committee.”

While the Constitution contains the prohibition of continuing committees/PACs receiving contributions from continuing committees/PACs, the U.S District Court enjoined this provision as of June 20, 2017 in *Free and Fair Election Fund, et al. v. Missouri Ethics Commission, et al. & Missouri Electric Cooperatives, et al. v. State of Missouri, et al.*, Consolidated Case No. 16-04332-CV-C-ODS (Western District of Missouri, Central Division). This issue is currently on appeal in *Free and Fair Election Fund, et al. v. Missouri Ethics Commission, et al. & Missouri Electric Cooperatives, et al. v. State of Missouri, et al.*, No. 17-2239 (8<sup>th</sup> Cir. 2017).

To the extent that the question of whether a continuing committee/PAC may receive funds from another continuing committee/PAC is currently under appeal, the Commission will not opine on whether the prohibition applies to out-of-state committees. The Commission however notes that both Chapter 130 and the Missouri Constitution require an out-of-state committee comply with the requirements of §130.021(10) and (11), RSMo and §130.049 and §130.050, RSMo before an in-state committee can accept contributions.

Sincerely,



James Klahr  
Executive Director