



MISSOURI ETHICS COMMISSION
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James Klahr
Executive Director

January 11, 2018

Re: Advisory Opinion No. 2018.01.CF.001

At the January 11, 2018 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:

Article VIII, Section 23.3(4) states that no candidate's candidate committee shall accept contributions from, or make contributions to, another candidate committee, including any candidate committee, or equivalent entity, established under federal law. Can a federal leadership PAC established by a Missouri federal officeholder make contributions to candidates in Missouri?

Supporting Analysis

Article VIII, Section 23.3(4) states as follows:

(4) No candidate's candidate committee shall accept contributions from, or make contributions to, another candidate committee, including any candidate committee, or equivalent entity, established under federal law.

Federal Election Commission (FEC) regulation 11 C.F.R. § 100.5(e) provides examples of federal political committees as follows:

(1) Principal campaign committee. Principal campaign committee means a political committee designated and authorized by a candidate pursuant to 11 CFR 101.1 and 102.1.

(2) Single candidate committee. Single candidate committee means a political committee other than a principal campaign committee which makes or receives contributions or makes expenditures on behalf of only one candidate.

(3) Multi-candidate committee. Multi-candidate committee means a political committee which (i) has been registered with the Commission or Secretary of the Senate for at least 6 months; (ii) has received contributions for Federal elections from more than 50 persons; and (iii) (except for any State political party organization) has made contributions to 5 or more Federal candidates.

...

(6) Leadership PAC. Leadership PAC means a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate for Federal office or an individual holding Federal office but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that leadership PAC does not include a political committee of a political party.¹

The question before this Commission is whether a committee authorized by federal law, while not a federal candidate's authorized candidate committee, is considered an "equivalent entity" for purposes of the Missouri Constitutional provision which prohibits contributions made or received by state candidate committees from federal candidate committees, or equivalent entities.

According to the Federal Election Commission Final Rules on Leadership PACS, 68 Fed. Reg. 67,017 (Dec. 1, 2003), federal officeholders and/or federal candidates may form "leadership PACs" to support candidates for various federal or nonfederal offices. Under federal law, these committees are not legally "affiliated" with the federal candidate's principal campaign and operate as federal nonconnected committees with certain rules applying regarding contributions and expenditures and contribution limits. For example, when a leadership PAC "pay[s] for costs that could or should be paid for by a candidate's authorized committee, such payments are in-kind contributions, subject to the Act's contribution limits and reporting requirements. *Id.*

Unlike a Missouri continuing committee or political action committee which by definition is not "formed, controlled or directed by a candidate,"² a federal leadership PAC is "established, financed, maintained or controlled" by a federal candidate or officeholder. Thus while not legally affiliated with the federal principal committee under federal law, these committees hold a unique position, unlike Missouri law, in which a federal candidate can establish and control the PAC.

According to §11 CFR 300.62, the leadership PAC " may solicit, receive, direct, transfer, spend, or disburse funds in connection with any non-Federal election, only in amounts and from sources

¹ Statutory authority for federal committees can be found in 52 U.S.C. §30101.

² Mo. Const. art. VIII, § 23.7(6)(c) and § 23.7(20); §130.011(10), RSMo.

that are consistent with State law, and that do not exceed the Act's contribution limits or come from prohibited sources under the Act.”

While Art. VIII, Section 23.3(4) does not define “equivalent entity,” it is this Commission’s opinion that a federal leadership PAC operates as an equivalent entity for a federal candidate committee for purposes of Missouri’s prohibition on contributions made or received between candidate committees. It should be noted that the prohibition applies to contributions only of state candidate committees, and not to independent expenditures made by a federal leadership PAC to support or oppose a Missouri state candidate or contributions made to or by other federal committees which do not fall within the prohibition.

Sincerely,



James Klahr
Executive Director