



MISSOURI ETHICS COMMISSION
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James Klahr
Executive Director

May 10, 2018

Re: Advisory Opinion No. 2018.05.CF.004

Dear

At the May 10, 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 questions presented and the Commission's opinion are as follows:

If a not for profit corporation requests and receives a contribution of more than \$500 from any person during a calendar year for the purpose of influencing or attempting to influence the actions of voters for or against the nomination or election to public office of one or more candidates, is it a committee under Mo. Const. Art. VIII §23?

If a not for profit corporation requests and receives a contribution of more than \$500 from any person during a calendar year for the purpose of influencing or attempting to influence the passage, qualification, or defeat of any ballot measure, is it a committee under Mo. Const. Art. VIII §23? If an organization is a "committee" under Mo. Const. Art. VIII §23, must it report all of its receipts and expenditures to the Missouri Ethics Commission?

If a not for profit corporation accepts a donation with the understanding between itself and the donor that the donation will be contributed in the name of the corporation to a candidate committee, continuing committee, or campaign committee, has the not for profit corporation "transferred anything of value to a committee with the intent to conceal, from the Missouri Ethics Commission, the identity of the actual source" of the contribution?

The Commission recently addressed nonprofit corporations in relation to Mo. Const. Art. VIII §23 in MEC Opinion No. 2017.08.CF.017. As discussed in that opinion, §355.025, RSMo, provides that nonprofit corporations in Missouri may be organized under that chapter for many purposes, including charitable, benevolent, political, religious, cultural and social welfare. In addition, nonprofit corporations which engage in political activity are typically registered with the IRS for purposes of exemption from federal income tax under 26 U.S.C. § 501(c), including 501 (c) (3), (4) and (6). A nonprofit's registration

status with the IRS may determine whether it may engage in political activity and, if it may, the type and amount of political activity it may engage in, such as lobbying, which might include ballot measures; and political activities which may include supporting or opposing candidates for public office.

Mo. Const. Art. VIII §23.7, defines a committee, in relevant parts, as follows:

(4) "Committee", a person or any combination of persons, who accepts contributions or makes expenditures for the primary or incidental purpose of influencing or attempting to influence the action of voters for or against the nomination or election to public office of one or more candidates or the qualification, passage or defeat of any ballot measure ...

(5) "Committee", does not include:

(a) A person or combination of persons, if neither the aggregate of expenditures made nor the aggregate of contributions received during a calendar year exceeds five hundred dollars and if no single contributor has contributed more than two hundred fifty dollars of such aggregate contributions;

...

(c) A corporation, cooperative association, partnership, proprietorship, or joint venture organized or operated for a primary or principal purpose other than that of influencing or attempting to influence the action of voters for or against the nomination or election to public office of one or more candidates or the qualification, passage or defeat of any ballot measure, and it accepts no contributions, and all expenditures it makes are from its own funds or property obtained in the usual course of business or in any commercial or other transaction and which are not contributions as defined by subdivision (7) of this section;

...

(e) A person who acts as an authorized agent for a committee in soliciting or receiving contributions or in making expenditures or incurring indebtedness on behalf of the committee if such person renders to the committee treasurer or deputy treasurer or candidate, if applicable, an accurate account of each receipt or other transaction in the detail required by the treasurer to comply with all record-keeping and reporting requirements; ...

Mo. Const. Art. VIII §23.7(19) defines a "person" as:

an individual, group of individuals, corporation, partnership, committee, proprietorship, joint venture, any department, agency, board, institution or other entity of the state or any of its political subdivisions, union, labor organization, trade or professional or business association, association, political party or any executive committee thereof, or any other club or organization however constituted or any officer or employee of such entity acting in the person's official capacity.¹

Thus, a nonprofit corporation qualifies as a "person" for purposes of the Art. VIII, §23 and the Missouri campaign finance law under Chapter 130 of the Missouri Revised Code.

¹ The definitions of "committee" and "person" in §130.011(7) and (22), RSMo are consistent with the constitution's definitions in Art. VIII, Sec. 23.7(5) & (19).

Subsections (5) (a) and (c) are relevant when considering whether nonprofit corporations are committees required to register and report with the Missouri Ethics Commission. Subsection 5(a) states that a "person" or "combination of persons" is not a committee if neither the aggregate of expenditures made nor the aggregate of contributions received during a calendar year exceeds five hundred dollars and if no single contributor has contributed more than two hundred fifty dollars of such aggregate contributions. Subsection 5(c) excludes a corporation (and other entities) from the definition of a "committee" if the corporation: 1) is organized or operated for a primary or principal purpose other than that of influencing or attempting to influence the action of voters for or against the nomination or election to public office of one or more candidates or the qualification, passage or defeat of any ballot measure; 2) accepts no contributions; and 3) makes all expenditures from its own funds or property obtained in the usual course of business or in any commercial or other transaction and which are not contributions.

Because a nonprofit corporation is a "person" under Missouri campaign finance laws, that corporation becomes a committee if it accepts contributions, in excess of \$500 in a calendar year or in excess of \$250 for a single contributor, for the primary or incidental purpose of influencing or attempting to influence the action of voters for or against the nomination or election to public office of one or more candidates or the qualification, passage or defeat of any ballot. This may include an earmarked amount given to the nonprofit that fits the definition of a "contribution" as defined in Mo. Const. Art. VIII §23.7(7), in relevant part:

a payment, gift, loan, advance, deposit, or donation of money or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office or the qualification, passage or defeat of any ballot measure...²

Once the nonprofit becomes a committee is required to register the committee with the commission within 20 days by filing a statement of committee of organization pursuant to §130.021.5 RSMo, and file reports as required under Chapter 130.

Both the Missouri Constitution and Missouri campaign finance disclosure law contain prohibitions on making contributions to a committee with intent to conceal the identity of the actual source of the contribution. These provisions can be found in Mo. Const. Art. VIII §23.3(14), §23.5, §130.031.3 and §130.081, RSMo. The answer to the third question would depend on specific facts in a given circumstance and cannot be answered in the abstract.

Sincerely,


James Klahr
Executive Director

² The definition of "contribution" in §130.011(12), RSMo is also consistent with the constitution's definition in Art. VIII, Sec. 23.7(7).