



Missouri Ethics Commission

Elizabeth L. Ziegler
EXECUTIVE DIRECTOR

October 21, 2020

Re: Advisory Opinion No. 2020.10.CF.006

At the October 20, 2020 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to section 105.955.16, RSMo, the Missouri Ethics Commission (MEC or Commission) may issue a written opinion regarding any issue on which the Commission may receive a complaint pursuant to Section 105.957.1(3), RSMo. The Commission receives complaints alleging violations of campaign finance provisions in Missouri law. The Commission issues this opinion within the context of Missouri's laws governing such issues, assuming only the facts presented by you in your letter.

The questions presented and the Commission's opinion appear below.

*A state political party plans to distribute more than 500 copies of a slate card that expressly advocates for the election of the party's presidential candidate, the party's congressional candidate in the district(s), and one or more state candidates (**proposed slate card**). Additionally, the party plans to have volunteers distribute more than 500 copies of a mailer that expressly advocates for the party's presidential candidate, the party's congressional candidates in the district(s), and one or more state candidates (**proposed volunteer mailer**). Together, the proposed slate card and proposed volunteer mailer may be referred to as "**proposed party materials**."*

Not only will the costs associated with the proposed party materials exceed \$2,650 per featured state candidate(s), but the materials themselves will be coordinated with the featured state candidate(s). Pursuant to federal law, the party must pay for the proposed party materials exclusively out of its federal account.

To facilitate review of this request in advance of the 2020 election, the party is asking the Missouri Ethics Commission to answer the following three questions as soon as possible:

- 1. Will the party be required to report its federal account expenditures for the proposed party materials as in-kind contributions to the featured state candidates in its reports filed with the MEC?*

2. *Will the state candidates whose names appear on the proposed party materials be required to report the party's federal account expenditures as in-kind contributions received in reports filed with the MEC?*
3. *If the answer to either Questions 1 or 2 is "yes," will the contribution limits in Article VIII, Section 23 of the Missouri Constitution apply to the resulting in-kind contributions?*

Reporting of Federal Account Expenditures

Notably, your question includes the following statement: "Pursuant to federal law, the party must pay for the proposed party materials exclusively out of its federal account." This Commission accepts that statement at face value and assumes accordingly that federal law will also control whether, when, and where the party is required to file reports disclosing contributions, expenditures, and contributions made from its federal account.

It appears that this question has already been addressed by the Federal Election Commission (FEC) in a 1993 advisory opinion issued to the chairman of the Rhode Island Democratic State Committee (Committee). FEC Advisory Opinion 1993-14. The Rhode Island Board of Elections had attempted to assert jurisdiction over the Committee's federal account, and in this advisory opinion the FEC clarified its position regarding when federal election law preempts state election law:

When the [Federal Election] Commission promulgated regulations at 11 CFR 108.7 on the effect of the [Federal Election Campaign] Act [of 1971, as amended], it stated that the regulations follow section 453 and that, specifically, Federal law supersedes state law with respect to the organization and registration of political committees supporting Federal candidates, disclosure of receipts and expenditures by Federal candidates and political committees, and the limitations on contributions and expenditures regarding Federal candidates and political committees.

Id. (citing Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 51. 11 CFR 108.7(b)). The MEC reads this advisory opinion to say that the FEC has jurisdiction with respect to elections involving Federal candidates and political committees such as a party's federal account.

This reading is consistent with Missouri campaign finance law, which acknowledges federal preemption with respect to federal candidates:

Notwithstanding any of the other provisions of this chapter, national political party committees, candidates for elective federal offices and any committee formed for the sole purpose of supporting a candidate or candidates for elective federal office shall be deemed to have fully complied with the provisions of this chapter if they have complied with all the reporting requirements of the federal election laws, and if copies of all election reports which are required by federal law to be filed with appropriate federal officials are filed with the Missouri ethics commission at the same time that they are filed with federal officials, and if all books and records relating thereto are kept in accordance with federal law.

Section 130.086, RSMo. The Commission notes that this statute was enacted in 1978 and last updated in 1991. With the advent of electronic filing, federal committees stopped providing paper copies of their reports to the MEC, because the information contained in those reports is available online through a link to the FEC website on the MEC website.

Reporting of Contributions under Missouri Campaign Finance Law

Missouri campaign finance law defines a contribution as “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[.] A contribution of anything of value shall be deemed to have a money value equivalent to the fair market value.” Section 130.011(12), RSMo. An “in-kind contribution” is a contribution “in a form other than money.” Section 130.011(19), RSMo.

Candidate committees are required to file campaign finance disclosure reports that contain information about contributions received and expenditures made. Section 130.041, RSMo. Those reports must include the “[t]otal dollar value of all in-kind contributions received[.]” Section 130.041.1(3)(d), RSMo.

The question of when party expenditures are considered contributions to candidates was squarely addressed by this Commission in Advisory Opinion 1996.06.135. This particular question and answer from that opinion provide clear guidance in this situation:

The Democratic State Committee proposes to make “expenditures” in support of a slate of or multiple Democratic candidates for multiple public offices. The expenditures will not be transferred to any individual candidates or the “candidate committee” for any individual candidate. Instead the funds to be expended and how they will be expended will at all times remain beyond the direction or control of any individual candidate for public office. Will such expenditures be considered as “contributions” to any individual candidate?

ANSWER: It is the traditional roles of political parties to support a list or slate of candidates of the party. As previously stated, so long as the expenditure is not directed, controlled, requested or influenced by such candidate, and so long as it is made without the cooperation or consent of the candidate, such expenditure is not a contribution to that candidate.

Your question states that the proposed party expenditures would be coordinated with the state candidate(s). Accordingly, as was made clear in this 1996 Advisory Opinion, the state candidates whose names appear in the proposed party materials will be required to include the receipt of those in-kind contributions in reports filed with the MEC.

Contribution Limits under the Missouri Constitution

In 2016, the Missouri Constitution was amended to include the following contribution limits:

[T]he amount of contributions made by or accepted from any person other than the candidate in any one election shall not exceed the following:

- (a) To elect an individual to the office of governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, office of state senator, office of state representative or any other state or judicial office, two thousand six hundred dollars.

Article VIII, Section 23.3(1).

In 2018, it was amended again:

In addition to other campaign contribution limitations or restrictions provided for by law, the amount of contributions made to or accepted by any candidate or candidate committee from any person other than the candidate in any one election for the general assembly shall not exceed the following:

- (1) To elect an individual to the office of state senator, two thousand five hundred dollars; and
- (2) To elect an individual to the office of state representative, two thousand dollars.

Article III, Section 2(c).

Both constitutional amendments include provisions for periodic adjustments to these limits, the details of which are not related to the issues present in this opinion request. It is adequate to state that as of January 1, 2020, the following contribution limits were in effect and these contribution limits are still in effect as of the date of this advisory opinion.

From any contributor to a candidate running:

For the Office of Governor	\$2,650
For the Office of Lieutenant Governor	\$2,650
For the Office of Secretary of State	\$2,650
For the Office of State Treasurer	\$2,650
For the Office of State Auditor	\$2,650
For the Office of Attorney General.....	\$2,650
For the Office of State Senator	\$2,559
For the Office of State Representative.....	\$2,046
For State Judicial Office	\$2,650

Your letter identifies state candidates whose names are to appear on the proposed party materials, but it does not identify the offices those candidates seek. If those candidates are running for any of these offices, then, to answer your third question, the contribution limits listed here would apply.

Sincerely,

Elizabeth L Ziegler
Executive Director