



Missouri Ethics Commission

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EXECUTIVE DIRECTOR

MEC Advisory Opinion – 2024.10.CF.002

Pursuant to §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. Section 105.957.1(1), RSMo and the Missouri Constitution, authorizes the MEC to receive complaints alleging violations of the requirements imposed on connected organization committees. The Commission issues this opinion within the context of Missouri’s laws governing such issues, assuming only the facts presented and other such facts that are generally available to the public.

The facts are presented as such:

1. The Business provides utility service and sends regular bills to several thousand customers every month.
2. The Business has established the Connected Committee pursuant to Mo. Const. art. VIII, §§ 23.3(3)(a) and 23.7(6)(d), and seeks to solicit contributions from its members, officers, directors, and employees.
3. The Business does not contribute any Business treasury funds to the connected committee, but does expend Business treasury funds to establish, administer, and maintain the committee, and to solicit voluntary contributions from the members, officers, directors, and employees of the Business.
4. The Business sends out monthly bills to customers in electronic and written form. Customers pay those bills. Some customers pay the bills automatically through ACH payments.
5. The Business intends to provide all customers a fixed refund of \$.10 per monthly bill. The refund will be announced in advance and applied to every monthly bill after a specific date.
6. The Business intends to provide customers the option of contributing their \$.10 refund, or any other amount, to the Connected Committee.
7. The refund is in no way conditional upon any customer’s decision to contribute to the Connected Committee.
8. The Business will convey this option in writing and will require an advance written authorization from the customer. The authorization will constitute a contract under which the Business agrees to process the customer’s contribution to the Connected Committee, and the customer agrees to use the refund as a contribution.
9. The written notice will be provided on a billing statement. Customers will be able to provide the authorization, enter the contract, and make the contribution by checking a box, either in writing or electronically, indicating that they wish to have their refund applied as a contribution rather than by receiving a refund on their next bill.

10. If customers do provide in advance, and in writing, that their refund should be contributed to the Connected Committee, then the refund will be disbursed by the Business into a Business account established for this purpose before being distributed on behalf of the customer to the Connected Committee.

11. The Business will transfer the contributed funds in regular intervals in a manner that minimizes transaction costs.

12. Any cost the Business incurs in soliciting the customers to contribute to the Connected Committee, or of collecting customer contributions and paying them to the Connected Committee, will be accounted for and charged to the Connected Committee, which will reimburse the Business. Thus, to the extent any part of this activity constitutes a solicitation of customers, the Business will not have expended any treasury funds for the solicitation and will not have made an in-kind contribution to the Connected Committee.

13. The customer will have the right to terminate the authorization at any time, applicable to the next month's bill and all future bills.

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

(1) May the Business solicit funds from customers for the Connected Committee by giving them the fixed refund of \$.10 of their bill every month and then giving customers the opportunity to donate that \$.10 to the connected continuing committee by checking a box on the invoice form designating the funds for a donation, as described above?

(2) Can customers provide consent by checking a box once for all future bills to send the refunded \$.10 each month to the Connected Committee?

Relevant Missouri Statutes and the Missouri Constitution

Pursuant to Mo. Const. Art. VIII, §23.7(6)(c-d) and §130.011(10-11), RSMo:

'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. "Continuing committee" includes, but is not limited to, any committee organized or sponsored by a business entity, a labor organization, a professional association, a trade or business association, a club or

other organization and whose primary purpose is to solicit, accept and use contributions from the members, employees or stockholders of such entity and any individual or group of individuals who accept and use contributions to influence or attempt to influence the action of voters.

‘Connected organization’, any organization such as a corporation, a labor organization, a membership organization, a cooperative, or trade or professional association which expends funds or provides services or facilities to establish, administer or maintain a committee or to solicit contributions to a committee from its members, officers, directors, employees or security holders. An organization shall be deemed to be the connected organization if more than fifty percent of the persons making contributions to the committee during the current calendar year are members, officers, directors, employees or security holders of such organization or their spouses[.]

Pursuant to §130.011(7)(a)e, RSMo, “‘Committee’, does not include:... 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 of this chapter[.]”

“Contributions received by a committee shall not be commingled with any funds of an agent of the committee[.]” §130.021.4(1), RSMo.

Pursuant to §130.036.1, RSMo, “every person who acts as an agent for a committee in receiving contributions, making expenditures or incurring indebtedness for the committee shall, on request of that committee's treasurer, deputy treasurer or candidate, but in any event within five days after any such action, render to the candidate, committee treasurer or deputy treasurer a detailed account thereof, including names, addresses, dates, exact amounts and any other details required by the candidate, treasurer or deputy treasurer to comply with this chapter. Notwithstanding the provisions of subsection 4 of section 130.021 prohibiting commingling of funds, an individual, trade or professional association, business entity, or labor organization which acts as an agent for a committee in receiving contributions may deposit contributions received on behalf of the committee to the agent's account within a financial institution within this state, for purposes of facilitating transmittal of the contributions to the candidate, committee treasurer or deputy treasurer. Such contributions shall not be held in the agent's account for more than five days after the date the contribution was received by the agent and shall not be transferred to the account of any other agent or person, other than the committee treasurer.”

Analysis

As presented in the facts above, the Business does not contribute any treasury funds to the Connected Committee (Committee), but does expend treasury funds to establish, administer, and maintain the committee, and to solicit voluntary contributions from the members, officers, directors, and employees of the Business.¹

In addition, to its members, officers, directors, and employees, the Business will solicit contributions from its customers on behalf of the Committee in the form of a refund to be disbursed by the Business into an account established for this purpose before being distributed on behalf of the customer to the Committee.

Section 130.036, RSMo, permits a business, whether connected organization or not, to act as an agent for a committee in collecting contributions, making expenditures, and incurring debt on behalf of the committee as long as the agent provides a detailed account of each receipt or other transaction in the detail required by the treasurer to comply with all record-keeping and reporting requirements of Chapter 130, RSMo.

While §130.021.4, RSMo, prohibits commingling of funds, agents may temporarily deposit contributions into their own financial accounts² to facilitate transfers to the committee, but these funds must be moved to the committee's account within five days and cannot be transferred to any other person or account. §130.036, RSMo.

Therefore, the Business may act as an agent on behalf of the Committee for the purpose of soliciting contributions from its customers, placing the contributions in the agent's account, and transferring said contributions to the Committee within five days on behalf of the customers. The Committee shall report said contributions as coming from each individual customer, not the Business. If each individual customer aggregate less than \$100 per calendar year, pursuant to Section 130.041, RSMo, the Committee may list the nonitemized contributions as a lump sum on their campaign finance reports. However, once an individual customer aggregate more than \$100 per calendar year, the Committee shall be required to list that individual contributor as an itemized figure with name, address, and employer information on their campaign finance reports.

¹ In MEC Opinion No. 2017.03.CF.010, the Commission stated that a corporation or labor organization may not contribute its own funds to its connected political action/continuing committee. In MEC Opinion No. 2017.07.CF.014, the Commission gave additional guidance to the definition of connected organizations.

² In MEC Opinion No. 2017.08.CF.016, the Commission opined that the labor organization may transfer the dues to its connected PAC from its treasury account. The labor organization might consider segregation of funds to ensure that only funds derived from membership dues are transferred to the organization's connected PAC, and it is important to keep accurate records of the source of the funds from dues pursuant to § 130.036, RSMo.

Nonetheless, regardless of whether the contributor aggregates more than \$100, the Committee is required to collect the contributor's name, address, and employer information for their records. Thus, the Business, acting as the Committee's agent, shall collect this information when they accept the contributions on behalf of the Committee.

Regarding the scheme in which the Business may use to solicit contributions on behalf of the Committee, Missouri statutes does not designate a particular methodology in which to solicit contributions. The MEC does not have an opinion on whether customers can provide consent by checking a box for all future bills to send the refunded \$.10 each month to the Committee. Whatever method the agent and the Committee use to solicit the contributions, they shall ensure the contributions are not held in the agent's account for more than five days after the date the contributions were received by the agent and shall not be transferred to the account of any other agent or person, other than the committee treasurer.

Conclusion

A Business may act as an authorized agent for their Connected Committee in soliciting or receiving contributions or in making expenditures or incurring indebtedness on behalf of the Committee if the Business renders to the Committee treasurer or deputy treasurer 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 of this chapter. Additionally, the Business may temporarily deposit contributions into their own financial accounts to facilitate transfers to the Committee, but these funds must be moved to the committee's account within five days and cannot be transferred to any other person or account. The Business might consider segregation of funds to ensure that only contributions earmarked for the Committee are transferred to the Committee.