
Constitutional Article VIII, Section 23

The Commission issued several opinions regarding Article VIII, Section 23. Opinion summaries can be found [here](#) (page 6 of this document). The full opinions can be found on the [Advisory Opinions](#) page of the MEC website.

On November 8, 2016, Missouri voters approved Constitutional Amendment 2 which, among its provisions, imposes campaign contribution limits on certain candidates for state office including statewide offices, legislative offices and judicial offices. The specific constitutional provision is Article VIII, Section 23. The full text of Article VIII, Section 23 can be viewed [here](#).

Litigation Update: May 2017

Portions of Article VIII, Section 23 have been challenged in federal litigation 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). The Federal District Court has issued [the ruling](#).

The Commission has received a number of telephone calls from members of the regulated community concerning the May 5, 2017 decision of the federal district court 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). The Commission wishes to clarify and state its understanding of the effect of that decision.

- The Court's decision has been stayed. Accordingly, all sections of Article VIII, §23 are still in effect. The stay is presently set to be lifted 45 days from May 5, 2017. However, the stay could be extended further.
- The Court permanently enjoined only specific portions of Article VIII, §23. The Court did NOT enjoin the entire Article. The portions of Article VIII, §23 that are not affected by the Court's decision include, but are not limited to, the following:
- Section 23.3(4) – ban on candidate committees making to or accepting contributions from other candidate committees;
- Section 23.3(3) – ban on corporate or labor organization contributions to candidate committees, exploratory committees, political party committees or political parties;
- Section 23.3(2) – limitation on aggregate contributions to political parties of \$25,000, including the list of committee types to which the aggregate applies;
- Section 23.3(12) – prohibition on candidate committees, political party committees, and campaign committees contributing to political action committees/continuing committees

The Commission urges the regulated community to continue to check the Commission's website for further updates concerning the Commission's views regarding the effect of the Court's decision.

The following is a general summary of provisions of Article VIII, Section 23 as passed by the voters.

Readers are cautioned that portions of this summary may be affected by litigation.

What is the effective date of Article VIII, Section 23?

Under Article VIII, Section 23, 2(b), "If a majority of the votes cast thereon is in favor of any amendment, the same shall take effect at the end of thirty days after the election." Therefore, the effective date was **December**

8, 2016.

How does Article VIII, Section 23 correspond to Chapter 130 of the Missouri Revised Statutes?

Article VIII, Section 23 is an amendment to the Missouri Constitution. Chapter 130 of the Missouri Revised Statutes are campaign finance laws passed by the Missouri General Assembly. Article VIII, Section 23 provides many definitions and some provisions that are identical to the statutes in Chapter 130. Article VIII, Section 23 provides additional provisions that are part of the Missouri Constitution, such as contribution limits, provisions relating to corporate and labor organization contributions, contributions received by and made by campaign finance committees, and criminal penalties.

- Governor
- Lieutenant Governor
- Secretary of State
- State Treasurer
- State Auditor

- Attorney General
- State Senator
- State Representative
- State Judicial Office
- Other State Office

What are the contribution limits and what candidates do the limits apply to?

Article VIII, Section 23. 3(1), provides a contribution limit of \$2,600 from any person, other than the candidate, to elect an individual to the Missouri state offices of:

Are there contribution limits for local elections?

Article VIII, Section 23 does not address candidates for local elections.

See Commission Opinion 2017.02.CF.001

Are there restrictions in Article VIII, Section 23 that apply to both state and local candidates?

Yes, while the contributions limits do not apply to local candidates, there are numerous provisions that apply to all candidate committees, including local candidates. These provisions include:

- Candidate committees are prohibited from accepting or making contributions to another candidate committee, including federal candidate committees
- Candidate committees cannot make contributions to political action committees/continuing committees
- Candidate committees cannot receive contributions from corporations (with some exceptions) and labor organizations directly (see question on corporation and labor organization contributions)
- Candidate committees can receive contributions from political action committees/continuing committees subject to contribution limits if they apply
- Candidate committees can make contributions to political party committees
- Candidate committees can receive contributions from political party committees

Can a Missouri candidate contribute personal funds to another candidate for office?

Yes. Article VIII, Section 23.3(4) prohibits a candidate committee from accepting or making contributions from another candidate committee, or equivalent entity, established under federal law. This prohibition does not apply to a candidate’s personal funds.

Is election defined?

Article VIII, Section 23.7(11) defines an “election” as:

- Any primary, general or special election held to nominate or elect an individual to public office

- Any primary, general or special election held to retain or recall an elected officeholder or to submit a ballot measure to the voters, and
- Any caucus or other meeting of a political party or a political party committee at which that party's candidate or candidates for public office are officially selected
- A primary election and the succeeding general election shall be considered separate elections.

What elections do contribution limits apply to?

Article VIII, Section 23.3(1), provides a contribution limit of \$2,600 from any person, other than the candidate, to elect individuals to state office for "one" election. Section 23.7(11) states that a primary election and the succeeding general election shall be considered separate elections.

Can a candidate subject to contribution limits receive contributions for the primary and general election at the same time, and prior to the primary for the general election?

In Commission Opinion No. 1996.06.131, the Commission stated that under the previous law, a continuing committee could not contribute more than the maximum allowed for an election during the time period that pertained to that election to a candidate subject to contribution limits. Therefore, the candidate could not receive a contribution in the maximum amount allowed for both the primary and general election at one time, and a contribution for the general election could be given to a successful candidate after the primary election.

While the Commission has not received a request for a similar opinion interpreting Article VIII, Section 23, Missouri committees are advised to follow this guidance. Therefore, contributions for the 2018 general election should not be received until after the August 2018 primary election.

Is person defined?

Article VIII, Section 23.3(1), provides a contribution limit of \$2,600 from any "person" to a candidate for certain state offices. The limit does not apply to a contribution made by the candidate to his or her own committee. Section 23.7(19) defines a "person" as:

- An individual or group of individuals
- Corporation (Article VIII, Section 23.3(1)) contains separate provision regarding corporate contributions – *See* Commission Opinion 2017.03.CF.010
- Partnership
- Committee (Article VIII, Section 23.12 contains separate provisions regarding committee to committee contributions)
- Proprietorship or joint venture
- Any department, agency, board, institution or other entity of the state or any of its political subdivisions
- Union or labor organization (Article VIII, Section 23.3(1)) contains separate provision regarding corporate contributions)
- Trade or professional or business association
- Association
- Political party or any executive committee thereof
- Any other club or organization however constituted or any officer or employee of such entity acting in the person's official capacity

NOTE: Article VIII, Section 23 contains separate provisions and restrictions on contributions by committees and some business entities. The constitutional provision should be reviewed for those specific provisions.

Are there contribution limits for contributions to political parties?

Article VIII, Section 23.3(2)(a) states that no political party shall accept aggregate contributions from any person that exceed \$25,000 per election at the state, county, municipal, district, ward, and township level combined. Article VIII, Section 23.3(2)(b) states no political party shall accept aggregate contributions from any committee that exceed \$25,000 per election at the state, county, municipal, district, ward, and township

level combined.

In Commission Opinion 2017.02.CF.007, the Commission discussed the election cycle for purposes of the \$25,000 aggregate for political parties.

The Commission has not opined whether contributions made to the state house and senate committees per political party, referenced in Article VIII, Section 23.3(13) apply to the \$25,000 per political party.

What is a political party?

Article VIII, Section 23.7(22) defines a “political party” as a political party which has the right under law to have the names of its candidates listed on the ballot in a general election.

What is a Political Party Committee and how does that differ from a Political Action Committee/ Continuing Committee?

Article VIII, Section 23.7(23) defines a political party committee as: a state, district, county, city, or area committee of a political party, as defined in Section 115.603, RSMo, which may be organized as a not-for-profit corporation under Missouri law, and which committee is of continuing existence, and has the primary or incidental purpose of receiving contributions and making expenditures to influence or attempt to influence the action of voters on behalf of the political party. Examples include the state party committees and county central committees.

Article VIII, Section 23.7(6)c and (20) define continuing committees and political action committees, and each type of committee is referenced in the Constitution. In Commission Opinion 2017.02.CF.002, the Commission stated that these two committees are the same.

Because there are limitations to contributions to and from political action committees that do not apply to political party committees, it is important to confirm the type of committee being considered. The committee type is found on the MEC website committee search.

Are Political Action Committees/Continuing Committees prohibited from receiving contributions from other committees?

Political action committees/continuing committees are prohibited from receiving contributions from:

- Other political action committees/continuing committees
- Candidate committees
- Political party committees
- Campaign committees
- candidate committees
- political party committees
- Exploratory committees
- exploratory committees
- political parties
- Debt service committees

How does Article VIII, Section 23 affect corporate and labor organization contributions?

Article VIII, Section 23.3(3)(a) prohibits corporations or labor organizations from making contributions (monetary or in-kind) to :

A corporation or labor organization may establish a political action/continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders.

Article VIII, Section 23.3(12) states that political action/continuing committees may receive contributions from corporations, associations, and partnerships formed under chapters 347 to 360.

The Commission has issued a number of opinions regarding corporate and labor organization contributions:

In Commission Opinion 2017.03.CF.010, the Commission addressed contributions from corporations and labor organizations to political action committees/continuing committees, stating that a corporation or

labor organization may not contribute its own funds to its connected political action committee/continuing committee; it may contribute its own funds to an unconnected political action committee/continuing committee as long the contribution is authorized under Art. VIII, §23.3(12). A political action committee/continuing committee which is connected to a corporation or labor organization may receive contributions from contributors not connected to the corporation or labor organization. The Commission also gave guidance on solicitations on behalf of that political action committee/continuing committee.

In Commission Opinions 2017.02.CF.005, 2017.02.CF.006 and 2017.03.CF.009, the Commission discussed contributions from limited liability companies (LLC) and foreign entities as follows:

- To the extent that a Missouri LLC is an “eligible entity” and elects to be classified as a corporation under the federal tax code, it is considered a “corporation” for purposes of §23 of the Missouri Constitution. The same holds true for a foreign LLC to the extent it is an “eligible entity” and elects to be treated as a corporation by the Internal Revenue Service, or has publicly-traded shares.
- An LLC with one corporate member/owner that has elected to be treated as a partnership and a disregarded entity under the Internal Revenue Code is subject to the ban on corporate contributions under Article VIII, §23.3(3)(a).
- Political action committees/continuing committees may receive contributions from foreign corporations, associations or partnerships, holding valid certificates of authority to do business in this state under the chapters 347 to 360, RSMo.

Do contribution limits apply to contributions made by children?

Article VIII, Section 23.3(17) provides that contributions from persons under 14 years of age shall be considered made by the parents or guardians of such person and shall be attributed toward any contribution limits. Where a contributor under 14 years of age has two custodial parents or guardians, 50% of the contribution shall be attributed to each parent or guardian. Where a contributor under 14 years of age has one custodial parent or guardian, all such contributions shall be attributed to the custodial parent or guardian.

Can non-citizens or foreign governments make state contributions?

Article VIII, Section 23(16) states that no Missouri committee shall knowingly accept contributions from:

- Any natural person who is not a citizen of the United States; or
- A foreign government

Are the contribution limits for contributions to state candidates and political parties permanently fixed?

Article VIII, Section 23.3(18) provides that contribution limits for contributions to state candidates and political parties shall be adjusted according to formula based upon the Consumer Price Index (CPI). The first adjustment shall be done in the first quarter of 2019, and then every four years thereafter. The secretary of state shall calculate such an adjustment in each limit and specify the limits in rules.

What are the penalties for violation of Article VIII, Section 23?

Article VIII, Section 23 provides criminal penalties for violations of specific provisions. These penalties can be found in Article VIII, Section 23.5 and 6.

Constitutional Article VIII, Section 23

Advisory Opinion Summaries

The full opinions can be found on the [Advisory Opinions](#) page of the MEC website.

2017.02.CF.001 The contribution limits set forth in §23.3(1) do not apply to contributions made to candidates for county or local government offices. A candidate who received a contribution over the \$2,600 limit from December 8, 2016 forward for a county or local office would be required to return the amount exceeding that limit if the candidate later chooses to run for a state office.

2017.02.CF.002 Because the definitions of continuing and political action committees are substantially the same, the Commission interprets these committees to be the same despite the fact that the constitutional provision refers to these committees in separate definitions. The Statement of Committee Organization provides a committee type as “Continuing (PAC)” and the committees are identified as political action committees on the Commission’s website.

2017.02.CF.003 It is the Commission’s opinion that the contribution limits apply to candidate committees and only to continuing committees/political action committees if a contribution to that committee is restricted or designated for a candidate.

2017.02.CF.004 A candidate committee can make an expenditure to support a candidate or ballot measure if those expenditures were “not requested to be made by, directed or controlled by, or made in cooperation with, or made with the express or implied consent of the candidate.”

2017.02.CF.005 To the extent that a Missouri LLC is an “eligible entity” and elects to be classified as a corporation under the federal tax code, it is considered a “corporation” for purposes of §23 of the Missouri Constitution. The same holds true for a foreign LLC to the extent it is an “eligible entity” and elects to be treated as a corporation by the Internal Revenue Service, or has publicly-traded shares.

2017.02.CF.006 Political action committees can receive contributions from foreign corporations, associations or partnerships, holding valid certificates of authority to do business in this state under the chapters 347 to 360, RSMo.

2017.02.CF.007 For purposes of the \$25,000 aggregate received by a political party from individuals and candidates, it is the Commission’s opinion that the aggregate applies to each election in which a political party participates under the definition of election contained in the constitutional provision.

2017.02.CF.008 Contribution limits articulated in §23.3(1) do not apply to contributions to the House Republican Campaign Committee (HRCC) and Missouri Senate Campaign Committee (MSCC) unless the contributions received by these continuing committee/political action committees are restricted or designated for a particular candidate. Contributions made by these committees to enumerated candidates are subject to the \$2,600 limitation per election. No, Section 23.3(3) does not prohibit the committees from taking contributions from corporations or labor unions. Yes, the exception to the prohibition against committee to committee transfers articulated in Section 23.3(12) apply to these committees.

2017.03.CF.009 A Limited Liability Company (LLC) with one corporate member/owner that has elected to be treated as a partnership and a disregarded entity under the Internal Revenue Code is subject to the ban on corporate contributions under Article VIII, §23.3(3)(a) of the Missouri Constitution.

2017.03.CF.010 A corporation or labor organization may not contribute its own funds to its connected political action/continuing committee; it may contribute its own funds to an unconnected PAC as long the contribution is authorized under Art. VIII, §23.3(12). A PAC which is connected to a corporation or labor organization may receive contributions from contributors not connected to the corporation or labor organization; guidance is given on solicitations on behalf of that PAC.

2017.03.CF.012 State office candidates in a primary election may not receive simultaneous contributions from the same contributor up to \$5,200 for the primary and general election in the period leading to the primary election. A contribution of up to \$2,600 for state office candidates in a general election must be received after the primary election.