

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

MISSOURI CHAMBER OF COMMERCE,)
AND INDUSTRY)
428 East Capitol Avenue)
Jefferson City, MO 65101,)

Plaintiff,)

vs.)

Case No. _____

MISSOURI ETHICS COMMISSION,)
Including Commission Chair Nancy Hagan,)
Commission Vice Chair Bill Deeken, and)
Commissioners Eric L. Dirks, Don Summers,)
Kim Benjamin, and George Ratermann,)
in their official capacities,)
3411A Knipp Drive)
Jefferson City, MO 65109,)

and)

JAMES KLAHR, in his official capacity as)
Executive Director of the Missouri Ethics)
Commission,)
3411A Knipp Drive)
Jefferson City, MO 65109,)

Defendants.)

PETITION FOR DECLARATORY JUDGMENT

For its Petition for Declaratory Judgment, Plaintiff Missouri Chamber of
Commerce and Industry hereby states as follows:

A. General Background

1. In November, 2016, Missouri voters passed Amendment 2, which became
effective at the end of the 30th day after the November 8, 2016 general election.

2. Amendment 2 added a new section, Section 23, to the Missouri Constitution, entitled the “Missouri Campaign Contribution Reform Initiative.” Mo. Const. art. VIII, § 23.1.

3. Amendment 2 imposes major new restrictions on campaign contributions, which severely burden political speech and association in Missouri and directly impact the First Amendment rights of the Plaintiff. Const. art. VIII, § 23.

4. Many of Amendment 2’s unlawful restrictions have already been permanently enjoined by the United States District Court for the Western District of Missouri in the case of *Free and Fair Election Fund, et al. v. Missouri Ethics Commission, et al.*, case number 16-04332-CV-C-ODS.

5. Not at issue in *Free and Fair Election Fund*, but challenged by the Plaintiff here, are the conclusions reached in two Missouri Ethics Commission advisory opinions, each of which interprets Section 23.3(3) of Amendment 2 to restrict the ability of a corporation to contribute to the corporation’s “connected organization” or “connected PAC.” As a result, under the Missouri Ethics Commission’s advisory opinions, a corporation may contribute to all PAC’s in Missouri except for the corporation’s connected PAC. Plaintiff therefore herein seeks a declaratory judgment finding that Amendment 2 permits a corporation to contribute to its connected PAC.

B. Jurisdiction and Venue

6. This Court has jurisdiction over this case under § 527.010, RSMo. and § 527.020, RSMo.

7. Venue lies in the Circuit Court of Cole County under § 508.010.2 RSMo

because the Defendants reside in Cole County.

C. Plaintiff Missouri Chamber of Commerce and Industry

8. Plaintiff Missouri Chamber of Commerce and Industry (“the Missouri Chamber”) was founded in 1921. The Missouri Chamber is the largest business association in Missouri. Together, with the Missouri Chamber Federation, the Missouri Chamber represents more than 75,000 employers across the entire business spectrum in the State of Missouri, including manufacturing, real estate, retail and service firms.

9. The Missouri Chamber also endeavors to limit and prevent unlawful infringements upon pro-business prerogatives in, among other areas, campaign financing; workers’ compensation; anti-trust law; air and water pollution control; hazardous waste management; public employee collective bargaining; taxation; and labor relations.

10. The Missouri Chamber is a not-for-profit corporation. It is organized pursuant to 26 U.S.C. § 501(c)(3) of the Internal Revenue Code. The Missouri Chamber is registered as a nonprofit corporation with the Missouri Secretary of State and is in good standing. It is also a Missouri taxpayer.

11. As a corporation, the Missouri Chamber is subject to the requirements and penalties of Amendment 2. The Missouri Chamber has a connected PAC entitled “We Mean Business PAC” which was created on September 22, 2017. The Missouri Chamber desires to make both monetary financial and in-kind contributions to this connected PAC. But, pursuant to the advisory opinions of the Missouri Ethics Commission, the Missouri Chamber would be subject to certain penalties, which are described below, as the result of this exercise of its First Amendment Rights.

D. Defendant Missouri Ethics Commission and its members

12. Defendant Missouri Ethics Commission (“MEC”) is a state agency acting under the executive branch of the Missouri state government. The MEC investigates and enforces the laws related to campaign finance disclosure.

13. The MEC’s principal place of business is in Jefferson City, Missouri.

14. The MEC is composed of six members, appointed by the Governor with the advice and consent of the Missouri Senate. Each member is a citizen and resident of the state of Missouri, and the term of each member is four years.

15. As of the date of this Petition, the members of the commission are chair Nancy Hagan, vice chair Bill Deeken, Eric L. Dirks, Don Summers, Kim Benjamin, and George Ratermann. Each member is named as a Defendant herein in his or her official capacity.

16. The MEC is also the state entity responsible for receiving a complaint that alleges a violation of Amendment 2. Mo. Const. art. VIII, § 23.4.(1).

17. The MEC uses state of Missouri funds generated through taxation to fund its operations, including investigations of potential civil and criminal violations of Missouri campaign finance law.

18. The MEC is the state entity responsible for auditing and investigating the allegations contained in a complaint that alleges a violation of Amendment 2. Mo. Const. art. VIII, §§ 23.4.(2), 23.4.(3).

19. Any natural person may file a complaint alleging a violation of Amendment 2. Mo. Const. art. VIII, § 23.4.(1).

20. The MEC is the state entity responsible for determining whether a complaint alleging a violation of Amendment 2 contains reasonable grounds “that a violation of law has occurred within the jurisdiction of the commission.” Mo. Const. art. VIII, § 23.4.(4).

21. “If, during an audit or investigation, the [MEC] determines that a formal investigation is necessary, the [MEC] shall assign the investigation to a special investigator” Section 105.959.5, RSMo.

22. Amendment 2 provides, “If, after audit and investigation of the complaint and upon a vote of at least four members of the commission, the commission determines that there are reasonable grounds to believe that a violation of law has occurred within the jurisdiction of the commission, the commission shall proceed with such complaint as provided by sections 105.957 to 105.963. RSMo, as amended from time to time.” Mo. Const. art. VIII, § 23.4.(4).

23. If the MEC concludes, based on the report from the special investigator or based on an audit, that there are reasonable grounds to believe that a violation of any criminal law has occurred, the MEC may seek to have a special prosecutor appointed. Section 105.961.2, RSMo.

24. If the MEC concludes, based on the report from the special investigator or based on an audit, that there are reasonable grounds to believe that a violation of any law has occurred which is not a violation of criminal law or that criminal prosecution is not appropriate, the MEC may conduct its own hearing and issue findings and conclusions. Section 105.961.3, RSMo.

25. “Upon vote of at least four members, the [MEC] may initiate formal judicial proceedings seeking to obtain any of the following orders:
- (1) Cease and desist violation of any provision of sections 105.450 to 105.496, or chapter 130, or sections 105.955 to 105.963;
 - (2) Pay any civil penalties required by sections 105.450 to 105.496 or chapter 130;
 - (3) File any reports, statements, or other documents or information required by sections 105.450 to 105.496, or chapter 130; or
 - (4) Pay restitution for any unjust enrichment the violator obtained as a result of any violation of any criminal statute as described in subsection 6 of this section.”

Section 105.961.5, RSMo.

26. The MEC has through “reconciliation agreements or civil action, the power to seek fees for violations in an amount not greater than one thousand dollars or double the amount involved in the violation.” Section 105.961.4(6), RSMo.

27. The MEC maintains a policy of imposing fees through reconciliation agreements, where the MEC negotiates for a complaint respondent to pay about 10% of the amount involved in a violation, with the remainder of the fee stayed until any further violation of the campaign finance laws within a two-year period from the date of the MEC’s order.

E. Defendant Executive Director James Klahr

28. Defendant James Klahr is the duly appointed and acting Executive Director of the MEC, and is named as a Defendant in his official capacity.

29. Pursuant to Missouri law, the Executive Director “shall be responsible for the administrative operations of the [MEC] and perform such other duties as may be delegated or assigned to the director by law or by rule of the [MEC].” § 105.955(11), RSMo.

30. Executive Director Klahr is the Missouri state official responsible for “[e]xamin[ing] each report and statement filed with the [MEC] pursuant to the requirements of this chapter to determine if the statements are properly completed and filed within the time required by this [Chapter 130, RSMo.]” Section 130.056.1(6), RSMo.

31. Mr. Klahr’s duties include, but are not limited to, making an initial determination as to whether complaints filed with the MEC provide jurisdiction for investigation, and employing and supervising the work of the MEC’s investigators.

32. Executive Director Klahr, under the supervision of the MEC, is the state official charged with overseeing the review and audit of campaign finance reports and statements filed with the MEC pursuant to Chapter 130, RSMo, and determining whether “a violation” has occurred. Section 105.959.1, RSMo.

F. Penalties Enforced by the Ethics Commission and Klahr

33. Section 23.5. of Amendment 2 provides:

Any person who knowingly and willfully accepts or makes a contribution in violation of any provision of Section 3 of this Article or who knowingly and willfully conceals a contribution by filing a false or incomplete report or by not filing a required report under chapter 130, RSMo, as amended from time to time, shall be held liable to the state in civil penalties in an amount of at least double and up to five times the amount of any such contribution.

34. Section 23.6.(1) of Amendment 2 provides:

Any person who purposely violates the provisions of section 3 of this Article is guilty of a class A misdemeanor.

35. Each of Amendment 2's references to "section 3 of this Article" actually references Section 23.3 of Article VIII of the Missouri Constitution, not Section 3 of Article VIII. Article VIII, § 3 of the Missouri Constitution refers to the secrecy of ballots, and was not the subject of Amendment 2.

36. On December 1, 2016, the MEC stated on its website that the criminal penalties found in Sections 23.4 and 23.5 apply to violations of Amendment 2.

37. Amendment 2 imposes a three-year statute of limitations for any violation of Section 23.3.

Notwithstanding any other provision of law which bars prosecutions for any offenses other than a felony unless commenced within one year after the commission of the offense, any offense under the provisions of this section may be prosecuted if the indictment be found or prosecution be instituted within three years after the commission of the alleged offense.

Mo. Const. art. VIII, § 23.6.(2).

38. Defendants MEC and Klahr act under color of Missouri law in administering potential sanctions.

G. Corporate contributions to connected PAC's under Amendment 2

39. Amendment 2 prohibits certain corporate contributions to connected PAC's. Section 23.3(3)(a) provides:

It shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee,

exploratory committee, political party committee or a political party; except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders.

Const. art. VIII, § 23.3(3)(a).

40. Section 23.3(3)(b) allows for certain exceptions which are not applicable in this case. It states:

The prohibition contained in subdivision (a) of this subsection shall not apply to a corporation that:

- (i) Is formed for the purpose of promoting political ideas and cannot engage in business activities; and
- (ii) Has no security holders or other persons with a claim on its assets or income; and
- (iii) Was not established by and does not accept contributions from business corporations or labor organizations.

Const. art. VIII, § 23.3(3)(b).

41. A “continuing committee” and political action committee, or PAC, are the same type of committee. A “continuing committee” is defined by Amendment 2 as:

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. Such

committee shall be formed no later than sixty days prior to the election for which the committee receives contributions or makes expenditures

Const. art. VIII, § 23.7(6)(c).

42. Section 23.3(12) of Amendment 2 permits political action committees to receive contributions from corporations, but prohibits contributions from other political action committees. It states:

Political action committees shall only receive contributions from individuals; unions; federal political action committees; and corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time, and shall be prohibited from receiving contributions from other political action committees, candidate committees, political party committees, campaign committees, exploratory committees, or debt service committees. However, candidate committees, political party committees, campaign committees, exploratory committees, and debt service committees shall be allowed to return contributions to a donor political action committee that is the origin of the contribution.

Const. art. VIII, § 23.3(12).

43. Section 23.7(6)(d) of Amendment 2 defines “connected organization” as follows:

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.

Const. art. VIII, § 23.7(6)(d).

H. The MEC and Klahr's advisory opinions

44. On March 27, 2017, the MEC issued Advisory Opinion No. 2017.03.CF.010 ("March 27 Advisory Opinion"). A copy of the March 27 Advisory Opinion is attached hereto as Exhibit A and incorporated by reference herein.

45. The March 27 advisory opinion concluded as follows:

It is the Commission's opinion that because this section expressly authorizes specific types of individual contributions but does not specifically authorize the contributions from the entity's treasury or funds, a corporation or labor organization may not contribute its own funds to its connected political action/continuing committee.

46. On July 14, 2017, the MEC issued advisory opinion No. 2017.07.CF.014 ("July 14 Advisory Opinion"). A copy of the July 14 Advisory Opinion is attached hereto as Exhibit B and incorporated by reference herein.

47. The July 14 Advisory Opinion reaffirmed the conclusions in the March 27 advisory opinion concerning connected PAC's. It stated:

The Commission discussed the application of both sections as they relate to corporate and union contributions to PACs in MEC No. 2017.03.CF.010. The Commission stated that a corporation or labor organization may not contribute its own funds to its connected PAC, but that it may contribute direct corporate or union funds to an "unconnected" PAC.

48. Both advisory opinions were signed by Klahr. The MEC and Klahr's conclusions concerning connected PAC's are wrong as a matter of law, since Amendment 2 does not prohibit a corporation from contributing to its connected PAC.

COUNT ONE – DECLARATORY JUDGMENT

49. Paragraphs 1 through 47 are incorporated by reference as if separately stated in this Count.

50. This Court has the power to issue a declaratory judgment where a person's legal rights under Missouri law are in question. § 527.020, *RSMo*.

51. The Missouri Chamber is a "person" for purposes of Section 527.020, *RSMo*. See § 527.130, *RSMo*.

52. The actions of Respondents in issuing the advisory opinions noted above and the potential enforcement of Amendment 2 in a manner consistent with those advisory opinions directly and adversely impact the Missouri Chamber, and call into question the rights of the Missouri Chamber pursuant to Amendment 2.

53. The controversy is ripe because the Missouri Chamber presently desires to contribute to its connected PAC and, pursuant to the advisory opinions noted above, would be subject certain sanctions, including potential criminal sanctions, as a result. The Missouri Chamber is *not* required to subject itself to these potential sanctions in order for its claims herein to be ripe.

54. Under Amendment 2, this Court should declare that a corporation may contribute to its connected PAC because:

a. Section 23.3(a) states that "it shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee, exploratory committee, political party committee or a political party; except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders." Although

Section 23.7(6)(d) of Amendment 2 defines “connected organization,” Section 23.3(a) does not specifically list “connected organization” among the list of entities to which a corporate contribution is unlawful. That list is limited to other defined terms, including the following: campaign committee, candidate committee, exploratory committee, political party committee and a political party. Section 23.3(a)’s omission of “connected organization” among the list of enumerated entities necessarily means that corporate contributions to a connected organization are lawful.

b. Since a corporation may act only through its officers and directors, Section 23.3(a)’s allowance “that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders” in fact explicitly permits donations directly from the corporation; i.e. from the corporation through its officers and/or directors.

c. Section 23.3(12) of Amendment 2 permits political action committees to receive contributions from corporations. It states, in part: “Political action committees shall only receive contributions from individuals; unions; federal political action committees; and **corporations**, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time and shall be prohibited from receiving contributions from other political action committees, candidate committees, political party committees, campaign committees, exploratory committees, or debt service committees.” (Emphasis added). Thus, Section 23.3(12) explicitly permits contributions from a corporation to a connect PAC; it merely limits contributions from one PAC to another.

55. This court’s declaration of the requirements of Amendment 2 with respect to the ability of the Missouri Chamber to contribute to its connected committee will terminate the controversy described herein.

WHEREFORE, the Missouri Chamber respectfully prays for the following relief:

1. That the Court declare that Amendment 2 does not prohibit contributions from a corporation to its connected PAC; and

2. Such other relief as the court may grant, including but not limited to Plaintiff's attorneys' fees and costs.

Respectfully submitted,

HUSCH BLACKWELL LLP

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James Klahr
Executive Director

March 27, 2017

Re: Advisory Opinion No. 2017.03.CF.010

Dear

At the March 27, 2017 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 and the Commission's opinion are as follows:

Art. VIII, Sec. 3(3)(a) states: "It shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee, exploratory committee, political party committee or a political party; except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders."

Art. VIII, Sec. 3(12) states: "Political action committees shall only receive contributions from individuals; unions; federal political action committees; and corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time, and shall be prohibited from receiving contributions from other political action committees, candidate committees, political party committees, campaign committees, exploratory committees, or debt service committees. However, candidate committees, political party committees, campaign committees, exploratory committees, and debt service committees shall be allowed to return contributions to a donor political action committee that is the origin of the contribution."

Art. VIII, Sec. 7(6)(d) states: "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.

Therefore, in reading these provisions together, and assuming I am not concerned with a corporation exempted by Art. VIII, Sec. (3)(b)(i-iii), and noting the MEC equates Continuing Committees with Political Action Committees (PAC) see, AO 2017.02.CF.002:

- a. *May a labor organization or corporation make contributions to a political action committee to which they are not connected and did not establish, or does the MEC deem the exception in Art. VIII, Sec. 3(3)(a) to mean labor organizations and corporations can only make contributions from the "dues from members, officers, directors, employees or security holders" to PACs that are connected to or established by the labor organization or corporation in question?*
- b. *Is the reverse true? May a PAC connected to a specific labor organization or corporation as described in Art. VIII, Sec. 3(3)(a), or as described in Art. VIII, Sec. 7(6)(d), receive contributions from corporations or labor organizations which did not establish, and/or are not connected, to the PAC in question?*
- c. *May a labor organization or corporation only contribute to their own established PACs through "dues from members, officers, directors, employees or security holders" or is the language not so limiting since Art. VIII, Sec. 3(12) seems to indicate PACs can receive monies directly from labor organizations' or corporations' general treasuries as well?*
- d. *Is the reverse true, May a PAC established or connected to a labor organization or corporation receive contributions from the general treasuries of labor organizations or corporations that are not connected to and/or did not establish the PAC in question?*

Supporting Analysis

Art. VIII, §23.3(3)(a) and (b) provide prohibitions on corporate and labor organization contributions as follows:¹

(3) (a) It shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee, exploratory committee, political party committee or a political party; except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders.

¹ In 2017.02.CF.002, the Commission opined that continuing committees and political action committees are the same type of committee. Likewise, the Commission interprets "unions" and "labor organizations" to be the same type of entity despite the fact that the constitutional provision refers to these in separate subsections and the term "union" is not defined.

(b) The prohibition contained in subdivision (a) of this subsection shall not apply to a corporation that:

- (i) Is formed for the purpose of promoting political ideas and cannot engage in business activities; and
- (ii) Has no security holders or other persons with a claim on its assets or income; and
- (iii) Was not established by and does not accept contributions from business corporations or labor organizations.

§23.3(12) however, provides that political action committees/continuing committees are authorized to receive contributions from "unions" and "corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time..."

While both sections do not specifically reference the term "connected organization", it is defined as follows:

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. Art. VIII, §23.7(6)(d) and §130.011(11), RSMo.

Once a connected organization is established and reported to the Commission on a statement of committee organization, the costs of establishing, administering or maintaining a committee, or the solicitation of contributions if solely directed to members, officers, directors, employees or security holders are not "contributions" or "expenditures" to the connected committee under Art. VIII, §23.7(8)(d) and §23.7(13)(e); and §130.011(12)(i)(d) and §130.011(16)(e)(e), RSMo.

Labor Organization and Corporate Contributions to Connected PACs

Art. VIII, §23.3(3)(a) creates various prohibitions on contributions from corporations and labor organizations, but authorizes the establishment of a "connected" political action/continuing committee (hereinafter "PAC") which may accept contributions or dues from members, officers, directors, employees or security holders. It is the Commission's opinion that because this section expressly authorizes specific types of individual contributions but does not specifically authorize the contributions from the entity's treasury or funds, a corporation or labor organization may not contribute its own funds to its connected political action/continuing committee.

Labor Organization and Corporate Contributions to PACs Not Connected to the Labor Organization or Corporation

Art. VIII, §23.3(12), provides that PACs are authorized to receive contributions from "unions" and "corporations, associations, and partnerships formed under chapters 347 to 360, RSMo....Therefore, while labor organizations and corporations are limited from contributing funds to their connected committee, they may contribute to an unconnected PAC as long the contribution is authorized under §23.3(12).

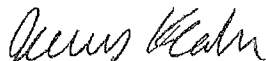
Receipt of Contributions by a PAC which is Connected to a Corporation or Labor Organization

Art. VIII, §23.7(6)(d) states that "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." In addition, §23.3(12) authorizes political action committees/continuing committees to receive contributions from "unions" and "corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time..."

Given that the definition of a connected organization assumes that a connected committee may receive 49% of its contributions from other sources, and that the §23.3(12) specifically authorizes labor organization and certain corporations to contribute to PACs, it is the Commission's opinion that a connected PAC may receive contributions from other contributors, including corporations or labor organizations which did not establish, and/or are not connected, to the committee in question.

To the extent that a connected committee may seek to receive contributions from unconnected contributors, it may use committee funds to solicit contributions. However, a connected labor union or corporation may not use treasury or corporate funds to solicit funds from outside sources as those solicitations are contributions under Art. VIII, §23.7(7)(h).

Sincerely,



James Klahr
Executive Director



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James Klahr
Executive Director

July 14, 2017

Re: Advisory Opinion No. 2017.07.CF.014

Dear

At the July 14, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

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.

Based on the questions posed, this opinion is issued with the assumption that both LLC's are corporations subject to the provisions of Article VIII, §23 of the Missouri Constitution.

Opinion

The questions presented and the Commission's opinion are as follows: ¹

Is a PAC not connected to an organization when its monetary contributions are from a corporation's general treasury, not a corporation's officers, employees, their spouses, et. al?

If yes, does it therefore follow that a PAC funded 100% by a corporation's general treasury funds is therefore not deemed to be not connected to an organization?

If yes, may that PAC which does not have a connected organization receive unlimited contributions from corporation A's treasury?

If yes, may that PAC which does not have a connected organization receive unlimited contributions from corporation A and corporation B's respective treasuries in any amount?

Analysis

¹ While the questions discuss corporate funds, guidance given may also be applicable to labor organizations (unions) to the extent the provisions also apply to them.

Art. VIII, §23 provides limitations on corporate and labor organization (union) contributions to certain committees, and it also specifically allows corporations and unions to establish and contribute to political action committees/continuing committees (hereinafter "PACs").

Specifically, Art. VIII, §23.3(3)(a) and (b) provide prohibitions on corporate and labor organization contributions as follows:²

(3) (a) It shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee, exploratory committee, political party committee or a political party; except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders.

(b) The prohibition contained in subdivision (a) of this subsection shall not apply to a corporation that:

(i) Is formed for the purpose of promoting political ideas and cannot engage in business activities; and

(ii) Has no security holders or other persons with a claim on its assets or income; and

(iii) Was not established by and does not accept contributions from business corporations or labor organizations.

§23.3(12), however, provides PACs are authorized to receive contributions from "unions" and "corporations, associations, and partnerships..."

The Commission discussed the application of both sections as they relate to corporate and union contributions to PACs in MEC No. 2017.03.CF.010. The Commission stated that a corporation or labor organization may not contribute its own funds to its connected PAC, but that it may contribute direct corporate or union funds to an "unconnected" PAC.

<http://mec.mo.gov/Scanned/PDF/Opinions/483.pdf>

The Commission also noted that given that the definition of a connected organization assumes that a connected committee may receive contributions from other sources, and that §23.3(12) specifically authorizes labor organizations and certain corporations to contribute to PACs, a connected PAC may receive contributions from other contributors, including corporations or labor organizations which did not establish, and/or are not connected, to the committee in question.

² In 2017.02.CF.002, the Commission opined that continuing committees and political action committees are the same type of committee. Likewise, the Commission interprets "unions" and "labor organizations" to be the same type of entity despite the fact that the constitutional provision refers to these in separate subsections and the term "union" is not defined.

To the extent that a committee's connected organization may solicit contributions from contributors who are not members, officers, directors, employees or security holders of such organization or their spouses, it may use committee funds to solicit those contributions. However, a connected labor union or corporation may not use treasury or corporate funds to solicit funds from outside sources as those solicitations are contributions under Art. VIII, §23.7(7)(h).

Corporate PACs established under Art. VIII, §23.3(3)

Art. VIII, §23.3(3)(a) does not specifically reference the term "connected organization", but does indicate that a corporation may "establish" a PAC.

In Missouri, organizations (including corporations) identify the certain PACs for which they provide support by identifying themselves as connected organizations on a statement of committee organization. Both the Missouri Constitution and Chapter 130, RSMo, define a "connected organization" as follows:

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.** Art. VIII, §23.7(6)(d) and §130.011(11), RSMo. (emphasis added).

In Missouri, contributions can be either monetary or in-kind. An in-kind contribution is defined as "a contribution...in a form other than money." Art. VIII, §23.7(16) and §130.011(19), RSMo. For example, services provided by a corporation on behalf of a committee is an in-kind contribution to the committee.

Once a PAC reports a connected organization to the Commission on its statement of committee organization, the costs of establishing, administering or maintaining a committee, or the solicitation of contributions if solely directed to members, officers, directors, employees or security holders of such organization or their spouses are not "contributions" or "expenditures" to the connected committee under Art. VIII, §23.7(8)(d) and §23.7(13)(e); and §130.011(12)(i)d. and §130.011(16)(e)e., RSMo. Because the corporation is serving as a connected organization, there is no violation of Art. VIII, §23.3(3)(a), as interpreted in MEC No. 2017.03.CF.010 because the costs of establishing, administering or maintaining the PAC, and the solicitation of its members, officers, directors, employees or security holders, are not contributions.

A corporation may become a connected organization one of two ways. It may choose the status of a "connected organization" by establishing, administering or maintaining a committee. Regardless of the above, at the point that more than 50% of the committee's contributors during the current calendar year, whether the contributions were monetary or in-kind, are from

members, officers, directors, employees or security holders of such organization or their spouses, it is deemed a connected organization by law.

In MEC No. 2003.01.100, the Commission stated that a corporation that makes more than 50% of contributions to a committee is not deemed a connected organization.³ The Commission looked to the definition of a connected organization for guidance under the limited facts given. <http://mec.mo.gov/Scanned/PDF/Opinions/353.pdf>.

Corporate Contributions to PACs established under §23.3(12)

The Missouri Constitution clearly authorizes corporate contributions to PACs under Art. VIII, §23.3(12). Therefore a corporation can make a direct contribution to a PAC in which it is not a connected organization.

Current Questions

With this additional guidance, the following are the responses to the specific questions posed:

Is a PAC not connected to an organization when its contributions are from a corporation's general treasury, not a corporation's officers, employees, their spouses, et. al?

The question does not state whether the contributions are all monetary or if the corporation is supporting the PAC. Under the legal definition of "connected organization", if the corporation establishes, administers or maintains a committee; or if more than 50% persons making contributions (whether monetary or in-kind) are from members, officers, directors, employees or security holders of such organization or their spouses in a particular calendar year, then the organization is deemed connected.⁴

Assuming the corporation does not expend funds or provide services or facilities to **establish, administer or maintain** a committee or solicit contributions to a committee from its members, officers, directors, employees or security holders under the facts provided, it is not a connected organization.

If yes, does it therefore follow that a PAC funded 100% by a corporation's general treasury funds is therefore deemed to be not connected to an organization?

As stated above, according to the definition of a connected organization, a PAC that is funded with 100% of its monetary contributions by a corporation's general treasury funds cannot be "deemed" to be a "connected organization." However, the PAC can be connected if the corporation is expending funds to establish, administer and maintain the committee, or to solicit officers, directors, employees or security holders of such organization.

³ At the time of the opinion, there was no prohibition on corporate contributions in Missouri.

⁴ A corporation should assess each year the percentage of contributors who are members, officers, directors, employees or security holders or their spouses.

A corporation which seeks to contribute to a PAC as allowed by Art. VIII, §23.3(12) must ensure that its actions do not run afoul of Art. VIII, §23.3(3)(a) in that it must not "establish" the PAC by meeting the definition of a connected organization.

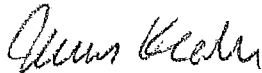
If yes, may that PAC which does not have a connected organization receive unlimited contributions from corporation A's treasury?

A corporation which seeks to contribute unlimited contributions to a PAC may not be connected. Assuming the corporation has not established the PAC and is not serving as a connected organization, it may make unlimited monetary contributions from the corporate treasury.

If yes, may that PAC which does not have a connected organization receive unlimited contributions from corporation A and corporation B's respective treasuries in any amount?

The answer is the same as above. So long as neither corporation is "connected" by the definition cited above, it may make unlimited monetary contributions to that PAC.

Sincerely,



James Klahr
Executive Director