

**ETHICS INTERPRETATION EI-1992-006
ISSUED MAY 19, 1994**

The Ethics Commission, in regular meeting, discussed your request for an Ethics Interpretation. You asked, in effect:

May an individual and an unincorporated business in which the individual is an owner each give the maximum campaign contribution under the Ethics Commission Act?

ANALYSIS

Since the maximum contribution applies to persons and families, the question may be answered by determining who is considered a person under the Ethics Commission Act, Section 4200 et seq. of Title 74 of the Oklahoma Statutes.

Section 4202 of Title 74 of the Oklahoma Statutes defines "person" as:

25. "Person" means an individual, corporation, association, firm, partnership, labor union or labor organization, committee, club or other organization, or a group of persons who are voluntarily acting in concert;

This definition provides that a person can be entities other than an individual. Business associations are expressly included.

The law does not specify that an individual and a business owned in whole or in part by the same individual must be considered one person for purposes of campaign contributions, as is shown by Section 4216 of Title 74 of the Oklahoma Statutes:

...No person or family may contribute more than Five Thousand Dollars (\$5,000.00) to a candidate for state office or to a candidate for municipal office in a municipality with a population of over two hundred fifty thousand (250,000) persons, according to the most recent federal decennial census, or to a candidate committee authorized by such a candidate to receive contributions or make expenditures on his behalf, nor more than One Thousand Dollars (\$1,000.00) to a candidate for other local office or to an organization authorized by such a candidate to receive contributions or make expenditures on his behalf for a campaign...

Each "person" may give the maximum contribution. It follows that both an individual and an unincorporated business in which that individual is an owner may each make up to the maximum campaign contribution.

However, an unincorporated business contributing to campaigns is "supporting or opposing a candidate or political party..." When such an entity contributes to a state or local candidate, as opposed to those running for federal office, a political party, or a state question campaign, it functions as a political action committee. When making contributions aggregating at least Two Hundred Dollars (\$200.00) during a calendar year, said entities fall within the purview of Section 4202 (26) of Title 74 of the Oklahoma Statutes, which provides:

Political action committee means a combination of at least two individuals, or a person other than an individual:

- a. with the primary or incidental purpose of:
 - (1) supporting or opposing a candidate or political party, except those required to file with the Federal Election Commission, or
 - (2) supporting or opposing a state question, and
- b. which accepts contributions or makes expenditures aggregating at least Two Hundred Dollars (\$200.00) during a calendar year.

Such an entity must, hence, register and report as a political action committee.

This interpretation assumes that the business is a bona fide operation organized to manufacture, sell or provide goods or services and does not have as a primary purpose the giving of campaign contributions or the making of campaign expenditures. The latter would constitute a subterfuge subject to challenge on the basis that it attempts to circumvent the maximum contribution limits.

CONCLUSION

It is, therefore, the ethics interpretation of the Ethics Commission as voted on at its regular meeting held on April 22, 1994, that under Section 4202 (25) and Section 4216 of Title 74 of the Oklahoma Statutes, a person may give the maximum campaign contribution both as an individual and through an unincorporated business in which he or she is an owner. However, an unincorporated business making expenditures supporting or opposing a state or local candidate, a political party or a state question, and which accepts contributions or makes expenditures aggregating at least Two Hundred Dollars (\$200.00) during a calendar year must register and report as a political action committee, pursuant to Sections 4200 et seq. of Title 74 of the Oklahoma Statutes. This interpretation assumes that the business is a bona fide operation organized to manufacture, sell or provide goods or services and does not have as a primary purpose the giving of campaign contributions or the making of campaign expenditures. The latter would constitute a subterfuge subject to challenge on the basis that it attempts to circumvent the maximum contribution limits.

Please be aware that state law requires this agency to publish the Ethics Interpretations it issues. This will be done in such a way as to protect the name of the requesting party.

To the extent that Ethics Interpretations EI-1992-006 is inconsistent with Ethics Interpretation EI-2002-005, it has been withdrawn.