

**ETHICS INTERPRETATION EI-2002-005
ISSUED FEBRUARY 21, 2003**

On February 21, 2003, the Ethics Commission of the State of Oklahoma [“the Commission”] met in regular meeting. It considered this matter in executive session, as required by law. In open meeting, the members voted unanimously to issue the following ethics interpretation in response to your question. You have asked:

Do the Constitutional Ethics Rules [“the Rules”], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 2002, Ch. 62, App., permit candidate committees to accept a maximum contribution from a family, in addition to a maximum contribution from one or more limited liability companies of which a member of the family is part owner?

FACTS

You have advised that a campaign has accepted a \$5,000 contribution from a family. The candidate would now like to accept a maximum contribution from one or more limited liability companies [LLCs] of which the contributor family is part owner. You have asked whether the practice is permissible under the Rules.

ANALYSIS

Oklahoma has long regulated campaign contributions. Unlike the federal system, which sets limits per individual, this state calculates that figure on the basis of the family unit. It is defined as a husband, wife and minor children living in the same household.

Definitions

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“**Family**” means an individual, his or her spouse, if any, and all children under the age of eighteen (18) years residing in the same household.

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Section 257:1-1-2

By ethics rule and by statute, the maximum contribution to candidate committees per person or family is \$5,000. It applies for the duration of the campaign. In contrast, the limit for other committees – meaning political action committees and political parties supporting or opposing candidates – is \$5,000 during a calendar year. Both statute and rule place a reciprocal duty upon recipients to respect these limits.

Contributions

(a) Limitations on contributions from a person.

(1) No *person or family* may contribute more than five thousand dollars (\$5,000) to a political action committee or a party committee in any calendar year. No political action committee or party committee shall knowingly accept a contribution from a person or family in excess of five thousand dollars (\$5,000) in a calendar year.

(2) No *person or family* may contribute more than five thousand dollars (\$5,000) to a candidate for state office or to a candidate committee authorized by such a candidate to accept contributions or make expenditures on his behalf during a campaign as defined in Chapter 1, Section 2 and as provided in Paragraphs (4) and (5) of this subsection. No candidate or candidate committee shall knowingly accept a contribution in excess of five thousand dollars (\$5,000) from a person or family during a campaign.

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Section 257:10-1-2(a)(1) and (2)

[emphasis added]

With the exception of corporations, business entities are legitimate contributors to committees supporting or opposing candidates. If properly constituted, the Rules deem them “persons” permitted to make contributions.

Definitions

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“**Person**” means an individual, corporation, *limited liability company*, association, proprietorship, firm, partnership, *limited liability partnership*, limited partnership, joint venture, joint stock company, syndicate, business trust, estate, trust, company, organization, committee, or club, or a group of persons who are voluntarily acting in concert.

* * *

Id.

The Commission has therefore recognized that partnerships, LLCs and other entities described above may contribute to such committees.

The previous election cycle saw a burgeoning of maximum contributions from business entities, in addition to those from the families and individuals who own them. Some LLCs, for instance, were wholly held by individuals. Others had more than one owner, but were not required to report those names.

The Commission also notes that it is possible for LLCs and other entities described above to be comprised of one or more corporations. Contributions from these entities would run afoul of Oklahoma’s prohibition against corporate participation in candidate campaigns.

Contributions

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(d) **Prohibitions and exceptions to corporate contributions.**

(1) No corporation shall contribute to any campaign fund of any party committee of this state or to any other person for the benefit of such party committee or its candidates, nor shall it, through any agent, officer, representative, employee, attorney, or any other person or persons, so contribute. Nor shall any such corporation, directly or through such other person, make any loan of money or anything of value, or give or furnish any privilege, favor or other thing of value to any party committee, or to any representative of a party committee, or to any other person for it, or to any candidate upon the ticket of any political party.

(2) A corporation shall not make a contribution, an expenditure or an independent expenditure to, or for the benefit of, a candidate or committee in connection with an election, except that this provision shall not apply to:

(A) a campaign or committee solely for or against a ballot measure or local question; or

(B) the establishment, administration, and solicitation of contributions to a political action committee to be utilized for political purposes by a corporation.

(3) No candidate, candidate committee or other committee shall knowingly accept contributions given in violation of the provisions of Paragraphs (1) and (2) of this subsection.

Section 257:10-1-2(d)(1)(2) and (3)

The Commission is charged with regulating the ethical conduct of state campaigns. As regards public disclosure, it must identify those who contribute. It must also enforce contributions limits. And, it must preclude corporate money of business entities with corporations as owners from being used to support or oppose candidates.

Based upon these considerations, the Commission has determined that it will henceforth interpret Rules' Section 257:10-1-2(a)(1) and (2) as prohibiting the practice of "stacking" a family's maximum contribution upon that of one or more of its LLCs, partnerships, joint ventures and other entities described in the Rules' definition of "person." In order to protect limits, the Commission finds that while such entities may contribute to committees supporting or opposing candidates, they may do so only by allocating to the individual owners their fair share of the contribution. This amount will be determined according to the percentage of ownership.

The \$5,000 limitation is to be applied collectively and cumulatively. Therefore, contributions made by appropriate entities within the definition of "person" must be allocated among members according to percentage of ownership. Once the \$5,000 limit is reached after applying all sources to the individual or family, no further

contributions may be made during the campaign [candidate campaigns] or calendar year [other committees].

Business entities must also observe the ban on corporate participation in committees supporting or opposing candidates. Although corporations are "persons" under the Rules, Oklahoma precludes these entities contributing to committees supporting or opposing candidates.¹ A corporation may not defeat the ban by forming or participating in another business structure. The Commission finds a business entity owned in whole or in part by one or more corporations is also precluded from giving to committees supporting or opposing candidates. This application is illustrated in the following provision:

Contributions

(e) **Prohibitions relating to committee solicitations and funds.** It shall be prohibited for:

* * *

(4) corporate contributions to a committee or person for or against a ballot measure to be commingled with a fund established by such person or committee to contribute to candidate committees or committees which support or oppose candidates.

257:10-1-2(e)

The Commission reminds contributors and campaigns alike that the Rules require contributions in excess of \$50 be accompanied or followed by a contributor statement.

Contributions

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(c) **Contributor statement.** Before accepting a single contribution exceeding fifty dollars (\$50.00), or before accepting multiple contributions from a single source which exceed fifty dollars (\$50.00) in the aggregate, persons accepting contributions must obtain from each contributor a statement which shall include:

- (1) the date the contribution was given;
- (2) the name and address, occupation [e.g. "retail sales clerk"] and employer [e.g. "Dillard"], or principal business activity of the contributor; a contribution from a person other than an individual or a committee shall be reported by the name of the person or committee and not the individual who signed the check;

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By constitution and statute, as well as constitutional rule, Oklahoma prohibits corporations from contributing to campaigns which support or oppose candidates. OKLA. CONST, Art. IX, Sec. 40; 21 O.S. 2001, §187.2; Rules' Section 257:10-1-2(d)(1)(2)(A)(B). These entities may, however, participate in ballot measures campaigns.

- (3) the amount; if in-kind, a description of the contribution and a good faith estimate of its fair market value;
- (4) a declaration that the contribution is freely and voluntarily given from the contributor's personal property, if an individual, or the person or committee's property, if other than an individual;
- (5) a declaration that the contributor has not been directly or indirectly compensated or reimbursed for the contribution, if an individual, and, if a person other than an individual or a committee, that the person or committee has not been compensated or reimbursed for the contribution by persons:
 - (A) other than those from whom contributor statements have been received and of whom disclosure has or will be made; or
 - (B) if from persons exempted from the definition of political action committee, by other persons; and
- (6) the signature of the contributor, or in the case of a committee, the treasurer or, in the treasurer's absence, the deputy treasurer of the committee.

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257:10-1-2(c)

Compliance requires those who receive contributions from business entities to know both the identity of owners and their percentage of interest. This will permit filers to allocate the contribution appropriately. The information will also help candidate and other committees to avoid accepting in excess of the \$5,000 aggregated contribution from a person or family. Therefore, contributor statements from business entities, in addition to other required data, must hereafter include the identity of each owner and his or her percentage of interest in each entity.

The Commission also finds that, except as pertains to the contributor statement requirement (which is an exclusive feature of the Rules), it will also hereafter apply this reasoning to its interpretations of the Political Subdivisions Ethics Act ["PSEA"], 51 O.S. 2001, §301-325. The holdings set forth in this ethics interpretation will therefore also apply at the county, municipal and school board levels of government.

CONCLUSION

It is therefore the ethics interpretation of the Ethics Commission, as decided at its regular meeting held February 21, 2003, that it will henceforth interpret Rules' Section 257:10-1-2(a)(1) and (2) as prohibiting the practice of "stacking" a family's maximum contribution upon that of one or more of its LLCs, partnerships, joint ventures and other entities described in the Rules' definition of "person." In order to protect limits, the Commission holds that while such business entities may contribute to committees supporting or opposing candidates, they may do so only by allocating to the individual owners their fair share of the contribution. This amount will be determined according to the percentage of ownership.

The \$5,000 limitation is to be applied collectively and cumulatively. Therefore, contributions made by appropriate entities within the definition of “person” must be allocated among members according to percentage of ownership. Once the \$5,000 limit is reached after applying all sources to the individual or family, no further contributions may be made during the campaign [candidate campaigns] or calendar year [other committees].

Business entities must also observe the ban on corporate participation in committees supporting or opposing candidates. Although corporations are “persons” under the Rules, Oklahoma precludes these entities contributing to committees supporting or opposing candidates. A corporation may not defeat the ban by forming or participating in another business structure. The Commission holds a business entity owned in whole or in part by one or more corporations is also precluded from giving to committees supporting or opposing candidates.

To avoid exceeding limits, recipients of contributions from business entities must therefore be apprized of the identity and percentage of interest held by owners so they may allocate their contribution appropriately. Contributor statements from business entities, in addition to other required data, must therefore include the identity of each owner and his or her percentage of interest in each entity.

The Commission also holds that, except as pertains to the contributor statement requirement (which is an exclusive feature of the Rules), it will hereafter also apply this reasoning to its interpretations of the PSEA. The holdings set forth in this ethics interpretation will therefore also apply at the county, municipal and school board levels of government.

To the extent that Ethics Interpretations EI-1992-006 and EI-1998-002 and Informal Opinion IO-1999-003 are inconsistent with this opinion, they are hereby withdrawn.

Please be advised that ethics interpretations are fact specific. They answer only the question or questions put forth in the underlying request according to information described in the “Facts” section [supra]. While they may shed light on other situations, this opinion does not necessarily control them.

To be binding on the future action of this agency, the interpretation must be directed to the individual situation.

The Commission is authorized by Oklahoma Constitution Article XXIX, Section Five and Section 305(A)(6) of Title 51 of the Oklahoma Statutes to interpret the Rules and the PSEA. Questions pertaining to other Oklahoma Statutes and the Constitution cannot be interpreted by the Commission and must be referred to the appropriate authority.

Ethics Interpretations are published with sufficient deletions to prevent identification of the person or persons involved in the situations herein described. The name of the requestor is considered confidential. This letter has been labeled accordingly.