

ETHICS INTERPRETATION EI-2011-001
ISSUED JUNE 28, 2011

Following announcement of a request for Ethics Interpretation in a prior regular meeting, the Ethics Commission of the State of Oklahoma [“ the Commission ”] held a public hearing on today’ s date, conducted no earlier than thirty days from the announcement. After having solicited both written and oral comment on the request and publishing its own proposed draft to the agency website no fewer than five days before the meeting, the Commission considered the matter in executive session, as required by law . You have asked the following set of questions:

Do the Constitutional Ethics Rules [“ the Rules”], Section 1-1-1 et seq of the Rules of the Ethics Commission, 74 O.S. 2011, Ch. 62, App. provide for allowing your entity, once it has registered with the Oklahoma Ethics Commission as a political action committee, to accept and disburse contributions made by individuals which are earmarked by the contributor for candidate committees, party committees, and other political action committees?

If your entity may receive earmarked contributions, do such contributions received and forwarded count against your entity’ s limits to other committees or only against the contribution limits of the original contributors?

If your entity may receive earmarked contributions, how should these earmarked contributions received and disbursed by your entity be reported to the Commission?

FACTS

You have advised that:

- Your entity is a political organization registered as a political committee with the Federal Election Commission, as well as in a number of states around the country.
- At present, your entity is not registered as a political action committee [“ PAC”] in the State of Oklahoma, but contemplates registering in the future.
- Your entity, which does not accept contributions made by non-individuals, would like to become an active PAC in Oklahoma and accept contributions made by individuals.

- Your entity would like to accept contributions which are earmarked for candidate committees, party committees, and other PACS (including committees established to influence one or more ballot measures).

- Such contributions would be made by members of the public using your entity's website, where said entity would list all Democratic committees as eligible to receive contributions. Committees would be listed with or without their involvement. Any member of the public would be able to solicit contributions for those committees using the tools found on the website. Contributors could make their contributions for Oklahoma candidates and committees on the site using a personal credit card. Your entity's software would process those contributions - in conjunction with its credit card processor – and the funds would be deposited into a bank account established and controlled by this entity. The cost of processing the contributions would then be deducted from the total amount of contributions made to each recipient committee, and the remainder would be forwarded to the recipients by means of checks drawn on your entity's bank account. Contributions would be forwarded on a regular basis, at least weekly.

ANALYSIS

From the outset, it should be noted that your entity is not an Oklahoma PAC. Nonetheless, the Commission will respond, since it contemplates registering in this state and may come under the jurisdiction of this agency and its Rules.

The scenario you describe hinges upon the practice of donors making contributions to your entity which are earmarked – or intended – for another committee. Under these facts, contributions to Oklahoma committees would be deposited into a bank account – not necessarily within this state – established and controlled by your entity. After deducting a service charge, this entity would then forward the balance of the contribution to an Oklahoma candidate, party or ballot measure committee.

What is contemplated here is not a case where your entity will gather up contributions, deposit them, then write a check to the ultimate recipient for the full amount of the contribution. Instead, the contribution will be the subject of a business transaction; the PAC will first deduct a processing fee. The amount provided to the ultimate recipient will therefore be different from the contribution of the original donor. Putting aside the issue of how the Rules deal with earmarked funds, this fact pattern poses significant issues both with the Rules as currently written and the Commission's reporting system.

The regimen you outline has never been contemplated by the Ethics Commission. There has been no input on your proposed system, no testimony, evidence or public

hearing. The members, who are charged with writing the rules of ethical conduct for state campaigns, have at this moment no basis on which to proceed.

For this reason, it is impossible for the Commission to find authority within its Rules for what you seek. Nor can that authority be construed from the Rules. Ethics interpretations are for interpreting existing law. They are not a vehicle for making new law or expanding current law beyond what was intended.

The Commission thus cannot find authority within the Rules to support your proposal. It must therefore answer all three questions in the negative and suggest that you seek, instead, one or more rule amendments. A petition for the latter can be found on the agency website.

CONCLUSION

It is therefore the ethics interpretation of the Ethics Commission, as decided at its regular meeting held June 28, 2011, that this scenario would require a fundamental re-vamping of both the Constitutional Ethics Rules and reporting system. Ethics interpretations are for the purpose of interpreting existing law. They are not a vehicle for making new law or expanding current law beyond what was intended.

For these reasons, the Commission cannot find authority within the Rules to support this proposal. It must therefore answer all three questions in the negative and suggest that the requester seek, instead, one or more rule amendments.

While the matter was considered in executive session, the vote to adopt this ethics interpretation was held in open meeting, as required by the Open Meeting Act, 25 O.S. 2001, § 301-314.

Please be advised that ethics interpretations are fact specific. They answer only the question or questions put forth in the underlying request. 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 Political Subdivisions Ethics Act, 51 O.S. 2001, §§ 301-325. Questions pertaining to other Oklahoma Statutes, the state and federal Constitutions or federal law cannot be interpreted by the Commission and must be referred to the appropriate authority.

Ethics Interpretations are issued not by staff, but by the Commissioners. Members consider briefs, testimony and input, if any, from the public, who have prior notice of

the issue(s) and an opportunity to be heard on the question(s) presented in the ethics interpretation request. Following consideration in executive session, members then vote on the ethics interpretation in open meeting.

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.

We trust the foregoing has answered your questions. Please advise if we may be of further assistance.