

**Proposed draft of Legislative Changes
Staff Recommendations for Modifications to
21 O.S. 2011, § 187.1 et seq.
2012 Session
For Consideration at the Ethics Commission
January 20, 2012 Public Hearing/Regular Meeting**

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

SENATE/HOUSE BILL

By:

AS INTRODUCED

An Act relating to state government;

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

§ 187. As used in Sections ~~1 through 3 of this act~~ 187 through 187.2 of this title:

1. "Accept", with reference to a contribution, means failure by a candidate, treasurer, deputy treasurer or agent of a committee to expressly and unconditionally reject and return a tendered contribution to the contributor within six (6) business days from receipt of the tender;

2. "Ballot measure" means an initiative, referendum, legislative referendum, legislative initiative, state question, or any proposition or measure submitted to voters for their approval or rejection at a municipal, county or statewide election;

3. "Campaign" means and includes all activities for or against the election of a candidate to a specific state or local office for a specific term or the passage or defeat of a ballot measure from the date of acceptance of the first contribution, the making of the first expenditure, or the filing of a declaration of candidacy, whichever is first, until a final campaign contributions and expenditures report is filed;

4. "Candidate" means a person who seeks nomination or election to state or local office. An individual is a candidate when the individual:

- a. has filed a declaration of candidacy for any state office with the Secretary of the State Election Board,
- b. has filed a declaration of candidacy for any local office with the secretary of any county election board,
- c. has filed a declaration of candidacy with the Secretary of State and has drawn active opposition,
- d. is nominated as a "substitute candidate" pursuant to Section 1-105 of Title 26 of the Oklahoma Statutes, or

- e. solicits or accepts contributions, makes expenditures or gives consent to an individual, organization, party committee, or other committee to solicit or accept contributions or make expenditures to secure election to any state or local office at any time, whether or not the office for which the individual will seek nomination or election is known when the:
 - (1) solicitation is made,
 - (2) contribution is accepted, or
 - (3) expenditure is made.

The term "candidate" shall include a person whose candidacy is unopposed;

5. "Candidate committee" means the committee, consisting of one or more persons who may be the candidate only, designated by a candidate to promote the candidate's candidacy and serve as the recipient of all contributions and the disbursing officer of all expenditures for the candidate;

6. "Committee" means a candidate committee, political action committee, or party committee;

- 7. a. "Contribution" means and includes:
 - (1) a gift, subscription, loan, guarantee or forgiveness of a loan, conveyance, advance, payment, distribution, or deposit of money or anything of value made to and with the knowledge and for the benefit of a committee for use in a campaign, or for reducing the debt of a committee,
 - (2) an expenditure made by a person or committee, other than a candidate committee, with the cooperation of, or in consultation with, a committee, a candidate, candidate committee, or candidate's agent or that is made in concert with, or at the request or suggestion of, a candidate, candidate committee, or candidate's agent,
 - (3) the difference between the payment to a person, other than a candidate or committee, of compensation for personal services or products to the candidate or committee, and the reasonable and customary rate charged by the person for like services or products in like quantities when the candidate or committee has knowledge of the discounted services or products,
 - (4) anything of value received by a committee that is transferred from another committee or other source,
 - (5) sums paid for tickets for a political event such as a reception, rally, or a similar fundraising event; however, the amount of any such contribution may be reduced for the purpose of complying with the reporting and contribution limitations requirements of Section 2 of this act 187.1 of this title, by the actual cost of consumables furnished by the committee in connection with the purchase of the tickets, and only the excess over the actual cost of the consumables shall be deemed a contribution,
 - (6) the candidate's own money used on behalf of that candidate's candidacy, and
 - (7) the difference between the open market value and a discount or rebate:
 - (a) not extended to the public generally, or

- (b) by a television or radio station not extended equally to all candidates for the same office.
- b. The term "contribution" shall not include:
- (1) the value of services provided without compensation by any individual who volunteers on behalf of a candidate or committee,
 - (2) for purposes of the contribution limits set forth in Section ~~2 of this act~~ 187.1 of this title, the transfer of any funds by a political action committee to another political action committee, provided the committees have been established as provided by law and the transferring committee and the receiving committee have been established, directly or indirectly, and are administered or financially supported, directly or indirectly, by a common entity,
 - (3) any payment or obligation incurred by a corporation, labor organization, membership organization, cooperative or corporation without capital stock for the establishment, administration, and solicitation of contributions to a separate segregated fund or political action committee to be utilized for political purposes,
 - (4) a nonreimbursed payment made by an individual for the individual's own travel expenses on behalf of a committee,
 - (5) a payment made by an occupant of a residence or office for costs related to a meeting or fundraising event held in the occupant's residence or office if the costs for the meeting or fundraising event do not exceed Five Hundred Dollars (\$500.00). However, if the occupant hosts more than one event in an election cycle for the same beneficiary, all subsequent payments that exceed Five Hundred Dollars (\$500.00) in the aggregate are contributions,
 - (6) a loan of money made in the ordinary course of business by a financial institution authorized to transact business in this state at terms and interest rates generally available to a member of the public without regard to that person's status as a state or local officer or state or local employee or a candidate for state or local office by the institution,
 - (7) a communication by a corporation, labor organization, or association aimed at its employees, members, owners, stockholders, directors, executive administrative personnel, or their families, or
 - (8) a tender of a contribution if the tender is not accepted, including use as collateral, or is transferred to the state as provided in Rule 10-1-2 of the Rules of the Ethics Commission, ~~74 O.S. Supp. 1994, Chapter 62, App.~~
8. "Electioneering communication"
- a. means any communication or series of communications that is sent by handbill or direct mail; broadcast by radio, television, cable or satellite; or appear in a newspaper, magazine or on a billboard which –
- (i) refer to one candidate or one or more of the same clearly identified candidates or one ballot measure or one or more of the same ballot measures;

- (ii) are made within –
 - (A) 60 days before a general or special election for the office sought by the candidate or candidates or the ballot measure or ballot measures;
or
 - (B) 30 days before a primary or runoff primary election for the office sought by the candidate or candidates; and
- (iii) are targeted to the relevant electorate;

b. does not mean –

- (i) a communication or series of communications appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political action committee, candidate, candidate committee or ballot measure committee;
- (ii) a communication or series of communications which constitute an expenditure or an independent expenditure under this chapter; or
- (iii) a communication or series of communications which constitute a candidate debate or forum or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

c. For purposes of this definition, a communication or series of communications which refer to one or more clearly identified candidates or one or more ballot measures are 'targeted to the relevant electorate' if the communication or series of communications have been or can be received by 2,500 or more persons in the municipality, district, or county the candidate seeks to represent;

9. "Expenditure" means a purchase, payment, distribution, loan, advance, compensation, reimbursement, fee deposit, transfer of funds between committees, or a gift made by a committee. An expenditure does not include the following:

- a. a loan of money, made in the ordinary course of business, by a financial institution authorized to transact business in this state,
- b. a communication by a corporation, labor organization, or association aimed at its employees, members, owners, stockholders, executive administrative personnel, or their families, ~~except a communication by the corporation's political action committee promoting or opposing a candidate or candidates,~~
- c. uncompensated services provided by an individual volunteering the individual's time, or
- d. a transfer of funds to another committee if such transfer is not accepted;

~~9-~~ 10. "Independent expenditure" means an expenditure made by a person to advocate the election or defeat of a clearly identified candidate or candidates or a ballot measure or ballot measures, but which is not made to, controlled by, coordinated with, requested by, or made upon consultation with a candidate, committee, treasurer, deputy treasurer or agent of a candidate committee or a ballot measure committee;

11. "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;

~~40-~~ 12. "Local office" means all elective offices for which a declaration of candidacy is filed with the secretary of any county election board;

~~44-~~ 13. "Party committee" means a political party or any affiliated or connected entity;

~~42-~~ 14. "Person" means an individual, corporation, association, proprietorship, firm, 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;

~~43-~~ 15. "Political action committee":

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

(1) with the primary purpose of:

(a) supporting or opposing a candidate or candidates, or a party committee, except those required to file with the Federal Election Commission, or

(b) supporting or opposing a ballot measure, and

(2) which accepts or gives contributions or makes expenditures from a joint account aggregating at least Five Hundred Dollars (\$500.00) during a calendar year, and

b. does not include:

(1) a party committee or a candidate committee,

(2) a person other than an individual, when that person makes an expenditure or expenditures from an account to which contributions have not been solicited or accepted from any other persons or individuals; and the expenditure or expenditures are required by law or by Chapter 10 of the Rules of the Ethics Commission to be reported by the recipient committee or committees as a contribution or contributions, ~~and~~

(3) a combination of individuals, or a person other than an individual, if the combination of individuals, or a person other than an individual, solicits contributions on behalf of a committee, and any contributions received as a result of the solicitation are forwarded to the committee without being deposited in any account; and the contributions are required by law or by Chapter 10 of the Rules of the Ethics Commission to be reported by the committee that receives the contributions,

(4) a corporation, or

(5) a labor union;

~~44-~~ 16. "Political party" means any political party so recognized for the purpose of having candidates appear on the ballot; and

~~45- 17.~~ "State office" means all elective offices for which declarations of candidacy are filed with the Secretary of the State Election Board.

§ 187.2 A. 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~~ to 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.~~

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

1. A campaign or committee formed solely for or against a ballot measure ~~or local question; or~~
2. A committee formed solely to make independent expenditures or electioneering communications as defined in Section 187(8) and (10) of this title; or
3. The establishment, administration, and solicitation of contributions to a political action committee to be utilized for political purposes by a corporation.

C. No candidate, candidate committee, or other committee shall knowingly accept contributions given in violation of the provisions of subsection A or B of this section.

D. The provisions of this section shall not apply to a bank, savings and loan association or credit union loaning money to a candidate in connection with his or her own campaign which is to be repaid with interest at a rate comparable to that of loans for equivalent amounts for other purposes.

E. Any person who knowingly and willfully violates any provision of this section where the aggregate amount contributed exceeds Five Thousand Dollars (\$5,000.00), upon conviction, shall be guilty of a felony punishable by a fine of up to four times the amount of the prohibited contribution or by imprisonment in the State Penitentiary for up to one (1) year, or by both such fine and imprisonment.

F. Any person who knowingly and willfully violates any provision of this section where the aggregate amount contributed is Five Thousand Dollars (\$5,000.00) or less, upon conviction, shall be guilty of a misdemeanor punishable by a fine of not more than three times the amount of the prohibited contribution or One Thousand Dollars (\$1,000.00), whichever is greater, or by imprisonment in the county jail for up to one (1) year, or by both such fine and imprisonment.

SECTION _____. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.