S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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January 24, 2000

Opinion No. 00-011

Campaign Fundraising by Legislator for County Office

QUESTIONS

1. Tenn. Code Ann. § 2-10-310(a) prohibits a member of the General Assembly from conducting a fundraiser, soliciting, or accepting contributions during the regular annual session. Does this statute prohibit a legislator from raising contributions for his or her own county office campaign during a regular session of the General Assembly?

2. If the answer to Question 1 is yes, does this prohibition violate any provision of the United States or Tennessee Constitution with regard to in-session contributions made by individuals residing in the district in which a state legislator is a candidate for county office?

OPINIONS

1. Yes, this Office has concluded in the past that Tenn. Code Ann. § 2-10-310(a) prohibits a member of the General Assembly from raising contributions for his or her own county office campaign during a regular session of the General Assembly. Op. Tenn. Atty. Gen. 97-147 (October 23, 1997).

2. No, this prohibition is defensible under the United States and Tennessee Constitutions.

ANALYSIS

1. Fundraising for Local Office by Legislator during Regular Session of the General Assembly

The first question is whether Tenn. Code Ann. § 2-10-310(a) would prohibit a member of the General Assembly from raising funds for a campaign for county office during a regular session of the General Assembly. Tenn. Code Ann. § 2-10-310(a) provides as follows:

> From the convening of the general assembly in organizational session through the earlier of the last day of regular session or June 1 in odd years, and from the convening of the general assembly in regular annual session to the earlier of May 15 or the conclusion of the annual session in even years, no member of the general assembly or a member's campaign committee shall conduct a fundraiser or solicit or

accept contributions for the benefit of the caucus, any caucus member or candidate of the general assembly or governor.

The United States District Court for the Eastern District of Tennessee concluded that an earlier version of this statute was unconstitutional to the extent it applied to nonincumbent candidates for seats in the Tennessee General Assembly. *Emison v. Catalano*, 951 F.Supp. 714 (E.D. Tenn. 1996). The Court's decision did not address the constitutionality of applying the same prohibition to incumbent members of the General Assembly and, therefore, the statute still applies to those individuals. This Office has concluded that this provision prohibits an incumbent member of the General Assembly from in-session fundraising for his or her election to a local office. Op. Tenn. Atty. Gen. 97-147 (October 23, 1997).

2. Constitutionality of Prohibiting In-Session Fundraising for Local Office

The second question is whether, assuming the statute does prohibit in-session fundraising for an election for local office, it unconstitutionally infringes on the rights of residents of the district from contributing to the legislator's campaign for local office. This Office has concluded that "a statute preventing current members of the General Assembly and statewide officials who are in a position to influence the legislative process from fundraising while the General Assembly is in session would be constitutionally defensible." Op. Tenn. Atty. Gen. 95-58 (May 24, 1995). That conclusion was based on the reasoning that such a ban furthers the State's compelling interest in preventing corruption or the appearance of corruption arising from fundraising while the legislature is in session.

Since this Office issued its opinion in 1995, a number of courts have found statutes banning in-session fundraising to be unconstitutional. *Shrink Missouri Government PAC v. Maupin*, 922 F.Supp. 1413 (E.D.Mo. 1996); *Arkansas Right to Life State Political Action Committee v. Butler*, 29 F.Supp. 2d 540 (W.D. Ark. 1998); *State v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska 1999). On the other hand, the United States Court of Appeals for the Fourth Circuit upheld a North Carolina statute preventing members of and candidates for the legislature and the Council of State from soliciting contributions from lobbyists or political committees employing lobbyists while the state legislature was in session, *North Carolina Right to Life, Incorporated v. Bartlett*, 168 F.3d 705 (4th Cir. 1999), *petition for cert. filed* (May, 1999).

None of these cases is binding on courts of this State. Further, we think it can be argued that in-session contributions to a legislator for his or her campaign for local office present the same danger of corruption or the appearance of corruption as legislative campaign contributions. For this reason, it is our opinion that the prohibition on in-session fundraising for local office by incumbent

legislators is also constitutionally defensible.

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