S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

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Opinion No. 00-185

Fundraising for Federal Office during Legislative Session

QUESTION

May a state legislator legally raise money for a federal race while the Legislature is in session?

OPINION

Yes, the statutory prohibition on legislative fundraising does not apply to campaigns for federal office.

ANALYSIS

This opinion addresses whether state law prohibits a state legislator from raising money for a campaign for federal office while the Tennessee General Assembly is in session. Under Tenn. Code Ann. § 2-10-310(a), generally, no member of the General Assembly or the member's campaign committee may conduct a fundraiser or solicit or accept "contributions" for the benefit of the caucus, any caucus member or member or candidate of the general assembly or governor while the General Assembly is in session. Subsection (b) imposes a similar restriction on political party campaign committees and legislative caucuses.

This Office has concluded that these restrictions prohibit a member of the General Assembly from soliciting or accepting contributions for his or her candidacy for local office during the period specified in the statute. Op. Tenn. Atty. Gen. 97-147 (October 23, 1997). But the term "contribution" as used in this statute means a gift "made for the purpose of influencing a measure or nomination for election or the election of any person for *public office* or for the purpose of defraying any expenses of an officeholder incurred in connection with the performance of the officeholder's duties, responsibilities, or constituent services." Tenn Code Ann. § 2-10-102(3) (emphasis added). The term "public office" means "any *state* public office or *local* public office filled by the voters[.]" Tenn. Code Ann. § 2-10-102(11) (emphasis added). The definitions of "state public office" and "local public office" in subdivisions (A) and (B) of this statute clearly do not include federal offices. For this reason, Tenn. Code Ann. § 2-10-310(a) does not prohibit a member of the General Assembly from soliciting or receiving campaign contributions for nomination or election to federal office while the General Assembly is in session.

Principles of statutory interpretation also support this conclusion. Where one construction of a statute would sustain its validity and another render the statute unconstitutional, a court must choose the former. *Davis-Kidd Booksellers v. McWherter*, 866 S.W.2d 520, 529-30 (Tenn. 1993). To the extent the statute could be interpreted to apply to fundraising for federal office, a court would probably conclude it was preempted by federal law. *Teper v. Miller*, 82 F.3d 989 (11th Cir. 1996) (fundraising restriction on state legislators preempted by federal campaign finance laws).

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Robert Rochelle
State Senator
4 Legislative Plaza
Nashville, TN 37243-0217