S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 01-046

Lobbyist Contributions to Legislator Running for Federal Office

QUESTION

Does state law prohibit a lobbyist who lobbies members of the General Assembly from contributing to a legislator's federal campaign while the Legislature is in session?

OPINION

No, state law does not prohibit a lobbyist who lobbies members of the General Assembly from contributing to a legislator's federal campaign while the Legislature is in session.

ANALYSIS

This opinion concerns whether a lobbyist within the meaning of Tenn. Code Ann. §§ 3-6-101, *et seq.*, is prohibited under state law from contributing to a legislator's campaign for federal office while the Legislature is in session. This Office has concluded that Tenn. Code Ann. § 2-10-310(a), which prohibits legislators from fundraising during the legislative session, does not prevent a state legislator from raising money for a campaign for federal office. Op. Tenn. Atty. Gen. 00-185 (December 13, 2000). Tenn. Code Ann. § 3-6-108(i) provides:

> No lobbyist, employer of a lobbyist or multicandidate political campaign committee controlled by a lobbyist or employer of a lobbyist shall make a *contribution* to a candidate for the office of governor, member of the general assembly or public service commission[1] during the time that the general assembly is in a regular annual legislative session.

(Emphasis added). Tenn. Code Ann. §§ 3-6-101, *et seq.*, do not define the term "contribution." Under Tenn. Code Ann. § 3-6-102(18), the term "political contribution" means:

[1] Statutes creating the Public Service Commission were repealed by 1995 Tenn. Pub. Acts Ch. 305, § 5. After the effective date of this act, any reference to the Public Service Commission is to be deemed a reference to the Tennessee Regulatory Authority or appropriate department. *Id.* at § 54.

> any amount of more than one hundred dollars ($100) in the form of an advance, conveyance, deposit, distribution, transfer of funds, loan, payment, pledge, purchase
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> of a ticket to a testimonial or similar fund-raising event, or subscription of money or anything of value, in connection with a political campaign and any contract, agreement, promise, or other obligation, whether or not legally enforceable, to make a political contribution; however, "political contribution" does not mean volunteer services or personal expenses.

Tenn. Code Ann. § 3-6-102(18). The statute does not define "political campaign." Conceivably, this definition could include a contribution made to a campaign for federal office by an individual who is also a candidate for one of the offices listed in Tenn. Code Ann. § 3-6-108(i). But we think Tenn. Code Ann. § 3-6-108(i) was not intended to prohibit lobbyists subject to state lobbying laws from making a contribution to a campaign for federal office for three reasons.

First, the statute uses the term "contribution" and not "political contribution." The term "contribution" is not defined in Tenn. Code Ann. § 3-6-102, but it is defined in Tenn. Code Ann. § 2-10-102(3) — which governs campaign finance — to exclude contributions to a campaign for federal office. Second, Tenn. Code Ann. § 3-6-108(i) was enacted as Section 8 of Chapter 531 of the 1995 Publc Acts. The prohibition on legislative fundraising during the legislative session, now codified as amended at Tenn. Code Ann. § 2-10-310, was enacted in Section 1 of that act. Statutes on the same subject matter — in this case, fundraising during the legislative session — should be construed together, and the construction of one, if doubtful, may be aided by consideration of the words of and the legislative intent indicated by the others. *Coleman v. Acuff,* 569 S.W.2d 459 (Tenn. 1978). Under this principle of statutory construction, and because the lobbying laws do not contain a separate definition of "contribution," it is appropriate to conclude that the term "contribution" used in Tenn. Code Ann. § 3-6-108(i) should be as defined in Tenn. Code Ann. § 2-10-102(3).

Finally, when 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). Under 2 U.S.C. § 453, the provisions of the Federal Election Campaign Act of 1971, as amended, and rules prescribed under it, "supersede and preempt any provision of State law with respect to election to Federal office." Under 11 C.F.R. 108.7, promulgated by the Federal Election Commission, rules and regulations under this act supersede state law concerning, among other matters, "[l]imitation on contributions and expenditures regarding Federal Candidate and political committees." 11 C.F.R. 108.7(b)(3). We think that, to the extent Tenn. Code Ann. § 3-6-108(i) could be interpreted to prohibit lobbyists or the other persons listed from contributing to a candidate for federal office, a court would probably conclude it was preempted by federal law.

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