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Opinion No. 01-161

Limits on Loans from Candidate's Personal Funds to Candidate's Campaign

QUESTION

This Office has concluded in the past that the Tennessee Registry of Election Finance may not constitutionally enforce the contribution limits of Tenn. Code Ann. § 2-10-302(c). May the Registry constitutionally enforce the contribution limits of this statute on a candidate's loan to his or her campaign committee?

OPINION

No.

ANALYSIS

State law limits the amount of money an individual may contribute from his or her personal funds to his or her election for state or local office. Tenn. Code Ann. § 2-10-302(c). This Office has concluded in the past that these limits are unconstitutional. Op.Tenn.Atty.Gen. 00-099 (May 24, 2000); Op.Tenn.Atty.Gen. 98-016 (January 15, 1998); Op.Tenn.Atty.Gen. 95-042 (April 19, 1995). This conclusion is based on the decision of the United States Supreme Court in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). In that case, the Court ruled that a federal statute limiting a candidate's right to make campaign expenditures from his or her personal funds violated the First Amendment to the United States Constitution. The Court concluded that the limitation imposed a substantial restraint on the candidate's ability to engage in protected First Amendment activity. 424 U.S. at 41. The Court then concluded that the restriction did not further a compelling governmental interest in preventing actual corruption and apparent corruption of the political process. *Id.* at 43. Research indicates that *Buckley* has not been overruled or modified with respect to this conclusion.

The request asks whether the Registry may constitutionally enforce Tenn. Code Ann. § 2-10-302(c) to the extent it limits a candidate's right to lend personal funds to his or her campaign. In fact, the term "contribution" as defined under the campaign finance laws includes a loan. Tenn. Code Ann. § 2-10-102(3). This Office has concluded that, under *Buckley*, a limit on an individual's right to lend personal funds to his or her campaign is unconstitutional for the same reasons as a limit on an individual's right to

donate personal funds to his or her campaign. Op.Tenn.Atty.Gen. 86-166 (September 24, 1986). In *Buckley*, the United States Supreme Court found unconstitutional a statute that placed a limit on a candidate's right to "make expenditures from his personal funds . . .." The statutory scheme defined "expenditure" to include a loan to influence his or her election as well as a purchase, payment, or gift for the same purpose. *Buckley,* 96 S.Ct. at 711. The Court did not distinguish between a limit on a gift and a limit on a loan. We think the rationale for finding a limit on gifts from a candidate's personal funds to be unconstitutional applies equally to a limit on loans from a candidate's personal funds. The limit on loans places a substantial restraint on a candidate's ability to engage in protected First Amendment activity. Furthermore, under *Buckley,* a restriction on loans from a candidate's personal funds does not further a compelling governmental interest in preventing actual corruption and apparent corruption of the political process. For this reason, it is our opinion that the Registry may not constitutionally enforce Tenn. Code Ann. § 2-10-302(c) to the extent that it limits the amount an individual may lend his or her personal funds to his or her campaign.

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