S T A T E O F T E N N E S S E E
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Opinion No. 03-112

Multicandidate political campaign committees

QUESTIONS

1. Does a group become a multicandidate political campaign committee when it appoints a treasurer with the Registry of Election Finance?

2. Does a group become a multicandidate committee when it "supports" its second candidate and, if so, would this mean that the first contribution to support a candidate would have been made before the group was a multicandidate committee even if it was registered with the Registry?

3. Is there a time limit on how long a group may wait to support or oppose the second candidate and still be considered a multicandidate committee?

4. Is an organization a multicandidate committee if it has received only one contribution, although other individuals are part of the organization?

5. Would an organization registered as a "multicandidate political campaign committee" with the Registry, which has received only one contribution, be considered to be making a contribution as a conduit or intermediary if it makes a contribution to a candidate, since the only funds available to the organization came from one source?

OPINIONS

1. & 2. Viewing the Campaign Financial Disclosure Act and the Campaign Contribution Limits Act as a whole, and in light of the differing reporting requirements and contribution limits with respect to multicandidate political campaign committees as opposed to single candidate (or single measure) committees, it is our opinion that a group or organization becomes a multicandidate political campaign committee when it appoints or certifies a political treasurer to the Registry pursuant to Tenn. Code Ann. § 2-10-105(e).

3. Neither the Disclosure Act nor the Contribution Limits Act contains any time limitation on when a multicandidate political campaign committee must support or oppose a second candidate or measure.

4. An organization may be a multicandidate political campaign committee, as defined in the statute, even if it has received only one contribution.

5. Whether a particular organization or person is a "conduit" or "intermediary" for purposes of Tenn. Code Ann. § 2-10-303(3) will depend upon individual facts and circumstances. The Registry is empowered to apply the statute to particular facts and circumstances to determine if the Contribution Limits Act has been violated.

ANALYSIS

1. You have asked several questions, all of which center around the primary issue of when does a group or organization become a multicandidate political campaign committee for purposes of the Campaign Financial Disclosure Act, Tenn. Code Ann. §§ 2-10-101, *et seq*., and the Campaign Contribution Limits Act, Tenn. Code Ann. §§ 2-10-301, *et seq*.

The Registry of Election Finance was established under Tenn. Code Ann. §§ 2-10-201, *et seq.,* and is charged with the administration and enforcement of the Campaign Financial Disclosure Act, Tenn. Code Ann. §§ 2-10-101, *et seq*.; the Campaign Contribution Limits Act, Tenn. Code Ann. §§ 2-10-301, *et seq*. ; the Lobbyist Registration and Disclosure Act, Tenn. Code Ann. §§ 3-6-101, *et seq*.; and the Conflict of Interest Disclosure Law, Tenn. Code Ann. §§ 8-50-501, *et seq*. Tenn. Code Ann. § 2-10-205. In creating the Registry, the Legislature stated:

> It is the intent of the general assembly to provide adequate financial disclosure by public officials, candidates for public office, and lobbyists. Furthermore, it is the intent of the general assembly to establish a registry of election finance to ensure enforcement of these statutes.

Tenn. Code Ann. § 2-10-202. The Registry is directed to "[d]evelop prescribed forms for statements that are required to be filed" under these laws and to "[p]repare and publish a manual for all candidates and committees, describing the requirements of the law, including uniform methods of bookkeeping and reporting and requirements as to reporting dates . . .." Tenn. Code Ann. § 2-10-206(1) & (5). The Registry is also authorized to promulgate rules and regulations, "as are necessary to implement the provisions of this chapter." Tenn. Code Ann. § 2-10-207(1). The Registry is further authorized to investigate possible statutory violations and to conduct a contested case hearing in determining whether any particular practices violate the acts. Tenn. Code Ann. § 2-10-207(2) & (4). In Op. Tenn. Atty. Gen. 98-122 (July 10, 1998), this Office stated:

> As an initial matter, it should be emphasized that interpretation and application of these statutes [in that instance, the campaign finance laws at Tenn. Code Ann. §§ 2-10-301, *et seq*.] is vested, in the first instance, with the Registry. Where . . . the statutes do not explicitly mandate a conclusion, the Registry is authorized to rely on its own

> expertise and experience to formulate directives to interested parties through rules or advisory opinions. Likewise, the Registry may convene hearings to apply its guidance to specific situations. . . . [D]eference is given by courts to such agency interpretations, a deference not accorded to the views of non-regulators.
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> It is . . . the Registry which has the authority to evaluate the statute, the mission of the agency, and alternative interpretations of the statute. The duty to interpret and enforce this statute has been given to the Registry in legislation approved by the legislative and executive branches. This Office's role is to advise the Registry as to whether a proposed interpretation by the Registry can be defended if challenged in court, not to select a particular interpretation and by saying that only one interpretation is possible, remove from the Registry the power to make issue-by-issue and case-by-case decisions necessary to regulate in the public interest.

Op. Tenn. Atty. Gen. 98-122.

With these principles in mind, we turn to the questions raised in the opinion request. Tenn. Code Ann. § 2-10-102(8) defines a multicandidate political campaign committee as a "political campaign committee to support or oppose two (2) or more candidates for public office or two (2) or more measures." Tenn. Code Ann. § 2-10-102(10) defines a political campaign committee as:

> (A) A combination of two (2) or more individuals, including any political party governing body, whether state or local, making expenditures, to support or oppose any candidate for public office or measure, but does not include a voter registration program;
> (B) Any corporation or any other organization making expenditures except as provided in subdivision (3), to support or oppose a measure; or
> (C) Any committee, club, association or other group of persons which receives contributions or makes expenditures to support or oppose any candidate for public office or measure during a calendar quarter in an aggregate amount exceeding two hundred fifty dollars ($250).

Tenn. Code Ann. § 2-10-105(e) requires that each political campaign committee "shall certify the name and address of the . . . committee's political treasurer to the registry of election finance . . . before the . . . committee may receive a contribution or make an expenditure in a state or local election." Since a multicandidate political campaign committee is, by definition, a political campaign committee, it is required to comply with the provisions of § 2-10-105(e) before it may receive any contributions or make any expenditures. However, the Campaign Financial Disclosure

Act ("the Disclosure Act") contains a number of other provisions that deal specifically with multicandidate campaign committees.

For example, there are separate reporting requirements for political campaign committees and multicandidate political campaign committees. Tenn. Code Ann. § 2-10-105(a) and (b) require political campaign committees in state and local elections to file with the Registry and county election commission, respectively, a "statement of all contributions received and all expenditures made by or on behalf of such . . . committee." Subsection (c) requires that these statements be filed both prior to and after any primary, referendum and general election. Conversely, a multicandidate political campaign committee is required to file quarterly reports as long as it remains in existence. Tenn. Code Ann. § 2-10-105(d) and Tenn. Rules & Regs. Chap. 0530-1-1-.05(1). To ensure the filing of these reports, Tenn. Code Ann. § 2-10-110(a) authorizes the Registry of Election Finance or a county administrator of elections to impose a civil penalty for failing to file or timely file any report or statement required by the Campaign Financial Disclosure Act. However, subsection (f) of the statute provides that for any civil penalty levied against a multicandidate political campaign committee under § -110, the treasurer of the committee is personally liable for such penalty. Additionally, Tenn. Code Ann. § 2-10-118 provides that it is a Class E felony for a responsible party of a multicandidate political campaign committee who has a prior assessment record to intentionally fail to file a required report for which that person is responsible for filing. A "responsible party" is defined as the treasurer of the committee appointed pursuant to § 2-10-105(e), or if no treasurer, any person who organizes or directs the fundraising activities of the committee.

Both the Disclosure Act and the Campaign Contribution Limits Act ("the Contribution Limits Act") place specific restrictions only on contributions by multicandidate political campaign committees. Tenn. Code Ann. § 2-10-117 prohibits a multicandidate political campaign committee, other than a committee controlled by a political party on the national, state or local level or by a caucus of such political party, from making a contribution to any candidate for the ten day period prior to an election. Tenn. Code Ann. § 2-10-302(b) prohibits a multicandidate political campaign committee from contributing in the aggregate to any candidate in any election in excess of $7,500 for a statewide office or the senate, and $5,000 for any other state or local public office. Finally, subsection (d) of that statute prohibits candidates for statewide office from accepting in the aggregate more than 50 per cent of the candidate's total contributions from multicandidate political campaign committees, while candidates for any other state or local public office are prohibited from accepting in the aggregate more than $75,000 from multicandidate political campaign committees.

Your first two questions raise essentially the same issue: when does a group or organization become a multicandidate political campaign committee — when it appoints a political treasurer, or when the group or organization makes an expenditure supporting or opposing a second candidate or measure. The meaning of a statute is determined by viewing the statute as a whole and in light of its general purpose. *City of Lenoir City v. State ex rel. City of Loudon*, 571 S.W.2d 297, 299 (Tenn. 1978). Viewing the Disclosure Act and Contribution Limits Act as a whole, and in light of the differing reporting requirements and contribution limits with respect to multicandidate political campaign committees as opposed to single candidate (or single measure) committees, we think that

a group or organization becomes a multicandidate political campaign committee when it appoints or certifies a political treasurer to the Registry pursuant to Tenn. Code Ann. § 2-10-105(e). Otherwise a group or organization has no ability to determine its reporting responsibilities and contribution limits, which would be inconsistent with the purpose of the entire campaign finance scheme as set forth in the Disclosure Act and Contribution Limits Act. Additionally, it is our understanding that this interpretation is consistent with the Registry's current practice in that the "Appointment of Political Treasurer" forms developed and utilized by the Registry require a group or organization to identify whether the treasurer is being appointed for a multicandidate political campaign committee or otherwise.

Your third question asks if there is any time limit on how long a group may wait to support or oppose a second candidate and still be considered a multicandidate political campaign committee. Neither the Disclosure Act nor the Contribution Limits Act contains any such time limitation.

Your next question asks whether an organization is a multicandidate political campaign committee if it has received only one contribution, although other individuals are part of the organization. As discussed above, a multicandidate political campaign committee is simply a political campaign committee to support or oppose two or more candidates or measures. Tenn. Code Ann. § 2-10-102(8). The definition of a political campaign committee provides three separate alternatives. The first alternative simply requires a combination of at least two individuals making expenditures to support or oppose a candidate or measure. *See* Tenn. Code Ann. § 2-10-102(10)(A). This alternative does not require the receipt of more than one contribution. Accordingly, it is our opinion that an organization may be a multicandidate political campaign committee, even if it has only received one contribution.

Your last question asks whether an organization registered as a "multicandidate political campaign committee" with the Registry, which has received only one contribution, would be considered to be making a contribution as a conduit or intermediary if it makes a contribution to a candidate, since the only funds available to the organization came from one source. Tenn. Code Ann. § 2-10-303(3) provides that

> [a]ll contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the registry of election finance and to the intended recipient.

As noted in our response to the previous question, an organization that has received only one contribution may still be a multicandidate political campaign committee. Whether a particular organization or person is a "conduit" or "intermediary" for purposes of Tenn. Code Ann. § 2-10-303(3) will depend upon individual facts and circumstances. As we noted in Op. Tenn. Atty. Gen.

98-122, the Registry is authorized in the first instance to apply the statute to particular facts and circumstances to determine whether the Contribution Limits Act has been violated.

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