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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February 13, 2007

Opinion No. 07-17

Constitutionality of ban on in-session contributions

QUESTION

Whether the ban on contributions to members of the General Assembly during legislative session violates the United States Constitution?

OPINION

To the extent Tenn. Code Ann. § 2-10-310(a)(1) prohibits a member of the General Assembly from using personal funds for his or her campaign during the legislative session due to the definition of "contribution," such provision is unconstitutional. Otherwise, it is our opinion that the ban on in-session fundraising by incumbents members of the legislature does not violate the United States Constitution.

ANALYSIS

Tenn. Code Ann. § 2-10-310(a)(1) provides as follows:

> Except as provided in subdivisions (a)(2) and (a)(3), 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 session to the earlier of May 15 or the conclusion of the annual session in even years, and from the convening of the general assembly in any extraordinary session through the conclusion of such extraordinary session, no member of the general assembly or a member's campaign committee or the governor or the governor's campaign committee shall 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.

Subdivisions (2) and (3) allow a member of the General Assembly who is a candidate for local

public office to engage in fund-raising for that campaign in narrowly defined circumstances. A "contribution" is defined as:

> any advance, conveyance, deposit, distribution, transfer of funds, loan, loan guaranty, personal funds of a candidate, payment, gift or subscription of money or like thing of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, 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(4).

You have asked whether this ban on campaign contributions to a candidate who is a member of the general assembly during the legislative session violates the United States Constitution. This Office has previously opined that the ban on in-session fund-raising by incumbent members of the legislature contained in Tenn. Code Ann. § 2-10-310(a) is constitutionally defensible, based upon our conclusion that such a ban furthers the State's compelling interest in preventing corruption or the appearance of corruption arising from fund-raising while the legislature is in session. *See* Op. Tenn. Atty. Gen. 00-011 (January 24, 2000); Op. Tenn. Atty. Gen. 95-058 (May 24, 1995) (copies attached).

We would note, however, that this Office has also previously opined that, although the definition of "contribution" includes the "personal funds of a candidate," Tenn. Code Ann. § 2-10-310(a) does not prohibit a member of the General Assembly from using personal funds for his or her campaign during session. *See* Op. Tenn. Atty. Gen. 98-061 (March 9, 1998) and Op. Tenn. Atty. Gen. 98-062 (March 9, 1998) (copies attached). Furthermore, the Sixth Circuit has held a similar Kentucky statute prohibiting gubernatorial candidates (including incumbent) from making contributions to their own campaigns during the 28-day period preceding a primary or general election unconstitutional. *See Gable v. Patton*, 152 F.3d 940, 951-953 (6th Cir. 1998). Thus, to the extent Tenn. Code Ann. § 2-10-310(a)(1) prohibits a member of the General Assembly from using personal funds for his or her campaign during the legislative session due to the definition of "contribution," such provision is unconstitutional. Otherwise, it is our opinion that the ban on in-session fundraising by incumbents members of the legislature does not violate the United States Constitution.

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