



ADVISORY OPINION 07-05

Interpretation of T.C.A. §§ 3-6-304(j) with respect to the application of the ban on lobbyist campaign contributions to state officials who are candidates for federal or local elected offices, and with respect to candidates for Governor and the General Assembly.

INTRODUCTION

The following Advisory Opinion is in response to a written inquiry from Mr. Bill Mason of Tennessee Citizen Action, regarding application of the ban on lobbyist campaign contributions which is contained in the Ethics Reform Act of 2006 (“Act”).

Mr. Mason asks the following questions: (1) Does the Act prohibit campaign contributions by a registered lobbyist to a state official, such as a member of the General Assembly or the Governor, who is a candidate for a federal office? (2) Does the Act prohibit contributions by a registered lobbyist to a state official, such as a member of the General Assembly or the Governor, who is a candidate for a county or city office? (3) Does the Act violate the Equal Protection Clause of the U. S. Constitution by allowing a lobbyist to contribute to a candidate for a local or federal office if the candidate is not a state official, but prohibiting such contributions to a candidate in the same campaign who is a state official? (4) In general, does the statute governing lobbyist campaign contributions apply only to candidates for the General Assembly or Governor, or does the statute govern lobbyist contributions to any campaigns of individuals who happen to hold a state office?¹

In response to the above questions, the Tennessee Ethics Commission (“Commission”) concludes:

- (1) The Federal Election Campaign Act pre-empts state law with regard to campaign contributions, and thus the prohibition contained in § 3-6-304(j) cannot be applied to contributions to an incumbent legislator or governor that are made in support of their election to a federal office.
- (2) T.C.A. § 3-6-304(j), in conjunction with T.C.A. § 2-10-310, prohibits lobbyist contributions to an incumbent legislator or governor who is running for a local public office.
- (3) Regarding the applicability of T.C.A. § 3-6-304(j) to lobbyist contributions in support of election to a federal office, see the answer to Question 1, above. Regarding election to other offices, the Tennessee Ethics Commission does

¹ Prior to addressing Mr. Mason’s inquiry, the Tennessee Ethics Commission notes that the authority to make determinations regarding the constitutionality of a state law lies exclusively with the office of the Attorney General and Reporter (“Attorney General”) and state and federal courts. Accordingly, the Commission will not attempt to make such determinations.

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not have the authority to determine the constitutionality of the Ethics Reform Act.

- (4) Contributions to non-incumbent state officials who are running for offices other than Governor or member of the General Assembly are not prohibited by the Act.

BACKGROUND

Mr. Mason is the Executive Director and the registered lobbyist for Tennessee Citizen Action, a grassroots consumer watchdog agency that advocates for a variety of issues, including government reform.

DISCUSSION

A. LOBBYIST CAMPAIGN CONTRIBUTIONS TO STATE OFFICIALS WHO ARE CANDIDATES FOR FEDERAL OFFICE

Does the Act prohibit contributions by a registered lobbyist to a state official, such as a member of the General Assembly or the Governor, who is running for a federal office?

T.C.A. § 3-6-304(j) states:

No lobbyist shall offer or make any campaign contributions, including any in-kind contribution, to or on behalf of the Governor or any member of the General Assembly or any candidate for the office of governor, state senator, or state representative.

The Federal Election Campaign Act, 2 U.S.C.A. § 451, et seq., regulates all aspects of election to federal office, including limits on campaign contributions, and states at § 453(a) "...the provisions of this Act, and of rules prescribed under this Act, supersede and pre-empt any provision of State law with respect to election to Federal office."

Thus, the Federal Election Campaign Act pre-empts state law with regard to campaign contributions, and the prohibition contained in T.C.A § 3-6-304(j) cannot be applied to contributions to an incumbent legislator or governor that are made in support of their election to a federal office.

B. LOBBYIST CAMPAIGN CONTRIBUTIONS TO STATE OFFICIALS WHO ARE CANDIDATES FOR LOCAL OFFICE

Does the Act prohibit contributions by a registered lobbyist to a state official, such as a member of the General Assembly or the Governor, who is running for a county or city office?

T.C.A. § 3-6-304(j) prohibits contributions to or on behalf of the Governor or any member of the General Assembly. T.C.A. § 2-10-310(a) is also relevant to the question of

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allowing lobbyists to make contributions to members of the General Assembly who are candidates for local office:

(a) (1) 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.

(2) During such period, *a member of the General Assembly who is a candidate for a local public office* shall be permitted to conduct fundraising events and solicit or accept contributions for such campaign for local public office only under the following conditions:

• • •

It shall be *unlawful for any lobbyist or employer of a lobbyist to make any contribution to such member's campaign committee during such period* for any purpose.

[Emphasis added.]

The prohibition against contributions to a member of the General Assembly who is running for local office is contained generally in T.C.A. § 3-6-304(j) and specifically in T.C.A. § 2-10-310(a). The prohibition against contributions to the Governor if he or she is running for local office is found in T.C.A. § 3-6-304(j).

In addition, the Attorney General issued an opinion on the subject of a legislator's fundraising for a campaign for judicial office, which concluded that the prohibitions contained in T.C.A. § 2-10-310 applied to elections for *all* state, local and judicial offices. It stated that the purpose of the prohibition against contributions during the legislative session is to limit benefits to a member of the General Assembly, not to limit the *type* of campaign that a sitting member can engage in.² This reasoning is equally applicable to T.C.A. § 3-6-304(j), which states simply that *any* campaign contribution to the Governor or a sitting legislator is prohibited. The legislature did not limit this prohibition by specifying only certain types of campaigns, or by specifying a time period within which the ban applies. Thus, T.C.A. § 3-6-304(j) bans lobbyist campaign contributions at any time to the Governor or sitting General Assembly members who are running for local office.

² Attorney General Opinion No. 97-148.

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C. VIOLATION OF EQUAL PROTECTION CLAUSE OF U. S. CONSTITUTION

Does the Act violate the Equal Protection Clause of the U. S. Constitution by allowing a lobbyist to contribute to a candidate for a local or federal elected office if the candidate is not a state official, but prohibiting such contributions to a candidate in the same campaign who is a state official?

As stated in Subsection A, above, contributions to campaigns for a federal office are pre-empted by federal law and therefore not affected by T.C.A. § 3-6-304(j). The Commission does not have the authority to determine the constitutionality of prohibiting contributions to a legislator or a governor who is a candidate for a local office.

**D. LOBBYIST CAMPAIGN CONTRIBUTIONS TO STATE OFFICIALS
OTHER THAN LEGISLATORS OR GOVERNOR**

In general, does the Act govern campaign contributions by lobbyists only to candidates for the General Assembly or Governor, or does the statute govern contributions by lobbyists to any campaigns of individuals who happen to hold a state office?

As stated in Subsection A above, the Act does not affect campaign contributions for federal elections, regardless of the status of the candidate.

Regarding candidacy for other offices, the plain language of T.C.A. § 3-6-304(j) states that lobbyist contributions to the Governor, sitting members of the legislature, *and any candidate for the office of Governor, state senator, or state representative* are prohibited (emphasis added). Accordingly, contributions to other state officials are not prohibited unless those officials are running for Governor or the General Assembly (for example, lobbyist contributions to a Commissioner of an executive branch agency who is a candidate for city mayor are not prohibited).

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Chair

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Commissioners

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