



## ADVISORY OPINION 07-12

Interpretation of T.C.A. §§ 3-6-301, *et seq.*, with respect to whether a lobbyist, employer of a lobbyist, or lobbying firm may host a fundraiser or provide a venue for a fundraising event for a member or candidate for the Tennessee General Assembly.

### **INTRODUCTION**

The following Advisory Opinion is in response to a written inquiry from Representative Glen Casada as to whether certain conduct is permitted under the Comprehensive Governmental Ethics Reform Act of 2006 (the “Act”).

Representative Casada poses the following questions:

1. Does the Act allow a lobbyist, employer of a lobbyist, or lobbying firm to host a fundraiser for a member of, or candidate for, the Tennessee General Assembly?
2. Does the Act allow a lobbyist, employer of a lobbyist, or lobbying firm provide to the legislator or candidate a venue for holding a fundraising event?

### **ANSWER**

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

1. A. The Act does not allow a lobbyist to make a “contribution,” as defined by law, including an in-kind contribution, to or on behalf of a member of the General Assembly who is running for a state office, or a candidate for the Tennessee General Assembly. However, very limited activity is permitted as being outside the statutory definition of “contribution.”

B. The Act does not allow an employer of a lobbyist, including a multicandidate political campaign committee controlled by an employer of a lobbyist, to make any contribution to a candidate for the General Assembly during any regular or extraordinary session of the General Assembly. An employer/committee is allowed to make contributions outside of a session and under other circumstances described below.

C. A lobbying firm is not an employer of a lobbyist. Therefore, the aforementioned restrictions on an employer of a lobbyist do not apply to a lobbying firm.

2. A. Generally, providing a venue is an in-kind contribution governed by the general restrictions and limits upon contributions. An exception is the provision of a lobbyist’s own home as a venue.

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B. When the General Assembly is not in session, employers of lobbyists are not prohibited from making campaign contributions, including making an in-kind contribution by providing a venue for a fundraiser.

C. A lobbying firm is not an employer of a lobbyist. Therefore, the aforementioned restrictions on an employer of a lobbyist do not apply to a lobbying firm.

**DISCUSSION**

**A. GENERAL DISCUSSION OF CAMPAIGN CONTRIBUTIONS BY LOBBYISTS AND EMPLOYERS OF LOBBYISTS**

**1. What is Prohibited CLEARER TO DIVIDE DISCUSSION INTO SUBPARTS**

This Advisory Opinion is based on the presumption that a lobbyist is not himself or herself a candidate for the General Assembly.

With regard to contributions by lobbyists, the Act contains the following restriction at T.C.A. § 3-6-304(j):

(j) No lobbyist shall offer or make any campaign contribution, 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.

Accordingly, lobbyists are prohibited from making campaign contributions at any time, to members of the General Assembly who are running for reelection to the General Assembly or other state office, and to candidates for the General Assembly.

With regard to contributions by employers of lobbyists, the Act contains the following restriction at T.C.A. § 3-6-304(i):

(i) No employer of a lobbyist or multicandidate political campaign committee controlled by an employer of a lobbyist shall make any campaign contribution to a candidate for the office of governor or member of the general assembly during any regular annual session or any extraordinary session of the general assembly.

The prohibition against employers of lobbyists and their multicandidate campaign committees is slightly different from the prohibition against lobbyists. Employers of lobbyists and their campaign committees are prohibited from contributing during a regular or extraordinary session of the General Assembly, but are not prohibited from contributing when the General Assembly is out of session. Also, they are not prohibited from contributing to a member of the General Assembly who is running for an office other than member of the General Assembly.

**2. What are “Contributions” Under Tennessee Law?**

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T.C.A. § 3-6-301(5) defines a “campaign contribution” as “any contribution as defined by § 2-10-102(4).” T.C.A. § 2-10-102(4) defines “contribution” as follows:

“Contribution” means 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. “Contribution” shall not be construed to include the following:

A. Services, including expenses provided without compensation by a candidate or individuals volunteering a portion or all of their time, on behalf of a candidate or campaign committee;

....

E. The use of real or personal property and the cost of invitations, food and beverages not exceeding one hundred dollars (\$100), voluntarily provided on an individual's residential premises for candidate related activities; or

The Act does not specifically define in-kind contributions. However, the Rules of the Registry of Election Finance, Chapter 0530-1-1-.03, define an in-kind contribution, for the purpose of campaign financial disclosure laws, as follows:

(6) An in-kind contribution is the provision of any goods or services to a candidate or political campaign committee without charge or at a charge which is less than the fair market value for such goods or services.

....

(8) Examples of in-kind contributions that are considered goods include, but are not limited to:

- (a) campaign materials, such as campaign literature, brochures, bumper stickers, campaign advertisements;
- (b) postage;
- (c) equipment and other similar supplies;
- (d) Reserved;
- (e) polling or survey data.

(9) Examples of in-kind contributions that are considered services include, but are not limited to:

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- (a) providing of paid personnel for telephone banks and distribution of campaign materials;
- (b) consulting services.

Finally, *see* the website of the Registry of Election Finance, FAQ no. 14, at [http://www.state.tn.us/tref/cand/cand\\_faq.htm#14](http://www.state.tn.us/tref/cand/cand_faq.htm#14) –

**14. What is included as a contribution for purposes of the contribution limitations?**

Campaign contributions made by cash or a written instrument, such as a check, would be subject to the contribution limitations of the law, as well as in-kind contributions. Loans may also be considered a campaign contribution and subject to the contribution limits (see below and question 15).

Clearly, an in-kind contribution is a type of campaign contribution under T.C.A. §§ 2-10-102(4) and 3-6-301(5). Therefore, by prohibiting “campaign contributions” at T.C.A. § 3-6-304(j) and (i), the Act prohibits in-kind campaign contributions.

**3. Contributions to Federal Campaigns**

With regard to both lobbyists and employers/committees, the Federal Election Campaign Act, 2 U.S.C.A. § 451, *et seq.*, preempts state law with regard to campaign contributions for federal office. Accordingly, the prohibitions contained in T.C.A. § 3-6-304(i) and (j) do not apply to contributions that are made to a member of the General Assembly if he or she is a candidate for federal office.

**B. WHAT A LOBBYIST OR EMPLOYER/COMMITTEE MAY CONTRIBUTE IN A RACE FOR STATE OFFICE**

Despite the broad statutory prohibition against contributions by lobbyists, they are permitted to make a very limited form of contribution (in the generic sense of the word).

First, a lobbyist may volunteer his or her services in support of a member of, or candidate for, the General Assembly. If all monetary or in-kind contributions are provided by a different source that is permitted to provide those monetary or in-kind contributions, a lobbyist may volunteer his or her services as a host of a fundraiser.

As an example, a lobbyist may help tend bar or prepare food for a fundraiser. Such services would be volunteer services, which are outside the definition of a “contribution.” However, a lobbyist is not permitted to pay for a bartender or caterer, as that would be a prohibited in-kind contribution.

Second, a lobbyist may provide the use of his or her home for holding a fundraiser. The lobbyist is also permitted to provide invitations, food and beverages for such an event, of a value not exceeding \$100.00.

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Third, an employer of a lobbyist is allowed to provide a venue, any other in-kind contribution, and any monetary contribution, up to the limits set forth in Title 2, T.C.A., if the General Assembly is out of session or if the member of the General Assembly is running for an office other than the General Assembly.

Based on the foregoing, a lobbyist would be permitted to hold a fundraiser at his or her home, with the costs (which would usually be more than \$100.00) being borne by an employer/committee, if all of the respective requirements governing each are met.

Finally, a lobbyist or employer/committee is allowed to provide a venue, invitations, food, beverages and other in-kind goods or services if the candidate/campaign pays fair market value. Such an arrangement is not within the definition of "contribution."

**C. CONTRIBUTIONS BY LOBBYING FIRMS**

T.C.A. § 3-6-301(16) defines a "lobbying firm" as "any firm, corporation, partnership or other business entity that regularly supplies lobbying services to others for compensation."

T.C.A. § 3-6-301(8) exempts lobbying firms from registering as an employer of any lobbyist within the firm.

A lobbying firm is not an "employer of a lobbyist" for the purposes of the Act, and a lobbying firm is otherwise not prohibited under the Act from making campaign contributions, either monetary or in-kind.

**D. CAVEATS ON EMPLOYERS OF LOBBYISTS AND LOBBYING FIRMS:**

The following caveats apply to this Advisory Opinion:

First, T.C.A. § 2-19-132(a) provides that "it is unlawful for the executive officers or other representatives of any corporation doing business within this state, to use any of the funds, moneys, or credits of the corporation for the purpose of aiding either in the election or defeat in any primary or final election, of any candidate for office, national, state, county, or municipal, or in any way contributing to the campaign fund of any political party, for any purpose whatever." An exception exists at T.C.A. § 2-19-132(b) for national political parties. Thus, the general prohibition against use of corporate funds, moneys or credits as campaign contributions would apply to employers of lobbyists and to lobbying firms.

Second, permissible types of contributions are limited as to amount by T.C.A. § 2-10-301, *et seq.*

Third, it is suggested that any interested candidate, employer of a lobbyist or lobbying firm consult the Registry of Election Finance, Attorney General's Opinions, and the laws and administrative regulations governing campaign finance in Tennessee.

Donald J. Hall, Chair

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R. Larry Brown

Thomas J. Garland

Linda Whitlow Knight, Esq.

Dianne Ferrell Neal

Benjamin S. Purser, Jr.,

Commissioners

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