

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 04-050

Legality of campaign contributions by limited partnership

QUESTIONS

1. May a limited partnership legally make a campaign contribution to a candidate for the state legislature?

2. May a limited partnership legally make a campaign contribution to a multicandidate political campaign committee?

OPINIONS

Tenn. Code Ann. § 2-19-132 does not prohibit a limited partnership from making a campaign contribution to a candidate for the General Assembly or to a multicandidate campaign committee. But no campaign contribution may be made from funds or profits of a general or limited partner that is a corporation, nor may such corporate funds be given to a multicandidate campaign committee to pay its organizational, operational, or administrative expenses for the purposes of furthering the election or defeat of a candidate or candidates. For purposes of determining compliance with contribution limits, the Registry may require partnership contributions to be attributed to the partners. The Registry could also attribute limited partnership contributions to some other person if the limited partnership is an intermediary or conduit for contributions by that person. A limited partnership organized for the sole purpose of receiving contributions or making expenditures to support or oppose any candidate for public office or measure would be subject to registration and disclosure requirements as a political campaign committee or a multicandidate political campaign committee. State law also sets separate limits on contributions of a multicandidate political campaign committee.

ANALYSIS

This opinion addresses whether a limited partnership may make a campaign contribution to a candidate to the state legislature or to a multicandidate political campaign committee. The Campaign Contribution Limits Law of 1995 establishes limits on campaign contributions. Tenn. Code Ann. §§ 2-10-301, *et seq.* Under Tenn. Code Ann. § 2-10-302(a), no “person” may make contributions to any candidate with respect to any election which in the aggregate exceed certain amounts. In the case of elections for membership in the General Assembly, the limit is one thousand

dollars (\$1,000). Tenn. Code Ann. § 2-10-302(a)(2). Subsection (b) of the statute limits contributions by a multicandidate political campaign committee to a candidate with respect to each election. The limit for an election to the Tennessee Senate is seven thousand five hundred dollars (\$7,500). Tenn. Code Ann. § 2-10-302(b)(1). The limit for an election to the Tennessee House of Representatives is five thousand dollars (\$5,000). Tenn. Code Ann. § 2-10-302(b)(2). Subsection (c) of the statute limits the aggregate amount of contributions that a candidate may accept from multicandidate political campaign committees. For candidates for election to the General Assembly, the limit is an aggregate of seventy-five thousand dollars (\$75,000).

Under Tenn. Code Ann. § 2-10-303, contributions made indirectly through a conduit or intermediary must be attributed back to the person who made the contribution. The statute provides in relevant part:

(3) All 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;

(4) All contributions made by affiliated political campaign committees shall be considered to have been made by a single committee[.]

Tenn. Code Ann. § 2-10-303 (3) & (4). Whether a contribution must be reattributed under this statute depends on specific facts and circumstances. The Registry of Election Finance has jurisdiction to enforce election finance disclosure requirements and contribution limits applicable in state elections. Tenn. Code Ann. § 2-10-205. In determining issues arising under the Campaign Contribution Limits Act of 1995, the Registry may rely on the precedents established under federal law. Tenn. Code Ann. § 2-10-309.

State law limits the use of corporate funds in connection with elections. Tenn. Code Ann. § 2-19-132(a) provides:

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.

This statute does not apply to a limited liability company. Op. Tenn. Att’y Gen. 98-053 (March 2, 1998). This Office has also concluded that the statute does not prohibit partnerships from donating funds to political campaigns. Op. Tenn. Att’y Gen. 79-454 (October 23, 1979). For the reasons discussed in those opinions, we conclude that Tenn. Code Ann. § 2-19-132 does not prohibit a limited partnership from making a campaign contribution to a candidate for the General Assembly or to a multicandidate campaign committee. But no campaign contribution may be made from funds or profits of a corporate general or limited partner. Tenn. Code Ann. § 2-19-132. This Office has also concluded that Tenn. Code Ann. § 2-19-132 prohibits the donation of corporate funds to a multicandidate political campaign committee to pay its organizational, operational, or administrative expenses for the purposes of furthering the election or defeat of a candidate or candidates for state or local office. Op. Tenn. Att’y Gen. 96-120 (September 19, 1996). Funds from a corporate general or limited partner, therefore, may not be used for this purpose.

It should also be noted that, for purposes of determining compliance with campaign limits, a contribution by a limited partnership may be attributed to the partners if the limited partnership is simply an intermediary or conduit for the partners. Tenn. Code Ann. § 2-10-303. The contribution could also be attributed to some other person if the limited partnership is an intermediary or conduit for contributions by that person. *Id.* Whether the contribution can be characterized in this way is a matter of facts and circumstances to be determined by the Registry of Election Finance. Federal Election Commission rules provide that a partnership contribution is attributed to the partners in proportion to their right to partnership distributions or as the partners agree. 11 C.F.R. § 110.1(e). The Registry of Election Finance has not promulgated similar rules with regard to contributions by limited partnerships under state law. But the Registry would be authorized to attribute partnership contributions in this manner.

Finally, a limited partnership organized primarily for the purpose of receiving contributions or making expenditures to support or oppose any candidate for public office or measure would be subject to registration and disclosure requirements as a political campaign committee or a multicandidate political campaign committee. Op. Tenn. Att’y Gen. 99-086 (April 8, 1999) (limited liability company as a political campaign committee). Contributions from multicandidate political campaign committees are subject to separate contribution limits. Tenn. Code Ann. § 2-10-302(b) (contributions to a candidate); Tenn. Code Ann. § 2-10-302(c) (aggregate limit on contributions a candidate may receive from multicandidate political campaign committees). *See also* Tenn. Code Ann. § 2-10-117 (multicandidate political campaign committees prohibited from making a contribution to a candidate within the ten days preceding an election).

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