

Ethics and Campaign Finance Reform: Tennessee's "Comprehensive Governmental Ethics and Reform Act of 2006"

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Words To Remember

"Trying to take money out of politics is like trying to
take jumping out of basketball."

- *Bill Bradley*

"Politics has become so expensive that it takes a lot
of money even to be defeated."

- *Will Rogers*

"Giving money and power to government is like
giving whiskey and car keys to teenage boys."

- *P.J. O'Rourke*

Corporate PACS: Which Law Governs?

- Federal v. 50-State System
- Governing law depends on recipient of funds
 - Federal candidate = federal law applies
 - Tennessee state or local = Tennessee law applies
 - State or local candidates/PACs/elections in other states = that state law applies

Corporate PACS: Which Law Governs?

- Some local governments have additional laws
 - The only Tennessee local government that is permitted to impose more stringent requirements is the City of Knoxville
 - Examples outside of Tennessee include Dallas and Atlanta

In Tennessee: Corporate PACs

- Establishing the PAC
 - Required before you can raise or solicit funds
 - A PAC effectively required whenever two or more individuals want to raise or spend money in a coordinated way to support or oppose a candidate/measure

Establishing Tennessee Corporate PACs

- Appoint a Treasurer
 - Most important position
 - Personal liability
 - Recent change under new law: PACs now are required to have at least one (1) officer in addition to treasurer
 - Consider appointing an Assistant Treasurer
 - Recent change under new law: PACs are now required to certify names/address of all officers

Establishing Tennessee Corporate PACs

- Open a Bank Account
 - Dedicated exclusively to PAC
 - Bank account can be interest-bearing; however, tax consequences can arise - political organizations with taxable income over \$100 per year must file an annual income tax return

Registering Tennessee Corporate PACs

- Where to file the Appointment of Treasurer form
 - With Registry of Election Finance:
PACs giving to candidates for state office/state elections, including governor, DA public defender, any state appellate level judge
 - With County Election Commission:
PACs giving to candidates for local office/local election (includes all other judges)
 - With Both:
PACs making contributions at both the state and local level, including the state House and Senate

Registering Tennessee Corporate PACs

- PACs pay \$75 to the Registry at the time of registration (annually)
- Recent change under new law: Registry is required to set a new registration fee; likely to increase
- Once forms are filed and fee is paid, PAC is fully authorized to make or accept contributions

How Much Can Individuals Contribute to a Tennessee PAC?

- Until 2006, individual contributions to PACs were unlimited
- Recent change under new law: imposes two-year aggregate contribution limits for individuals:
 - \$40,000 every two (2) years to all state/local candidates
 - \$61,400 every two (2) years to all Tennessee PACs
 - Total aggregate limit for individuals = \$101,400, which will be indexed for inflation every two years
- Change makes Tennessee consistent with federal law, which imposes identical limits for individuals

How Much Can Tennessee PACs Contribute?

- *No change in PAC contribution limits*
- Statewide candidates (e.g., governor, state appellate-level judges) = \$7,500 per election
 - No more than 50% of all contributions accepted by statewide candidates can come from PACs, per election
- State Senate candidates = \$7,500 per election
- All other state/local candidates = \$5,000 per election
 - State senate/all other state/local candidates can receive no more than \$75,000 in aggregate PAC contributions per election

Prohibited Contributors to Tennessee PACs:

- Corporations (exception: LLCs, LLPs, and PCs that are taxed as partnerships, and not as corporations)
- Foreign Nationals
- Federally-chartered banks and corporations
- Anyone in name of another person

Other PAC Contribution Limitations:

- PACs may not make contribution during certain periods:
 - During regular session of General Assembly
 - Recent change under new law: new law expands the “blackout” period to including any “extraordinary session” of the General Assembly
 - No contribution to any state/local candidate between 10 days before election and election day

Other PAC Contribution Limitations:

- PACs are not permitted to make cash contributions
- Recent change under new law: Permissible cash contributions from individuals limited to \$50 per election
- Loan: If from PAC, loans are limited to normal contribution limits
- In-kind contributions: Cannot come from a corporation; must be valued at fair market value
 - * Discounts = in-kind contributions

Other PAC Contribution Limitations:

- Best Practices in Raising PAC Money:
 - Send acknowledgement, with date and amount
 - Deposit contributions within 10 days
- Best Practices in Spending PAC Money:
 - Use checks, including memo section to describe purpose
 - Pay operating/legal expense through PAC
 - Tennessee differs from federal law, which permits “connected organization” to pay for administration
 - Itemize purchases and keep receipts; if use credit card, have one dedicated to PAC

Tennessee Registry of Election Finance: What Is It?

- Revised structure under new law
- Six (6) Member Board
 - 2 Members Appointed by Governor
 - One Democrat - Nominated by state executive committee
 - One Republican - Nominated by state executive committee
 - 4 Members Appointed by General Assembly
 - One appointed from each party caucus in the House and Senate
 - Recent change under new law: members of Registry now required to complete a “training program” conducted by the Attorney General’s office
- Four (4) staff members
 - Likely to increase as Registry’s responsibilities increase

Tennessee Registry of Election Finance What It Does:

- Administers campaign finance statutes
 - Candidates
 - PACs
 - Single-Measure Committees
- Recent change under new law: Registry now required to conduct random "audits" of candidate and campaign committee
- Recent change under new law: Registry now to issue advisory opinions and post on website
- Administers lobbyist disclosure statutes (e.g. registration, activity reports)
- Administers conflict of interest statutes for state officials (e.g. governor, state legislators)

Tennessee Registry of Election Finance

- Audit Requirements Under New Law:
 - *Does Not Apply to Multicandidate PACs*
 - Requires Registry to "audit" randomly two percent (2%) of all General Assembly candidates per election cycle
 - Also required to audit any candidate for governor who receives ten percent (10%) of vote
 - Also required to audit one candidate from each level of state appellate courts
 - Candidates required to maintain all records for two (2) years to aid audit process
 - Audit results are considered confidential "working papers;" not subject to open records law
 - New law gives Registry subpoena power to aid in audit process

Tennessee Registry of Election Finance Reporting Periods - PACS

- Quarterly Reports
 - January 1 - March 31
 - April 1 - June 30
 - July 1 - September 30
 - October 1 - December 31
- Due on the 10th of the month following the end of quarter

Tennessee Registry of Election Finance Reporting Periods - PACS

- Exception
 - Due date falls on weekend - Report is due on next business day
- A report is considered "filed" the day it is mailed via certified mail
- Under new law, PAC reports are to be posted by Registry on the Internet "as soon as practicable"

Tennessee Registry of Election Finance Reporting Content

- Contributions totaling over \$100 from a single source in a period
 - Full Name of Contributor
 - Complete Address of Contributor
 - Date of Contribution
 - Amount of Contribution
 - Recent change under new law: PACs are now required to gather contributor's occupation and employer information, which is consistent with federal law
- Expenditure totaling over \$100 to a single payee in a period
 - Full Name of Payee
 - Complete Address of Payee

Tennessee Registry of Election Finance Reporting Content

- Amount of Expenditure
- Purpose of Expenditure
- Contributions totaling \$100 or less from a single source in a period
 - May Be Totaled And Reported As A Single Item
- Expenditures totaling \$100 or less to a single payee in a period
 - May Be Grouped And Totaled By Category And Reported
- Loans
- Obligations

Tennessee Registry of Election Finance Penalties and Sanctions

- Penalties
 - Class One
 - 30 Day Or Less Late
 - Maximum Penalty \$25/day up to \$750
 - Class Two
 - Over 30 Days Late
 - Maximum Penalty up to \$10,000
 - Contribution Limit Violations
 - Maximum Penalty \$10,000 or 115% of excess amount (whichever is greater)
- Sanctions
 - PAC is disqualified from accepting or making contributions

Tennessee Registry of Election Finance Appeals

- Reconsiderations Before Registry
 - Must Be Requested Within 14 Days of Date Order Was Issued
 - Sworn Statement Reconsideration
 - Statement Must Include New Information
 - Personal Appearance Reconsideration
 - If You Fail To Appear For Hearing - Request Denied
- U.A.P.A. Hearing
 - Must File a Petition With Registry Requesting
- Orders Are Final After 30 Days

Tennessee Registry of Election Finance Getting Forms and Information

- Forms
 - Internet - www.state.tn.us/tref
 - Telephone - (615) 741-7959
 - E-mail - registry.info@state.tn.us
 - Office - 404 James Robertson Parkway, Suite 1614
 - County Election Committee
- Information
 - FAQs, Statutes, Rules, Filing Dates
 - Internet - www.state.tn.us/tref
 - Question
 - Telephone - (615) 741-7959
 - E-mail - registry.info@state.tn.us