



## **DELETE THE LOGO – WE HAVE NOT USED THAT ON ADVISORY OPINIONS.**

### **ADVISORY OPINION 07-03**

Interpretation of § T.C.A. 3-6-304(j)  
with respect to whether a lobbyist  
may sign campaign contribution  
checks to gubernatorial or legislative  
candidates in her capacity as the  
treasurer of a political action committee.

#### **INTRODUCTION:**

The following Advisory Opinion is written in response to a request from Ms. Marylee A. Booth of the Tennessee Oil Marketers Association (“TOMA”) with regard to whether a lobbyist who is the Treasurer of a political action committee (“PAC”) may sign campaign contribution checks from the PAC to legislative officials and candidates.

Ms. Booth poses the following scenario: TOMA is a statewide trade association which is registered as an employer of a lobbyist. TOMA is governed by a Board of Directors. Ms. Booth is TOMA’s Executive Director and is registered as its in-house lobbyist. She also supervises the work of TOMA’s contract lobbyists. Additionally, TOMA has a PAC, the Tennessee Oil Marketers Political Action Committee (“TOMPAC”), which is governed by a Board of Trustees that is separate from TOMA’s Board of Director. Ms. Booth serves as TOMPAC’s Secretary and Treasurer and in that capacity signs checks distributing TOMPAC contributions to candidates.

Contributors to TOMPAC may request that their contribution be earmarked for the contributor’s chosen candidate. Unless the contributor makes such a specific request, the Trustees of the PAC determine the distribution of the contributions. Ms. Booth may provide the Trustees advice and information about a contribution to a candidate, but the Trustees make the final decision regarding the distribution of contributions.

#### **ANSWER:**

In response to the above question, the Tennessee Ethics Commission (“Commission”) concludes that Ms. Booth, in signing checks as the Treasurer of a PAC, is not making a prohibited campaign contribution.

#### **DISCUSSION:**

May a lobbyist, in her capacity as the Treasurer of a political action committee and not in her individual capacity, sign campaign contribution checks to gubernatorial or legislative candidates?

T.C.A. § 3-6-304(j) states:

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No lobbyist shall offer or make any campaign contribution, including 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, a lobbyist is prohibited from making campaign contributions.

A political action committee, or probably more correctly, a "multicandidate political campaign committee" as defined in T.C.A. § 2-10-102(9) and (12), is an entity created by state law. By definition, it consists of two or more individuals. It has registration, disclosure and reporting requirements. See T.C.A. § 2-10-105. It must have a Treasurer, and at least one officer besides a Treasurer, and all officers must be disclosed. Tenn. Code Ann. § 2-10-105(e). Once a committee receives a contribution, the money belongs, in the eyes of the law, to the committee; it is no longer the property of the person or entity that contributed it. When a committee makes a distribution, it is legally the committee's contribution, not a contribution by the entities or individuals who collectively contributed to the committee.

The law has a long history of recognizing the separateness between an individual and an entity. An individual may be the sole shareholder of a closely-held corporation and, as long as proper formalities are observed, the individual and the shareholder are legally separate.

The prohibition in T.C.A. § 3-6-304(j) applies to lobbyists in their individual capacities. The fact that the Ethics Act recognizes the distinction between lobbyists on the one hand, and employers of lobbyists and multicandidate campaign committees on the other hand, is underscored by the fact that T.C.S. § 3-6-304(i) applies to employers and multicandidate campaign committees.

When a person is acting in other than his or her individual capacity, i.e., is acting as a member, Treasurer or other officer, of a multicandidate political campaign committee, the prohibition in T.C.A. § 3-6-304(j) does not apply.

The Commission is mindful of Tennessee Attorney General's Opinion 06-025, a copy of which is attached hereto as Exhibit A.

Thomas J. Garland,  
Chair

R. Larry Brown  
Donald J. Hall  
Linda Whitlow Knight, Esq.  
Dianne Ferrell Neal  
Benjamin S. Purser, Jr.  
Commissioners

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