

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

April 7, 2006

Opinion No. 06-064

Banning Lobbyist Contributions to Committee Controlled by House or Senate Caucus

**QUESTION**

House Bill 2693/Senate Bill 2756 would amend 2006 Tenn. Pub. Acts Ch. 1 (Ex. Sess.), the “Ethics Act.” The bill would ban a lobbyist from making a campaign contribution to any political campaign committees controlled by a caucus established by members of either House of the General Assembly. Is this bill constitutional?

**OPINION**

In Op. Tenn. Att’y Gen. 06-025 (February 6, 2006), this Office concluded that a court would probably find a ban on lobbyists’ contributions to state officials or candidates to be unconstitutional because it is not narrowly tailored to further a compelling state interest. For the same reasons, we think a court would conclude that the proposed extension of the ban to include contributions to a political committee controlled by a House or Senate caucus is unconstitutional because it is not narrowly tailored to further a compelling state interest. In addition, the ban could also be found unconstitutional because it applies to any committee, regardless of whether that committee makes contributions to state incumbents or confines its contributions to state candidates and local candidates and incumbent officers.

**ANALYSIS**

This request concerns a bill that would amend 2006 Tenn. Pub. Acts Ch. 1 (Ex. Sess.), the “Ethics Act.” The Ethics Act rewrites the statutory scheme governing lobbyists. The new Tenn. Code Ann. § 3-6-304 became effective when the Ethics Act became law. 2006 Tenn. Pub. Acts Ch. 1 (Ex. Sess.), § 54. The new Tenn. Code Ann. § 3-6-304(j) provides:

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.

2006 Tenn. Pub. Acts Ch. 1, § 35, § 3-6-304(j). The proposed bill would amend the new § 3-6-304(j) by adding the following sentence:

No lobbyist shall offer or make any campaign contribution to any political campaign committees controlled by a caucus established by members of either house of the General Assembly.

Under the new definitions to the Ethics Act, which are not yet effective, the term “campaign contribution” means “any contribution as defined by § 2-10-102(4).” New Tenn. Code Ann. § 3-6-301(5). Because the Ethics Act did not amend this statutory definition, we assume the term “campaign contribution” under portions of the Ethics Act now in effect is also defined under Tenn. Code Ann. § 2-10-102(4). Under that section, “contribution” means money or other thing of value “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.” Under Tenn. Code Ann. § 2-10-102(12), “political campaign committee” means:

- (A) A combination of two (2) or more individuals, including any political party governing body, whether state or local, making expenditures, to support or oppose any candidate for public office or measure, but does not include a voter registration program;
- (B) Any corporation or any other organization making expenditures, except as provided in subdivision (4), to support or oppose a measure; or
- (C) Any committee, club, association or other group of persons which receives contributions or makes expenditures to support or oppose any candidate for public office or measure during a calendar quarter in an aggregate amount exceeding two hundred fifty dollars (\$250).

We assume that the purpose of HB 2693/SB 2756 is to prevent lobbyists from evading the ban on campaign contributions under new Tenn. Code Ann. § 3-6-304(j). This Office concluded that that ban is probably unconstitutional because it is not narrowly tailored to further a compelling state interest. *Op. Tenn. Att’y Gen. 06-025* (February 6, 2006). In that opinion, we found the ban problematic for two reasons. First, it bans contributions to candidates, who are not in a position to influence legislation. In *Emison v. Catalano*, 951 F.Supp. 714 (E.D. Tenn. 1996), the United States District Court for the Eastern District of Tennessee found that a ban on campaign contributions during a legislative session was unconstitutional to the extent it applied to non-incumbent candidates for the legislature. Second, it applies to any lobbyist who receives any compensation at all for influencing state legislative or administrative action. For this reason, the ban is distinguishable from bans upheld by other courts. *Institute of Governmental Advocates v. Fair Political Practices Commission*, 164 F.Supp.2d 1183 (E.D. Cal. 2001); *State v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska 1999), *cert. denied*, 528 U.S. 1153, 120 S.Ct. 1156, 145 L.Ed.2d 1069 (2000).

For the same reasons, we think a court would conclude that the proposed extension of the ban to include contributions to a political committee controlled by a House or Senate caucus is unconstitutional because it is not narrowly tailored to further a compelling state interest. The proposed bill would ban any contributions to such a committee, regardless of whether that

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committee supports incumbents for state office, or is confined to candidates for state office or to incumbents and candidates for local office. Further, it would apply to any lobbyist who receives any compensation to influence state legislative or administrative action.

PAUL G. SUMMERS  
Attorney General

MICHAEL E. MOORE  
Solicitor General

ANN LOUISE VIX  
Senior Counsel

Requested by:

Honorable Bill Dunn  
State Representative  
103 War Memorial Building  
Nashville, TN 37243