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P.O. BOX 6486, ANNAPOLIS, MD 21401-0486 PHONE (410) 269-2840

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MARYLAND STATE BOARD OF ELECTIONS

Issue Date: December 19, 2013

FUNDRAISING DURING THE SESSION

Election Law Article

Title 13 – Campaign Finance

Subtitle 2 – Campaign Finance Organization and Activity

Part VI – Contributions – Prohibitions

Section 13-235

The Maryland State Board of Elections issues this guidance for publication and inclusion in the Summary Guide to clarify activities by covered officials and political committees during legislative session fundraising prohibition.

Intent of the Law

The purpose of Section 13-235 of the Election Law Article is to curtail corruption or the appearance of corruption by eliminating financial quid pro quo contributions in return for a vote on legislation during the regular session of the General Assembly. See Joint Committee on Legislative Ethics Advisory Opinion #60 (March 13, 1989).

General Provisions¹

The law generally prohibits the following activities by the Governor, Lieutenant Governor, Attorney General, Comptroller, and members of the General Assembly (covered officials):

- Receiving a contribution;
- Conducting a fundraising event;
- Soliciting or selling a ticket to a fundraising event; or
- Depositing or using any contribution of money that was not deposited prior to the legislative session.

¹ There are two exceptions to the general rule. First, filed candidates for elective local government or federal office, including election to a national political party presidential nominating convention are not prohibited from fund raising activity. Second, gubernatorial candidates who have applied for and accepted a public contribution from the Fair Campaign Financing Fund may solicit and accept eligible private contributions and deposit any disbursements from the Fund during the legislative session. See, Election Law Article, Section 13-235(c) and (d).

The prohibition extends to persons acting on behalf of these covered officials, such as:

- The responsible officers of the authorized candidate campaign committee of the covered officials;
- Any other authorized individuals or agents of the covered officials, including the campaign manager, paid staff, and paid vendors.
- A political committee of the covered officials; and
- Any other political committees organized under Title 13 of the Election Law Article that operate in coordination with the covered official.

Application of the Law

- a. *Authorized Candidate Committee of a Covered Official* - The authorized candidate committees of a covered official is prohibited from fundraising during session.
- b. *Slate that includes a Covered Official* – By definition, a slate is a political committee that is formed by two or more candidates to conduct and pay for JOINT campaign activities to promote the candidacies of all of its members. Therefore, a slate that includes a covered official is prohibited from fundraising during session.
- c. *Legislative Party Caucus Committee* - A legislative party caucus committee is prohibited from fundraising during session since it is established for the purpose of electing candidates that include members of the General Assembly, who are covered officials.
- d. *Central Committees* – A state or local central committee is not prohibited from fundraising during session. While a central committee often works closely and coordinates some of its expenditures with candidates during an election, generally the central committees operates independently from candidates and authorized candidate campaign committees. Although the statute does not prohibit state or local central committees from engaging in campaign finance activities during the legislative session, it does prohibit a covered official, and the official’s authorized committees and agents from receiving contributions from or coordinating fundraising or expenditures with a state or local central committee during the legislative session.
- e. *Authorized Candidate Committee of a Non-Covered Individual* – Generally, an authorized candidate committee of a non-covered individual may raise campaign funds during the legislative session. This is true even if the candidate is a member of a slate or is affiliated with a legislative party caucus committee that includes a covered official. The authorized candidate campaign committee is formed and organized with sole purpose to support the non-covered individual and must make disbursements accordingly.
- f. *Political committee that operates in cooperation and coordination with a committee of a Covered Official* –Any political committee that operates in cooperation or coordination with a covered official’s campaign committee during the legislative session is prohibited from fundraising during the legislative session. Examples of cooperation and coordination include acting at the request

or suggestion of the covered official, political committee of the covered official, or an agent of the covered official; receiving campaign material, campaign strategies, campaign information that is not publicly disclosed or publicly available from the covered officials or persons on behalf of the covered official

- g. *Contributions by a Covered Official during Session are Permissible* - An official covered by the law may contribute his or her own campaign funds to any candidate who is not prohibited from receiving contributions during the legislative session.

Governor and Lieutenant Governor

Section 13-235 applies to covered officials that are candidates for Governor and Lieutenant Governor in the same manner as described above. Accordingly, if one member of the gubernatorial ticket is a covered official, that official's authorized candidate committee may not fundraise during session. Further, if ticket has established a slate, the slate would also be prohibited from fundraising during session. And, the prohibition on fundraising would not apply to the non-covered candidate's committee, unless that committee is operated in cooperation and coordination with the covered official.

There are certain unique aspects of candidacy for Governor and Lieutenant Governor that suggest that their candidate committees will be operated in cooperation and coordination. For example, they are the only candidates who are jointly placed on the ballot and run as a unit and a vote cast for the Governor is a vote cast for the Lieutenant Governor and vice versa.

However, Maryland campaign finance law clearly considers them separate candidates. Each must pay a filing fee to run for office and each must establish his or her own candidate committee as a prerequisite to filing a certificate of candidacy. In addition, contributors may make a contribution to both the candidates without violating the contribution limits for campaign finance entities formed to support a candidate. *See* Election Law Article, Section 13-226(d).

If the candidate not covered by Section 13-235 does not cooperate or coordinate with the covered official during the restricted period, then the candidate not covered by the law may raise funds to deposit in his or her authorized candidate campaign committee. Fundraising is candidate-specific and not for a particular office. The purpose of the authorized candidate committee is to promote that individual's candidacy. Only the candidate not covered by the law and the responsible officers of the authorized candidate campaign committee has complete control over its campaign funds and how they are to be disbursed. The gubernatorial ticket does not have access to nor has a legal right to those funds. Furthermore, the candidate not covered by the law may, in the future, seek another office and should not be precluded from fundraising due to an affiliation in the current election cycle. The burden for independence rests with the candidate not covered by the law.

Recurring Contributions

In 2013, the prohibition regarding depositing funds into the account of a political committee of a covered official during the legislative session was amended by House Bill 1499, Chapter 419. An electronic contribution initiated prior to the start of the legislative session may now be deposited after the session begins. However, this minor exception to the deposit prohibition does not authorize the receipt or deposit of contributions of a recurring nature initiated during the legislative session. Electronic contributions initiated during the legislative session to a covered official, regardless of whether it was recurring or not, are not permitted.

Examples of Improper Activity During the Legislative Session

The following are examples of improper activity during the legislative session that may be subject to a sanction by the State Board of Elections:

1. An official covered by the law, the authorized candidate committee of that official or any person acting on behalf of that official fundraises, solicits or receives a contribution.
2. A slate committee that includes an official covered by the law fundraises, solicits or receives a contribution.
3. A political committee fundraises, solicits or receives contributions or makes expenditures during the legislative session and operates in coordination with or on behalf of the covered official, or the authorized committees or agents of the covered official.
4. A covered official, persons acting on behalf of the official or a political committee of the official, suggests, requests, initiates, creates, produces, distributes, or pays for a fundraising event.
5. A covered official, persons acting on behalf of the official or a political committee of the official are materially involved in decisions regarding the content, time, intended audience, means or mode of a fundraising event during legislative session.
6. A political committee conducting any fund raising activity shares the same responsible officers with the campaign finance entities of the covered official.
7. A covered official or persons acting on behalf of the official designs any scheme or device with potential contributors to evade the prohibition through the use of a political committee.

Penalty

The authorized candidate campaign committee of the official covered by Section 13-235 is liable for any civil penalty for a violation of the law. The civil penalty is equal to the sum of \$1,000 plus the amount of the illegal contribution. In addition, the political committee that receives the contribution in question must refund the contribution to the contributor.