

BEFORE THE MISSOURI ETHIC COMMISSION

**CAMPAIGN FINANCE
COMPLAINT**

Date of Complaint:

Name of Complainant:

Address of Complainant:

Phone Number of Complainant:

Committees and Individuals Against
Whom Complaint is Brought:

Ashcroft for Missouri and its Treasurer
Gene McNary and its Deputy Treasurer
Kalena Bruce
P. O. Box 1554
Jefferson City, MO 65102

Committee for Liberty and its Treasurer
Mark Milton
11004 Manchester Road
St. Louis, MO 63122

Office Sought:

Governor

Nature of Complaint:

Campaign Finance Disclosure
Requirements In Chapter 130, Revised
Statutes of Missouri And Article VIII,
Section 23 of The Missouri Constitution

The matters alleged in this Complaint are not the subject of civil or criminal litigation, to the knowledge of the Complainant.

I. INTRODUCTION

This Complaint brings to the attention of the Missouri Ethics Commission an obvious and indefensible violation of Missouri's campaign finance laws. It involves a coordinated mass mailing communication between a candidate committee, Ashcroft for Missouri and a continuing committee, the Committee for Liberty. Ashcroft for Missouri received an over-limit unlawful in-kind contribution from Committee for Liberty. Indeed, this violation is so plain that this Commission need do little or no investigating. The violation is obvious on the face of the mass mailing and the 2024 first quarter reports of the two Committees.

II. BASIC FACTS

I received the letter attached hereto as Exhibit 1 (hereinafter the "Letter"). It states it was Paid For By Ashcroft for Missouri, Gene McNary, Treasurer, and Committee for Liberty, Mark Milton, Treasurer.

A review of MEC filings reveals that Ashcroft for Missouri is the candidate committee for John "Jay" Ashcroft. According to the Secretary of State's website, John R. "Jay" Ashcroft is a candidate for Governor in the Republican primary on August 6, 2024. According to MEC records, Committee for Liberty is a continuing committee. As is clear from Exhibit 1, the Letter is jointly paid for by Ashcroft for Missouri and Committee for Liberty. The Letter frequently mentions Mike Kehoe. According to the Secretary of State's website, Mike Kehoe is a candidate for Governor in the Republican Primary on August 6, 2024. The Letter also mentions Bill Eigel. According to the Secretary of State's website, Bill Eigel is a candidate for Governor in the Republican Primary on August 6, 2024. As will be explained below, the Letter is an unlawful over-the-limit in-kind contribution from the Committee for Liberty to Ashcroft for Missouri.

III. CAMPAIGN FINANCE REPORTS

It is apparent from the first quarter reports of both committees that the Committee for Liberty made an overlimit contribution to Ashcroft for Missouri. Ashcroft for Missouri shows an expenditure on 2/12/2024 for "Campaign Materials" to Roe Strategic LLC in the amount of \$5,244.84. Committee for Liberty shows an expenditure on 1/26/2024 for "Fundraising Mailer & Postage" in the EXACT SAME AMOUNT OF \$5,244.84.

These identical expenditures to the same vendor in the same amount are obviously not a coincidence. The Letter states that it is paid for by the two committees. Obviously, they split the cost of the Letter or 50-50. As described below, the Committee for Liberty has made an overlimit contribution o Ashcroft for Missouri.

IV. THE LETTER IS AN OVER-LIMIT IN-KIND CONTRIBUTION FROM COMMITTEE FOR LIBERTY TO ASHCROFT FOR MISSOURI

A. Introduction

Missouri's campaign finance structure, as it applies to non-legislative elections, has two levels: a constitutional scheme created in Article VIII, Section 23 and a statutory scheme created in Chapter 130, RSMo. Where there is any conflict between the two, the provisions of Article VIII, Section 23 will control. *State ex rel. Blades v. Wabash R. Co.*, 158 S.W. 26, 28 (Mo. 1913). However, the two levels are nearly identical.

B. Expenditures

Both Article VIII, Section 23 and Chapter 130 define and address expenditures. Under both schemes, which use identical definitions, there are no definitions for independent expenditures,¹ instead expenditures are defined and the absence of an element of the expenditure makes it outside of the scope of independent expenditures. Article VIII, Section 23.7(12) and Section 130.011(16) define "expenditure" as follows:

"Expenditure", a payment, advance, conveyance, deposit, donation or contribution of money or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office or the qualification or passage of any ballot measure or for the support of any committee which in turn supports or opposes any candidate or ballot measure or for the purpose of paying a previously incurred campaign debt or obligation of a candidate or the debts or obligations of a committee; a payment, or an agreement or promise to pay, money or anything of value, including a candidate's own money or property, for the purchase of goods, services, property, facilities or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office or the qualification or passage of any ballot measure or for the support of any committee which in turn supports or opposes any candidate or ballot measure or for the purpose of paying a previously incurred campaign debt or obligation of a candidate or the debts or obligations

¹ See MEC Advisory Opinion 1996.01.110 at page 2 ("The term 'independent expenditure' is not a term that is defined by statute. The Missouri Ethics Commission will use normal methods of construction to interpret what is an independent expenditure and will make this determination on a case-by-case basis.")

of a committee. An expenditure of anything of value shall be deemed to have a money value equivalent to the fair market value.

The definition makes it clear that when an entity expends funds or resources, it is an expenditure. The term “independent expenditure” arises from the interaction between the expenditures and the definition of contributions.

C. Contributions

Again, both the constitutional and statutory provisions use the identical language to define a contribution. Article VIII, Section 23.7 (7) and Section 130.011(12), RSMo, define “contribution” as follows:

“Contribution”, a payment, gift, loan, advance, deposit, or donation of money or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office or the qualification, passage or defeat of any ballot measure, or for the support of any committee supporting or opposing candidates or ballot measures or for paying debts or obligations of any candidate or committee previously incurred for the above purposes. A contribution of anything of value shall be deemed to have a money value equivalent to the fair market value.

Article VIII, Section 23.7(12) and Section 130.011(16) make it clear that “contributions” are not just monetary contributions but also the transmission of something else (non-money) of value to the committee, (“in-kind contributions.”) Where such a transmission of value to a committee occurs, the restrictions on value for a gubernatorial race apply and the transmission of value is an in-kind contribution. That contribution is required to be reported to the MEC, as is required for any contribution of money. In-kind contributions are not illegal *per se*, but could quickly exceed the per-election maximum.

D. The Letter is For the Purpose of Supporting Candidate Ashcroft and Opposing Candidates Kehoe and Eigel

As noted above, the key is the definition of “contribution.” The Letter, by its own language, was paid for in part by Committee for Liberty. The text of the Letter makes clear it meets the statutory and constitutional definition of contribution, which focuses on the “purpose of supporting or opposing the nomination or election of any candidate for public office.”

The Letter plainly and egregiously advocates for the election of candidate Ashcroft and the defeat of candidates Kehoe and Eigel, as follows:

- The Letter is on a letterhead “ASHCROFT GOVERNOR.” The font of the letterhead is identical to the font on a website advocating for the election of candidate Ashcroft called ashcroftformissouri.com.
- The Letter seven times says disparaging things about candidate Kehoe, including, “Who needs a Democrat in the Governor’s mansion when you have Mike Kehoe?”
- The Letter references “political gadfly Bill Eigel.”
- The Letter says, “I am the conservative choice for Missouri.”
- The Letter says, “And as Governor,” then lists five specific campaign promises.
- The Letter is signed by candidate Ashcroft.

Accordingly, it is quite plain that this document is for the purpose of supporting one candidate and opposing two others.

E. The Letter is Not a Lawful Fundraising Communication

In advisory opinions, the Commission has discussed the ability of candidates, under specified circumstances, to engage in fundraising activities jointly with a continuing committee. *See Advisory Opinion 2017.09.CF018 (summarizing prior opinions)*. Those opinions say that nothing in Chapter 130 or the Missouri Constitution prohibits a candidate from appearing at a fundraising event or fundraising on behalf of a continuing committee. *Advisory Opinion 2017.09.CF018, at 4*. But that analysis assumes the communication is actually a fundraising document, not a communication “supporting or opposing the nomination or election of any candidate for public office.” *Mo. Const., Art. VIII, § 23(7); Section 130.011(12), RSMo*. When the communication is, in fact, an advocacy piece for and against candidates, it is a “contribution” under the constitutional and statutory definitions.

When one views the Letter in its totality, it is quite plain it is a piece advocating for candidate Ashcroft and against candidates Kehoe and Eigel. On page 4 of this Complaint, several reasons are discussed and quoted. In addition to those, the purpose of the Letter is revealed by the volume of discussion of electing candidate, not fundraising. Attached to this Complaint is an annotated version of Exhibit 1, with fundraising language highlighted. The Letter contains 53 lines of text, only 15 mention fundraising in any way. Attached as Exhibit 2 is a copy of that Letter with the fundraising text highlighted. Other than three lines, the fundraising text is all at the end of the letter. Quite plainly, the Letter is an advocacy piece, poorly masquerading as a fundraising

letter. But this Commission should not fall for the disguise – the Letter is, in fact, a contribution from Committee for Liberty to Ashcroft for Missouri.

F. Missourians for Ashcroft Received an Unlawful Overlimit and Unreported Contribution

Because the Letter is not, in fact, a fundraising document, but rather a communication supporting one candidate and opposing two others, the portion of the expense paid for by Committee for Liberty is an in-kind contribution from Committee for Liberty to Ashcroft for Missouri. As noted above, the two Committees made identical expenditures of \$5,244.84 to the same mail vendor a few days apart. Quite plainly, the cost of the Letter was split 50-50.

The maximum contribution that a political action committee can make to a candidate committee is \$2,825 per election. The \$5,244.84 in-kind contribution is over the limit for the August primary. So, the contribution is unlawfully over the limit. In addition, neither committee reported the contribution. Committee for Liberty should have reported a contribution of \$5,244.84 to Ashcroft for Missouri. Equally, Ashcroft for Missouri should have reported receipt of that contribution. Of course, doing so would have revealed the over-limit contribution.

V. **FEDERAL LAW**

In Advisory Opinions, this Commission has sometimes cited federal law on the issue of coordinated activity. *See, e.g., Advisory Opinion 2017.09.CF.018 at 3*). Federal law is more detailed on the issue of coordinated communications than is Missouri law. “FEC regulations provide for a three-pronged test to determine whether a communication is coordinated. A communication must satisfy all three prongs of the test to be considered a coordinated communication (and, as a result, count against contribution limits).”

<https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/coordinated-communications/>

The first prong is the so-called payment prong. The payment prong is satisfied when a communication is paid in whole or part by a person other than the candidate. *11 CFR § 109.21(a)*. In this case the payment prong is obviously met since the Letter says it was paid for by two committees: Ashcroft for Missouri and Committee for Liberty.

The second prong is the content prong. It is satisfied when, among other things, the public communication expressly advocates the election or defeat of a clearly identified candidate for office. *11 CFR § 109.21(c)(3)*. A public communication includes a mass mailing, which the Letter was. *See 11 CFR § 100.26*. A public communication

expressly advocates the election where it uses words such as “vote,” “support,” “reject,” which in context can have no other reasonable meaning than to urge the election or defeat of a candidate. *11 CFR § 100.22(a)*. Even language such as “Nixon’s the One.” “Carter 76,” “Reagan/Bush” or “Mondale,” meet the test. *Id.* An alternative test looks at whether “taken as a whole, . . . [the communication] could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates.” *11 CFR 100.22(b)*.

As discussed above, unmistakably, the Letter meets this test, for all the following reasons:

- The Letter is on letterhead of “ASHCROFT GOVERNOR.”
- The first line of the Letter references the primary election occurring in five months.
- The Letter references a different candidate Mike Kehoe by name and in a negative manner seven times.
- The Letter calls candidate Bill Egle a “political gadfly.”
- The Letter references polling for the Governor’s race.
- The Letter states, “As Governor,” then lists five specific campaign promises.

The third prong is the conduct prong. It identifies specific conduct “whether or not there is agreement for formal collaboration.” Two specific tests under the conduct prong apply here. First is the “request or suggestion” test. It is met where another party pays for a communication at the request or suggestion of the candidate or candidate committee or the candidate or candidate committee assents to the communication. *11 CFR § 109.21(d)(1)*. Second is the “material involvement” test. It is met where a candidate or candidate committee is materially involved in decisions, among others, the content of the communication, its intended audience of, and the size or prominence of the communication. *11 CFR § 109.21(d)(2)*.

Plainly, the conduct prong is met here:

- The “ASHCROFT GOVERNOR” letterhead is used.
- The Letter is signed by candidate Ashcroft.

- The Letter repeatedly uses the word “I,” referencing candidate Ashcroft.
- The Letter is paid for in part by Ashcroft for Missouri.

VI. **CONCLUSION**

The Letter is an obviously coordinated communication. Every dime Committee for Liberty spent on it is an in-kind contribution to Ashcroft for Missouri. The identical expenditures of \$5,244.84 to the same vendor days apart prove the violation. Ashcroft for Missouri has filed false campaign finance reports and the Commission should take appropriate action.

VERIFICATION BY OATH OR AFFIRMATION

STATE OF MISSOURI)
) ss.
COUNTY OF _____)

I, _____, being duly sworn upon oath or affirmation legally administered, certify under penalty of perjury that the information contained in this Complaint is complete, true and correct, to the best of my knowledge and belief.

Complainant Signature

Subscribed and sworn to before me this _____ day of _____, 2024.

Notary Public

My Commission Expires: _____