

TENNESSEE



CAMPAIGN FINANCE AND BALLOT MEASURE GUIDE

These resources are current as of 6/2017. We do our best to periodically update these resources and welcome any comments or questions regarding new developments in the law. Please email us at advocacy@afj.org.

What's New in This Guide

The following changes/additions have been made since the previous version of this guide:

- This guide is the first iteration for Tennessee.

This guide summarizes key aspects of laws and regulations governing campaign finance on the state level. The laws discussed in this publication apply to election activities surrounding candidates for local and statewide office. It is not intended to provide legal advice or to serve as a substitute for legal advice.

In some jurisdictions, city and/or county regulations may also apply to certain political activities. Check with the appropriate local jurisdiction before undertaking any activity.

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TYPES OF TENNESSEE ORGANIZATIONS

- Political Action Committees (PACs):
 - Affiliated political campaign committee:
 - Political campaign committees established, financed, maintained, or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons. TCA § 2-10-102(1).
 - Political campaign committee:
 - Any corporation or any other organization making expenditures to support or oppose any measure. TCA § 2-10-102(12)(A); or
 - Any committee, club, corporation, 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 (\$1000). TCA § 2-10-102(12)(B).
- Multi-Candidate Committee is defined as a committee that makes expenditures to support or oppose two or more candidates for public office or two or more measures. TCA § 2-10-102(9).

CONTRIBUTION LIMITS AND SOURCE RESTRICTIONS

	To Candidates				To Committees		Single Measure
	Govern or	Other Statewide	Legislative	Municipal	PACs	Parties	
From:							
Individuals	\$4,000	\$4,000	\$1,500	\$1,500	No limit	No limit	No limit
PACs	\$11,800	\$11,800	\$11,800 (State Senate) \$7,800 (State Rep.)	\$7,800	No limit	No limit	No limit
Corporations	\$250	\$250	\$250	\$250	\$250	\$250	Legal

- Corporate contributions:
 - Since June 1, 2011, Tennessee has allowed corporations to make contributions to candidates and PACs in Tennessee. However,

corporations making campaign contributions totaling over \$250 in the aggregate to candidates in a calendar quarter must register as a PAC and file campaign financial disclosure reports.

- Contributions to PACs:
 - Contributions to PACs are unlimited.
- Total contribution limits from PACs (TCA § 2-10-302):
 - Statewide office: 50% of total contributions;
 - All elections except statewide: \$118,000
- Total contribution limits from Political Party PACs (TCA § 2-10-302):
 - Statewide office: \$393,000;
 - State Senate: \$63,300; and
 - State Rep/All other state and local offices: \$31,600.
- Legislative session fundraising blackout:
 - From the convening of the General Assembly in organizational session through the earlier of June 1 or the last day of regular session in odd numbered years and from the convening of regular legislative session to the earlier of May 15 or the conclusion of annual session in even numbered years and from the convening of an extraordinary session through the conclusion of extraordinary session, the governor or a legislator may not have a fundraiser or solicit or accept contributions for the governor or legislator's benefit or for the benefit of another legislative candidate or gubernatorial candidate, a political party legislative caucus PAC or any member of a political party legislative caucus PAC. TCA § 2-10-310(a)(1).
- PAC fundraiser blackout during legislative session:
 - From the convening of the General Assembly in organization session through the earlier of June 1 or the last day of regular session in odd numbered years and from the convening of regular legislative session to the earlier of May 15 or the conclusion of annual session in even numbered years and from the convening of an extraordinary session through the conclusion of extraordinary session, a political party PAC is prohibited from conducting a fundraiser, soliciting or accepting campaign contributions for the benefit of a legislative candidate, gubernatorial candidate, a caucus or any caucus member. TCA § 2-10-310(b).
- Lobbyist blackout during extraordinary legislative session:
 - An employer of a lobbyist or a PAC controlled by an employer of a lobbyist is prohibited from making a campaign contribution to a gubernatorial or legislative candidate during regular or extraordinary legislative session. TCA § 3-6-304.

- PAC campaign contribution blackout just prior to elections:
 - During the nine (9) day period prior to any election day, a PAC is prohibited from making a campaign contribution to a candidate for state or local public office, unless the committee is a political party PAC. TCA § 2-10-117. PACs can contribute to elected officials during this nine (9) day blackout period as long as the elected official is not up for election.

- Online contributions:
 - The above rules apply to all online contributions. Treasurers or candidates should contact their respective vendors to turn off the online contribution option during the prohibitive periods.

- What to do if a candidate receives a contribution during blackout period:
 - Should a candidate receive a campaign contribution during one of the above blackout periods, the candidate should return that contribution within sixty (60) days of receipt. TCA § 2-10-307.

- Government buildings:
 - For state employees, it is unlawful to use public buildings or facilities for meetings or preparation of campaign activity in support of any particular candidate, party or measure unless reasonably equal opportunity is provided for presentation of all sides or views, or reasonably equal access to the buildings or facilities is provided all sides. TCA § 2-19-206(b).
 - Exceptions: popularly elected officials, officials elected by the general assembly, qualified candidates for public office, members of the governor's cabinet, and members of the governor's staff are expressly excluded from the provisions of TCA § 2-19-206(b). See TCA § 2-19-201(3).

- Cash contributions:
 - Individuals may contribute \$50 in cash to any candidate or PAC. Contributions exceeding \$50 per election must be made by check, money order or other written instrument. TCA § 2-10-311.

- What are considered contributions:
 - Individuals:
 - In-kind contributions: Generally, the donation of anything of value is an in-kind contribution. This includes the donation of rent, office machines, furniture, stamps, etc. The fair market value of the donated item counts against the contribution limits. Donation of services is also considered an in-kind contribution.

- Fundraising tickets and items: The purchase of a fundraising item or ticket to a fundraiser is a contribution. The full purchase price counts as the contribution.
 - Loans: Loaning money to a candidate or political committee is a contribution, even if the individual charges interest on the loan.
 - PACs and Single Measure Campaign Committee:
 - A reportable contribution is defined as “any advance, conveyance, deposit, distribution, transfer of funds, loan, loan guaranty, personal funds of a candidate, payment, gift, pledge or subscription, of money or like thing of value and any contract, agreement, promise or other obligation...made for the purpose of influencing a measure or nomination for election or the election of any person for public office.” TCA § 2-10-102(4).
 - In-kind contributions are goods or services provided to a candidate without charge (such as the use of equipment or advertisement materials at no cost to the candidate) and must be listed separately on the campaign disclosure statement from other campaign contributions. TCA § 2-10-107(c)(1) and Rule 0530-1-1-.03(6).
- What are *not* considered contributions:
 - Individuals:
 - Volunteering: An individual may help candidates and committees by volunteering personal services. Your services are not considered contributions as long as you are not paid by anyone. (If your services are compensated by someone other than the committee itself, the payment is considered a contribution by that person to the committee.) As a volunteer, the expenses you incur volunteering are not considered contributions.
 - Home event: A fundraising party or reception is not considered a contribution as long as the cost of the invitations, food and beverages do not exceed \$100.
 - Voter registration: Nonpartisan activity designed to encourage individuals to vote or register to vote is not considered a contribution.
 - PACs and Single Measure Campaign committee:
 - Volunteer work: Services, including expenses provided without compensation by a candidate, or any individuals who volunteer a portion or all of their time on behalf of a candidate are not contributions. TCA § 2-10-102(4)(A).
 - Publicity: Not included within the meaning of contribution is any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper,

magazine, or other periodical publication, unless such facilities are owned wholly or in part or controlled by a political party, political committee or candidate. TCA § 2-10-102(4)(B).

- Voter registration efforts: Any nonpartisan activity designed to encourage individuals to vote or to register to vote is not considered a campaign contribution. TCA § 2-10-102(4)(C).
 - Internal communications: Not included within the meaning of contribution is any written, oral or electronically transmitted communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election or election of any person to public office. However, if the organization or corporation simply finances the dissemination, distribution or republication in whole or in part of campaign materials prepared by the candidate or candidate's committee, then such financing shall be considered a campaign contribution. TCA § 2-10-102(4)(D).
 - Other candidate-related activities: Not included within the meaning of contribution is the use of real or personal property and the cost of invitations, food and beverages not exceeding one hundred dollars (\$100), voluntarily provided on an individual's residential premises for candidate-related activities. TCA § 2-10-102(4)(E).
- Contributions from nonprofit organizations:
 - 501(c)(3) entities cannot support or oppose a candidate for public office.

COMMUNICATIONS

- PAC communications:
 - Publicity: Not included within the meaning of contribution is any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned wholly or in part or controlled by a political party, political committee or candidate. TCA § 2-10-102(4)(B).
- Independent Expenditures:
 - An independent expenditure is money spent for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request of, or

- suggestion of, a candidate or any agent or authorized committee of the candidate. Tenn. Comp. R. & Regs. 0530-01-03-.07.
- Independent expenditures are not considered contributions and are unlimited. An individual may spend any amount on each communication as long as the expenditure is truly independent. One may, for example, pay for an advertisement in a newspaper or on the radio urging the public to vote for the candidate one wants elected. Or one may produce and distribute posters or yard signs telling people not to vote for a candidate one opposes.
- Issue Advocacy v. Express Advocacy:
 - Tennessee does not have a statutory definition for express advocacy. However, the Tennessee Supreme Court adopted the *Buckley v. Valeo* “magic words” test for express advocacy. Express advocacy is limited to communications that contain express words of advocacy of the election or defeat of a candidate or issue such as “vote for,” “elect,” “support,” etc. *Bemis v. Pentecostal Church v. State*, 731 S.W.2d 897 (Tenn. 1987).
 - Disclaimers:
 - When a disclaimer is required:
 - Whenever any person makes an expenditure for the purpose of financing a communication that expressly advocates the election or defeat of a clearly identified candidate, as defined by § 2-10-102, or that solicits any contribution, through any broadcasting station, newspaper, magazine, outdoor advertising facility, poster, yard sign, direct mailing or any other form of general public political advertising, a disclaimer shall appear and be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of persons who paid for and, where required, who authorized the communication. Such person is not required to place the disclaimer on the front face or page of any such material, as long as a disclaimer appears within the communication, except on communications, such as billboards, that contain only a front face. TCA § 2-19-120 (emphasis added).
 - Disclaimer requirements:
 - Such communication, including any solicitation, if paid for and authorized by a candidate, an authorized committee of a candidate, or its agent shall clearly state that the communication has been paid for by the authorized political committee, in addition to the identity of the person who is the head of such committee, or the identity of the treasurer of such committee. TCA § 2-19-120(a)(1) (emphasis added).

- Such communication, including any solicitation, if authorized by a candidate, an authorized committee of a candidate or an agent thereof, but paid for by any other person, shall clearly state that the communication is paid for by such other person and is authorized by such candidate, authorized committee or agent. TCA § 2-19-120(a)(2) (emphasis added).
 - Such communication, including any solicitation, if made on behalf of or in opposition to a candidate, but paid for by any other person and not authorized by a candidate, authorized committee of a candidate or its agent, shall clearly state that the communication has been paid for by such person and is not authorized by any candidate or candidate's committee. TCA § 2-19-120(a)(3) (emphasis added).
 - For solicitations directed to the general public on behalf of a political committee which is not an authorized committee of a candidate, such solicitation shall clearly state the full name of the person who paid for the communication. TCA § 2-19-120(a)(4)(A) (emphasis added).
 - For purposes of this section, whenever a separate segregated fund solicits contributions to the fund from those persons it may solicit, such communication shall not be considered a form of general public advertising. Such advertisements shall also include the name of the printer of such advertisement, and the identity of the person who paid for the advertisement. TCA § 2-19-120(a)(4)(B) (emphasis added).
 - When Disclaimer is not required:
 - Bumper stickers, pins, buttons, pens, novelties, and similar small items upon which the disclaimer cannot be conveniently printed do not require a disclaimer.
- Electioneering Communications
 - Tennessee does not have a statutory definition for Electioneering Communications.
 - In the 2015 legislative session, there was a bill that would have defined "Electioneering communication." SB 970 (Kelsey). The bill, which did not pass, defined Electioneering communication as any broadcast, cable, or satellite television, or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:
 - (1) Clearly identifies a candidate for a state or local public office by either specifically naming the candidate, or identifying the candidate without using the candidate's name;

- (2) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within 60 days before any election for that office in the jurisdiction in which the candidate is seeking election; and
- (3) Either alone, or in combination with one or more communications identifying the candidate by the same person during the 60 days before an election, has a fair market value of \$1,000 or more.

COORDINATION

- Independent expenditures:
 - As long as expenditures have not been coordinated with a candidate or any agent or authorized committee of a candidate, they remain classified as “independent expenditures” and are not treated as “contributions.” Tenn. Comp. R. & Regs. 0530-01-03-.07.
 - What is coordination?
 - Based on information about the candidate’s plans, projects, or needs provided to the expending person by the candidate, or by the candidate’s agent(s), with a view toward having an expenditure made; or
 - Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of any authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate’s committee or agent. Tenn. Comp. R. & Regs. 0530-01-03-.07(4)(a).
 - Questions arise where one organization makes both contributions and expenditures. In this case, the Tennessee Attorney General has opined:
 - [T]he Registry’s determination that the particular expenditure was coordinated and therefor a contribution under the statute must be supported by evidence which is both substantial and material in light of the entire record . . . The evidence before the tribunal must be such relevant evidence as a reasonable mind might accept as adequate to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration.

....

[A]ny determination that an expenditure is coordinated, rather than independent, under the statute should be based on concrete factual evidence. Tenn. Op. Att’y Gen. No. 93-90 (July 24, 1996) (citations omitted).

- Thus, coordination is not illegal. However, coordination means that the independent expenditures are no longer independent and qualify as contributions.
- Taking personal/vacation time to avoid coordination:
 - Say for example that an employee of a PAC wants to coordinate with a candidate during the PAC blackout period. TCA § 2-10-117. There is nothing in the Registry's regulations or Tennessee's campaign finance laws that would prevent someone who works for an organization that provides services to candidates to take time off to volunteer for those candidates if the person chooses to do so on their own time.

REGISTRATION AND REPORTING REQUIREMENTS

- What's a contribution?
 - See Contribution Limits and Source Restrictions.
- What's an expenditure? TCA § 2-10-102(6).
 - Expenditure means a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing a measure or the nomination for election or election of any person to public office.
 - Expenditure also includes the use of campaign funds by an officeholder for the furtherance of the office of the officeholder.
- Candidates
 - State public office
 - Shall file with the registry of election finance a statement of all contributions received and expenditures made by or on behalf of such candidate. TCA § 2-10-105(a).
 - Local public office
 - Shall file with each county election commission of the county where the election is held a statement of all contributions received and all expenditures made by or on behalf of the candidate. TCA § 2-10-105(b).
 - When filed? TCA § 2-10-105(c).
 - Quarterly during an election year, within ten (10) days following the conclusion of the quarterly reports ending March 31, June 30, September 30, and January 15.
 - Also required to file pre-primary statement and pre-general election statement. The pre-primary statement shall cover the period from the last day included in the July quarterly statement through the tenth day before the primary election. The pre-primary statement is due seven (7) days before the primary election. The pre-general statement shall cover the period from the last day included in the October quarterly

statement through the tenth day before the general election. Such pre-general statement is due seven (7) days before the general election.

- PACs
 - State election PACs
 - Shall file with the registry of election finance a statement of all contributions received and expenditures made by or on behalf of such committee. TCA § 2-10-105(a).
 - Local election PACs
 - Shall file with each county election commission of the county where the election is held a statement of all contributions received and all expenditures made by or on behalf of the committee. TCA § 2-10-105(b).
 - When filed? TCA § 2-10-105(c).
 - Quarterly during an election year, within ten (10) days following the conclusion of the quarterly reports ending March 31, June 30, September 30, and January 15.
 - Also required to file pre-primary statement and pre-general election statement. The pre-primary statement shall cover the period from the last day included in the July quarterly statement through the tenth day before the primary election. The pre-primary statement is due seven (7) days before the primary election. The pre-general statement shall cover the period from the last day included in the October quarterly statement through the tenth day before the general election. Such pre-general statement is due seven (7) days before the general election.
- Treasurers. TCA § 2-10-105(e).
 - Each candidate and PAC shall certify the name and address of their treasurer to the registry of election finance or the county election commission before they can receive contributions.
 - A candidate may serve as their own treasurer.
- Supplemental semiannual statements. TCA § 2-10-106.
 - If the final statement of a candidate shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit, the campaign treasurer shall file with the registry of election finance or the county election commission, a supplemental statement of contributions and expenditures.

ENFORCEMENT AND PENALTIES

- Class 1 offense. TCA § 2-10-110(a)(1).
 - A Class 1 offense is the late filing of any report or statement. A Class 1 offense shall be punishable by a civil penalty of not more than \$25/day up to a maximum of \$750.

- For local public offices, the county administrator of elections shall have personally served upon, or send by return receipt requested mail, an assessment letter to any candidate or committee upon discovery that the due report has not been filed. The administrator shall forward a copy of such notice to the registry of election finance.
- For state public offices, the registry of election finance shall have personally served upon, or send by return receipt requested mail, an assessment letter to any candidate or committee upon the discovery that the due report has not been filed.
- The civil penalty of \$25/day will begin to accrue 5 days after service and shall continue to accrue until the report is filed or for 30 days, whichever occurs first.
- Assessment letter
 - For a Class 1 offense, the registry shall send an assessment letter to a candidate or committee in a form sufficient to advise the candidate or committee of the factual basis for the violation, maximum penalty, and the date a response to the letter must be filed.
- Class 2 offense. TCA § 2-10-110(a)(2).
 - A Class 2 offense means failing to file a report within 35 days after service of process or receipt of notice by registered or certified mail an assessment or any other violations. A Class 2 offense is punishable by a maximum civil penalty of not more than \$10,000 or 15% of the amount in controversy, if 15% of the amount in controversy is greater than \$10,000.
 - No penalty shall be imposed if a candidate fails to list a contribution but corrects the omission to the registry's satisfaction within 10 business days from the date the candidate is served process by, or receives notice from the registry. A candidate shall only be allowed to correct 2 omissions in one calendar year and the total of the omissions shall not exceed \$2,000.
- Civil Penalty. TCA § 2-10-110(c).
 - If the civil penalty is not paid within 30 days after assessment becomes final or by the qualifying deadline for election, whichever is earlier, the candidate owing such civil penalty shall be ineligible to qualify for election to any state or local public office until such penalty and costs are paid.
- Treasurer
 - For any civil penalty levied by the registry against a multicandidate campaign committee, the treasurer of the committee is personally liable for the penalty. TCA § 2-10-110(f)(1)

SINGLE MEASURE CAMPAIGNS

- Who must file campaign financial disclosure statements?

- Reports of appointment of treasurers and disclosure of contributions and expenditures are required of: (1) a group of two or more individuals making expenditures to support or oppose any state or local measure in a referendum, (2) a corporation or any other organization making expenditures to support or oppose any state or local measure in a referendum, (3) any committee, club, association or group of persons receiving contributions or making expenditures totaling more than two hundred fifty dollars (\$250) in a calendar year to support or oppose any state or local measure in a referendum.
- Where must SMCs file reports?
 - Single-measure political campaign committees making expenditures to support or oppose a statewide referendum, such as a proposed amendment to the constitution, must file all reports with the Registry. Single-measure committees making expenditures to support or oppose a local measure must file with the local county election commission where the election is held.
- What must a SMC do to begin a campaign operation?
 - **Political Campaign Treasurers.** Before any monies can be received or spent, single-measure committees must certify the name and address of its political treasurer to the Registry of Election Finance for a state referendum and to the county election commission for a local referendum. This is accomplished by completing and filing an appointment of political treasurer statement.
 - **Campaign Bank Account.** A single-measure committee must open and maintain a separate bank account into which all campaign contributions are to be deposited. Additionally, all expenditures from campaign funds must be expended from this bank account.
- Reporting requirements are the same as candidates and committees.
- There are no contribution limits for SMCs.

CONTACT INFORMATION FOR STATE AND LOCAL AGENCIES

Tennessee Registry of Election Finance
404 James Robertson Parkway
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Nashville, TN 37243
(615) 741-7959
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FOR FURTHER ASSISTANCE

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