

# KENTUCKY

## CAMPAIGN FINANCE AND BALLOT MEASURE GUIDE

**These resources are current as of 7/30/14. 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@afi.org](mailto:advocacy@afi.org).**

This guide summarizes key aspects of *state* campaign finance law and regulations. 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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## OVERVIEW

The [Kentucky Registry of Election Finance](#) administers and enforces the laws regulating the financing of state and local elections in Kentucky.

## CONTRIBUTION LIMITS AND SOURCE RESTRICTIONS

	To Candidates or Slates			To Committees			
From ↓	Governor/ Statewide	Legislative	Municipal	PACs	Party Executive Comm.	Caucus Campaign Comm.	Political Issue Comm.
Individuals	\$1,000 per election	\$1,000 per election	\$1,000 per election	\$1,500 per year	\$2,500 per year	\$2,500 per year	Unlimited
PACs <sup>2</sup> and contributing orgs	\$1,000 per election*	\$1,000 per election*	\$1,000 per election*	\$1,500 per year aggregate *	\$2,500 per year aggregate *	\$2,500 per year	Unlimited
Corps.	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Unlimited

\*Candidates are restricted in the amount of contributions they can receive from PACs per election. This same limit applies to contributions to candidates made by executive committees and caucus campaign committees. See "[Aggregate Limits](#)" below. Although the Kentucky Registry of Election Finance recently addressed the constitutionality of the state's individual aggregate contribution limit, it did not address the aggregate PAC contribution limits.

<sup>1</sup> The Democratic and Republican Party caucuses in each body of the General Assembly may establish a "caucus campaign committee," which may receive contributions and make expenditures to support or oppose one or more specific candidates or slates of candidates for nomination or election, or a committee. Caucus campaign committees include the House Democratic caucus campaign committee; the House Republican caucus campaign committee; the Senate Democratic caucus campaign committee; and the Senate Republican caucus campaign committee. [KRS 121.015\(3\)\(b\)](#). A caucus campaign committee may accept contributions separate from the party's executive committee.

<sup>2</sup> The Kentucky Registry of Election Finance recently issued an opinion concluding the state's aggregate contribution limits on individual donors was unconstitutional. The opinion did not address the constitutionality of the PAC aggregate limits. [Kentucky Registry of Election Finance AO No. 2014-003](#).

[KRS 121.150](#); [121.025](#); [121.035](#).

## Aggregate Limits

- Kentucky had historically imposed an aggregate contribution limit on individual contributors. The Kentucky Registry of Election Finance issued a recent advisory opinion clarifying the aggregate contribution limits for individual donors are unconstitutional as a result of the Supreme Court's opinion [McCutcheon v FEC](#). [Kentucky Registry of Election Finance AO No. 2014-003](#). As a result of this Advisory Opinion, individuals can now contribute up to \$1,500 per year to all PACs. This Advisory Opinion did not address whether it will enforce aggregate limits on contributions from PACs. PACs interested in contributing in excess of the aggregate limits should consult with an attorney.
- In any one election, candidates may not receive aggregate contributions from PACs, executive campaign committees, and caucus campaign committees of more than 50% of his or her total contributions or \$10,000, whichever is greater. For purposes of calculating the percentage, contributions from PACs, executive campaign committees, and caucus campaign committees are considered separately. [KRS 121.150\(23\)](#). The Kentucky Registry of Election Finance has not addressed the constitutionality of these aggregate limits in light of [McCutcheon v. FEC](#).
- Aggregate limits also apply to cash contributions and anonymous contributions. See "[Source Restrictions](#)" below.

## Contributing Organizations

- Kentucky law also provides for a "contributing organization," which is a group of individuals that merely contributes to a candidate from time to time, from funds derived solely from within the group and not solicited or received from sources outside the group itself. The contributing organization has the same contribution limits as a PAC. However, the contributing organization must only report to the Registry when any contribution made by the group exceeds \$100. [KRS 121.015\(4\)](#).

## Source Restrictions

- Lobbyists
  - Registered legislative lobbyists may not give to or raise money for legislators, legislative candidates, or caucus campaign committees. This prohibition extends to bundling contributions, including delivering, controlling, or soliciting contributions. KRS 6.811(6).
    - Members of registered lobbyists' families are not subject to this restriction.
    - The restriction applies even if a sitting legislator is running

for a different office that is not subject to the ban and to candidates who have not yet been elected to the legislature.

- Registered lobbyists may solicit and contribute to party executive committees as long as the funds are not earmarked to a specific legislative race. The party, in turn, may channel the lobbyist's contribution to any legislative candidate of the party's choice. ([Advisory Opinion 94-019](#)).
- **Lobbyist Employers**
  - During a regular session of the General Assembly, an employer of a legislative agent shall not make a campaign contribution to a legislator, candidate, campaign committee for a legislator or candidate, or caucus campaign committee. This prohibition extends to contributions made from the lobbyist employer's PAC, as discussed below.
  - This prohibition does not apply to candidates for the General Assembly in a special election held during a regular session of the General Assembly
- **State Employees**
  - Candidates and committees (party executive, caucus campaign, or permanent) may not *solicit* state employees. [KRS 121.150\(23\)](#); [121.320](#).
- **Corporate Contributions**
  - Corporations are prohibited from making contributions (including in-kind contributions) to candidates, PACs, party executive

committees, or caucus campaign committees. Ky. Const. § 150; [KRS 121.025](#), [121.035](#), [121.150\(21\)](#), [\(22\)](#). Corporations may establish a PAC and fund the PAC with voluntary contributions from employees and members, including through the use of payroll deductions. The PAC must reimburse the corporation for the costs of administering the PAC. [Kentucky Registry of Election Finance AO No. 2014-003](#).

- Corporations can contribute to in support of a constitutional amendment, a public question which appears on the ballot, or position on an issue of public importance. For example, a corporation can contribute to a political issues committee. [KRS 121.035\(3\)](#).
- Minors
  - Contributors to candidates, PACs, and party or caucus committees must be at least 18 years of age by the General Election to contribute more than \$100.00. [KRS 121.150\(5\)](#).
- Cash Contributions
  - Candidates and committees are prohibited from accepting cash contributions in excess of \$50, in aggregate, from any one contributor per election. [KRS 121.150\(4\)](#).
  - Contributions made by cashier's check or money order will be considered cash contributions unless the instrument clearly identifies the payor and the payee, in which case it will be considered a check. [KRS 121.150\(4\)](#).
- Federal Campaign Accounts
  - A nonfederal candidate in Kentucky may not solicit or receive contributions from a federal campaign account. [KRS 121.150\(24\)](#).
- Charitable Contributions
  - Solicitations from and contributions by campaign committee, caucus campaign committees, political issues committees, PACs, and party executive committees to any religious, charitable, civic, eleemosynary, or other causes or organizations established primarily for the public good are expressly prohibited (unless the committee is shutting down). [KRS 121.150\(2\)](#).
- Gifts
  - Candidates are prohibited from accepting gifts of money for use in their campaign. [KRS 121.015\(6\)](#).
- Anonymous Contributions and Contributions Made in the Name of Another
  - Neither candidates nor committees may accept anonymous contributions of \$50 per contribution, or an aggregate of \$1,000 per

election. [KRS 120.150\(3\)](#).

- Contributions made in the name of another are prohibited. [KRS 120.150\(12\)](#).
- PAC Contributions during the General Assembly Legislative Session
  - PACs (as that term is defined in KRS § 121.015) are prohibited from contributing to a member of the General Assembly, candidate for the General Assembly, or his or her campaign committee during a regular session of the General Assembly. This prohibition does not apply to candidates for the General Assembly in a special election held during a regular session of the General Assembly. KRS § 6.767(2).

### **In-Kind Contributions**

- An in-kind contribution is a non-monetary contribution consisting of goods or services, offered free or at less than the usual charge. Similarly, when a person pays for services on the candidate's behalf, the payment is an in-kind contribution. [KRS 121.015\(6\)\(b\)-\(c\)](#); [32 KAR 2:170](#). [The definition of in-kind contribution may extend to the sharing of information between entities making Independent Expenditures. Advisory Opinion 2012-06.](#)
- In-kind contributions count against contribution limits and are subject to the same reporting requirements. *Id.*
- An expenditure made in cooperation, coordination, or consultation with or at the request or suggestion of the campaign counts as an in-kind contribution to the candidate.
  - Exceptions: In-kind contributions that are valued at \$100 or less do not qualify as contributions until the aggregate value *per contributor* exceeds \$100 per election. Volunteered services are not considered contributions. [KRS 121.015\(7\)](#).
- The distribution or republication of campaign material produced or prepared by a candidate's campaign is considered coordination and should be reported as an in-kind contribution. [KRS 121.015\(6\)](#), [121.150\(1\)](#); [Advisory Opinion 95-012](#).
- Discounts are considered an in-kind contribution unless the discount is available to the general public. [32 KAR 2:170](#).

<b>COMMUNICATIONS</b>
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### **Issue Advocacy vs. Express Advocacy**

- Kentucky has adopted the so-called "magic words" test for express advocacy. *Martin v. Commonwealth*, 96 S.W.3d 38, 46 (Ky. 2003). Express advocacy means any communication that uses phrases such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "reelect," "vote against," "defeat," and "reject." *Buckley v. Valeo*, 424 U.S.

1, 44, fn 52 (1976); *Sandy Jones v. Alan Baker et al.* (KREF Case No. 2004-207); [Advisory Opinion 2006-001](#). Express advocacy communications are considered to be “independent expenditures” so long as they are not coordinated, and are subject to disclosure and disclaimer requirements. See “[Independent Expenditures](#)” below.

- Issue advocacy – communications that do not constitute express advocacy are considered constitutionally-protected First Amendment

speech and are *not* subject to these campaign finance laws. Corporations are allowed to engage in issue advocacy without restriction (provided it is not coordinated with a candidate or party, in which case it would be regulated as an in-kind contribution). [Advisory Opinion 2006-003](#). *Kentucky Registry of Election Finance v. Louisville Bar Association*, 579 S.W.2d 622, 627 (Ky.App. 1978).

### **Membership Communications**

- Membership communications are not distinguished from communications to the public. Therefore, membership communications containing express advocacy are treated as expenditures (or contributions, if coordinated). A corporation is prohibited from making communications containing express advocacy, such as endorsements, even if such communication goes only to members. (Advisory Opinions 2006-004, 2002-007).

### **Independent Expenditures (IEs)**

- An independent expenditure is an “expenditure of money or other things of value for a communication which expressly advocates the election or defeat of a clearly identified candidate or slate of candidates, and which is made without any coordination, consultation, or cooperation with any candidate, slate of candidates, campaign committee, or any authorized person acting on behalf of any of them, and which is not made in concert with, or at the request or suggestion of any candidate, slate of candidates, campaign committee, or any authorized person acting on behalf of any of them.” [KRS 121.015\(12\)](#).
- Following *Citizens United*, Kentucky now allows for-profit corporations to make independent expenditures from their general treasury funds for express advocacy. [Advisory Opinion 2010-001](#). Kentucky statutes and regulations have not yet been amended to expressly permit this.

Kentucky Law provides that a “not-for-profit corporation, which does not derive a substantial portion of its revenue from for-profit corporations, may make independent expenditures.” KRS § 121.035(3). Of course, in light of Advisory Opinion 2010-001, all nonprofit corporations, including entities that accept corporate donations, may make independent expenditures.

- 527 Political Organizations and IEs
  - Section 527 political organizations that accept contributions and make independent expenditures in support of or opposition to one or more specific candidates or slate of candidates may register as “unauthorized campaign committees.” See KRS 121.210(4); [Advisory Opinion 2011-002](#). Contributions to unauthorized campaign committees are not subject to source and amount limitations. KRS 121.015(3)(a).

- A national Section 527 political organization may establish an unauthorized campaign committee in Kentucky and transfer its general treasury funds to the unauthorized campaign committee. However, the committee must identify the 527 organization as the committee's contributor. However, *if the 527 organization has raised or solicited funds intended for the making of IEs in Kentucky elections*, then the affiliated unauthorized campaign committee must itemize each of the contributors to the 527. [Advisory Opinion 2011-002](#).<sup>2</sup>
- Reporting Independent Expenditures
  - Individuals, committees, and any other groups who make IEs exceeding \$500 in the aggregate in any one election are required to report directly to the Kentucky Registry of Election Finance using [Form KREF 013](#). [KRS 121.150\(1\)](#).
  - Express advocacy expenditures that are not independent (i.e. are coordinated) qualify as in-kind contributions. [KRS 121.015\(6\)\(b\)-\(d\)](#).

### **Disclaimers**

- Disclaimers are required for express advocacy communications in newspaper or magazine advertising, posters, circulars, billboards, handbills, sample ballots, and paid-for television or radio announcements. [KRS 121.190](#).
- Required language:
  - If paid by the candidate, slate or candidates, or campaign committee, it shall state:

“Paid for by Name of candidate, slate of candidate, or campaign committee.” Example, “Paid for by Committee to Elect Jane Doe.”

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<sup>2</sup> This issue was recently litigated in Kentucky's Franklin Circuit Court, in *Logsdon v. Restoring America*, Civil Action No. 11-C1-1527 (filed October 17, 2011). In this case, Restoring America, Inc., a Section 527 political organization, established an unauthorized campaign committee in Kentucky by the name of Restoring America. Restoring America, Inc. had specifically solicited and received contributions for the purpose of making independent expenditures in Kentucky elections. The committee made independent expenditures that expressly advocated the election of a Republican gubernatorial nominee and the defeat of the Democratic incumbent. In its disclosure reports required under KRS Chapter 121, Restoring America listed as its sole contributor the 527 political organization, Restoring America, Inc. In response to a lawsuit filed against Restoring America, the Franklin Circuit Court judge issued a restraining order prohibiting the group from making any further express advocacy communications pertaining to candidates in Kentucky's 2011 General Election. The restraining order was dissolved following Restoring America's disclosure of the individual contributors to Restoring America, Inc., the affiliated 527 organization.

- If paid for by another group, it shall state:

“Paid for by Name and address of the individual or committee which paid for the communication.” Example, “Paid for by Kentucky Democratic Party, 190 Democrat Drive, Frankfort, KY 40601.”

- For television and radio broadcasts, compliance with FCC’s regulation shall be considered in compliance with Kentucky law.
- Disclaimers are not required on certain small items such as calling cards smaller than 3.5” by 5”, pens and pencils, clothing, emery boards, fly swatters, matchbooks, bumper stickers, etc.
- Disclaimers are only required for one page of a multi-page mailing.

[KRS 121.190\(1\)](#); [32 KAR 2:110](#).

## REGISTRATION AND REPORTING REQUIREMENTS

### Registering as an In-State PAC

- Under Kentucky law, any group that has as a primary purpose expressly advocating the election or defeat of a candidate(s) or political party, and which functions on a regular basis throughout the year, must register as a Permanent Committee. [KRS 121.015\(3\)\(d\)](#); [121.170\(1\)](#).
- Federally-registered PACs or out-of-state PACs do not have to register in Kentucky to make contributions to Kentucky candidates or make independent expenditures. However, they must file copies of registration and reports showing Kentucky disbursements with the Registry – see below. They still must abide by Kentucky campaign finance laws.
- All permanent committees must register with the Kentucky Registry of Election Finance at the time they are organized using [Form KREF 010](#) (or [electronically](#)).
  - Exception: Federally-registered out-of-state PACs are exempt from registering as a Permanent Committee in Kentucky. However, they must still meet certain reporting requirements. See below.
- A committee must register at the time it is organized. [KRS 121.170](#).
- Restrictions: A member of the General Assembly cannot form a PAC. [KRS 121.170\(7\)](#).

### **Administering an In-State PAC**

- Bank account – Only a financial institution authorized to transact business in Kentucky (this includes all major national banks); and insured by the FDIC may be designated as a depository. [KRS 121.220](#). This requirement does not apply to federally-registered out-of-state PACs. [KRS 121.170](#).
- The administrative expenses of PACs *may not* be paid for by affiliated corporations.
- Solicitation – PACs may solicit and receive contributions only from the following: individuals, contributing organizations, partnerships, LLCs, LLPs, unincorporated associations, other PACs, party executive committees, Federal PACs, and caucus campaign committees. Corporate contributions are prohibited.

### **In-State PAC Reporting**

- All permanent committees must file periodic reports with the Kentucky Registry of Election Finance disclosing contributions received and expenditures made. [KRS 121.180\(6\)](#).
  - Exception: Federally-registered out-of-state permanent committees who contribute to non-federal Kentucky candidate, must only file with the Registry:
    - a copy of their federal registration form (FEC Form-1); and
    - a copy of their finance report showing Kentucky disbursements (FEC Form-3X).  
[KRS 121.170\(5\)](#).
  - Although federally-registered out-of-state permanent committees are exempt, federal committees that have their office in Kentucky and contribute to non-federal Kentucky candidates are not exempt.
- Contributions received in excess of \$100 must be itemized, listing the full name, address, age if under the legal voting age, date of contribution, amount of contribution, and employer and occupation. [KRS 121.180\(6\)\(b\)](#).
- Reporting Deadlines
  - PACs must file quarterly reports. The reporting deadlines are the end of a regular calendar quarter (March 31, June 30, September 30, and December 31). The Registry permits a 5-day grace period for filing purposes.

- There is a five-day grace period.
- Electronic filing is available at <http://kref.ky.gov/efile/>, but it is not mandatory. [KRS 121.120\(6\)](#).

**Termination** – When a PAC terminates it must:

- Liquidate all assets (or zero out Kentucky account);
- If excess funds exist, the funds may be disposed of in whole or in part as follows:
  1. Escheat to the State Treasury;
  2. Be returned pro rata to all contributors;
  3. In the case of a partisan permanent committee, organized to support candidates of a single political party, funds may be transferred to a caucus campaign committee, the state or county party executive committee, or to an affiliated committee; or
  4. Donate the funds to any charitable, nonprofit, or educational institution recognized under Section 501(c)(3) of the IRS; *and*
- File a final report with the Registry showing a zero balance.

KRS 121.180(10).

### **Out-of-State Contributors**

- Out-of-state PACs, including federal PACs, that wish to contribute to Kentucky candidates and committees must file copies of their regular reports (reflecting Kentucky activity) with the Kentucky Registry of Election Finance. Out-of-state PACs must abide by Kentucky source campaign finance laws, including source restrictions. I.e. out-of-state PACs that receive corporate money must use a segregated account containing no corporate money to make Kentucky contributions.

## **BALLOT MEASURES**

### **Political Issue Committees**

- A political issue committee is defined as three (3) or more persons joining together to advocate or oppose a constitutional amendment or public question which appears on the ballot if that committee receives or expends money in excess of one thousand dollars \$1,000. [KRS 121.015\(3\)\(c\)](#).
- Political issue committees are subject to the Registry’s registration and reporting requirements.
- Registration

- Political issue committees must register with the Registry *before* any funds are raised or spent on the committee’s behalf by using [Form KREF 010](#). [KRS 121.170](#).
- Contribution Limits
  - There are no limits on contributions to political issue committees, and corporate contributions in support of a constitutional amendment or a public question are permitted. [Advisory Opinions 1998-011](#), [1999-005](#), [2000-004](#), [2000-005](#), [2001-001](#) and [2002-005](#); [KRS 121.035\(3\)](#).
  - However, all contributions accepted by a political issues committee must comply with certain contribution restrictions imposed on committees, generally, as provided in [KRS 121.150](#). See above on “[Source Restrictions](#).” These limits include:
    - No political issues committee shall accept cash contributions in excess of \$50 from each contributor;
    - No political issues committee shall accept anonymous contributions in excess of \$50 from each contributor or in excess of \$1,000 in the aggregate;
    - No political issues committee shall accept contributions in excess of \$100 from a minor (any person who is not 18 years-old on or before the next general election);
    - No political issues committee shall accept a contribution made by a person who has received a payment, distribution, loan, advance, deposit or gift of money from another person to contribute on their behalf. [KRS 121.150\(12\)](#) (prohibiting giving in the name of another).
  - Corporations can contribute to a political issues committee in support of a constitutional amendment, a public question which appears on the ballot, or position on an issue of public importance. [KRS 121.035\(3\)](#).

<b>PENALITES AND ENFORCEMENT</b>
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- The penalties for knowing violations of KRS Chapter 121 may result in conviction of a Class D felony. Substantial civil penalties may also be assessed for non-knowing violations.
- Corporations convicted of knowingly violating the campaign finance laws stand to have their corporate charters revoked or lose their ability to do business in Kentucky, and face substantial fines.

## CONTACT INFORMATION FOR STATE AND LOCAL AGENCIES

Secretary of State  
700 Capitol Avenue  
Suite 152  
Frankfort, KY 40601  
Phone: (502) 564-3490  
FAX: (502) 564-5687  
[www.sos.ky.gov](http://www.sos.ky.gov)

State Board of Elections  
140 Walnut Street  
Frankfort, Kentucky 40601  
Phone: (502) 573-7100  
Fax: (502) 573-4369 or

(502) 696-1952  
[www.elect.ky.gov](http://www.elect.ky.gov)

Registry of Election Finance  
140 Walnut Street  
Frankfort, KY 40601  
Phone: (502) 573-2226  
Fax: (502) 573-5622  
[www.kref.ky.gov](http://www.kref.ky.gov)

List of County Clerks:  
<http://elect.ky.gov/countyclerks.htm>

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## FOR FURTHER ASSISTANCE

**For assistance regarding these resources or for more information about federal law, please contact our attorney one-on-one counseling service:**

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