

## Business

### • Watch out, don't 'max out'

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It's another big election year in Maryland. Highly contested, high-priced campaigns are underway for county, state, and federal offices. In the gubernatorial election alone the announced candidates have already raised over \$ 10.6 million 2006.

You have to be living under a rock if you haven't been pursued for political campaign contributions by now. But watch out before you "max out." If you, as an individual or a business entity, contribute more than the legal limit, you may have civil and even criminal charges filed against you, along with the embarrassment of negative press. (Just this week, in fact, the Associated Press reported that the Office of the State Prosecutor charged one corporation and 24 people — including a state senator, who was cited civilly — for exceeding election-cycle limits.)

The following, although not intended to be a definitive recitation of Maryland campaign finance law, outlines some important rules and restrictions that an individual or business should know before contributing money or anything of value to a candidate or a political cause in Maryland. **Contribution limits**

Maryland election laws govern all state-wide and county elections, but they do not regulate federal elections or municipal elections (except Baltimore City). Md. Code Ann., Elect. Law § 2-202. The central campaign finance rule is this: a "person," including any legal or commercial entity, corporation, business trust, estate, trust, partnership, or limited liability company, can contribute no more than \$4,000 to one campaign finance entity and no more than \$10,000 to all campaign finance entities in the aggregate during an election cycle. Md. Code Ann., Elect. Law §13-226.

Now let's examine how to apply this rule under the statutory framework in Maryland.

Maryland law prescribes four-year election cycles beginning every Jan. 1 following the gubernatorial election during which contribution limits are capped. Md. Code Ann., Elect. Law § 1-101(w). Most individuals and businesses run afoul of the law simply by failing to keep good records during each four year cycle. We are currently in the Jan. 1, 2003 to Dec. 31, 2006 election cycle.

A "campaign finance entity" means a personal treasurer or a political committee. The rule (§ 13-226) is intended to cover contributions made to any candidate for public or party office, or any political party, slate or PAC to promote or assist in the promotion of the success or defeat of a candidate, political party, or question. Md. Code Ann., Elect. Law § 1-101(h) and (o). The \$4,000 limit per candidate applies regardless of the number of offices sought by a particular candidate. Md. Code Ann., Elect. Law § 13-226.

So, if you have given your favorite candidate \$2,000 toward her election to county office back in 2004, and another \$2,000 for her more recent campaign for statewide office, you have given that candidate all that you can give her before Jan. 1, 2007.

Contributions made by different corporations are treated as having been made by one contributor if the corporations are owned by the same stockholders, or one of the corporations wholly owns the other. Md. Code Ann., Elect. Law §13-226(e). Partnerships and LLCs, however, even if comprised of mostly the same partners and shareholders, may make independent contributions.

Anonymous contributions and contributions from a person or entity other than the maker of the check, otherwise known as "pass through contributions," are prohibited. All anonymous checks must go to the state treasurer. Md. Code Ann., Elect. Law §13-602(a)(5).

During each Legislative Session of the General Assembly, there is a “black-out” period for statewide officeholders, giving challengers a fundraising advantage. During this time, contributions may not be solicited, accepted or deposited by the governor, lieutenant governor, attorney general, comptroller, a member of the General Assembly, or a person acting on behalf of any of these individuals. Md. Code Ann., Elect. Law §13-235.

A “contribution” means “the gift or transfer, or promise of gift or transfer, of money or other thing of value.” Md. Code Ann., Elect. Law §1-101(o). Purchasing a ticket to attend a campaign fundraiser is considered a contribution.

Also included within the definition of “contribution” are “in-kind contributions,” which are non-monetary contributions of things that have value, such as office space, food, signs, and stamps. Volunteer services, however, like stuffing envelopes or answering phones, do not count against the contribution limits. Md. Code Ann., Elect. Law § 13-233.

Hypothetically, if the CEO of a company held a fundraiser at her home for candidate X which cost her \$2,000 for food and drink, she will have to apply that \$2,000 against the contribution limits, leaving her only \$2,000 more that she can give to candidate X between Jan. 1, 2003 and Dec. 31, 2006. The CEO’s personal contributions do not count against her company’s contribution limits. Moreover, she is free to volunteer her services on the campaign if she is “maxed out.” Citizens have an obligation to report the value of in-kind contributions to the campaign treasurer, who in turn reports the amount to the State Board of Elections (SBE).

Most well-run campaigns will advise you when you are maxed out as to their candidate, but don’t count on this; it’s not a defense.

Campaign treasurers are obligated under the law to write a receipt for every contribution over \$50 (in the aggregate). Thus, each person or business entity is legally responsible for keeping accurate track of contributions to ensure the \$10,000 contribution limit is not exceeded.

Frequently individuals and business entities exceed the contribution limits because a contribution made at the beginning of an election cycle is either forgotten or incorrectly attributed to the prior election cycle.

Exceptions. There are two exceptions under Maryland law to the contribution limits. First, there is no limit on how much money one can contribute toward a ballot issues committee. Md. Code Ann., Elect. Law § 13-226(a). Second, a contribution to a party committee that is earmarked exclusively for administrative expenses does not count toward the contributor’s aggregate contribution limit. See 60 Opinions of the Attorney General 259, 261-62 (1975). Administrative expenses are, for example, the cost of maintaining the party’s normal headquarters and staff. See also 70 Op. Att’y Gen. 96 (1985).

A person who knowingly and willfully tries to circumvent the campaign contribution limits or threatens employees to influence voting is guilty of criminal violation (misdemeanor) and on conviction may be fined up to \$25,000 or imprisoned up to 1 year or both. Md. Code Ann., Elect. Law, § 13-603. An unknowing violation of any provision of the campaign finance laws may involve a civil penalty not to exceed \$5,000 if the State Prosecutor or State’s Attorney issues a civil citation. Md. Code Ann., Elect. Law, § 13-604. **PACS**

In Maryland, a Political Action Committee (PAC) is a group of two or more people who form to support or oppose more than one candidate — usually to promote the group’s purposes. A PAC can transfer funds to other campaign accounts up to the transfer limit of \$6,000, and a PAC has no aggregate contribution limit. Md. Code Ann., Elect. Law 13-227.

PACs established by employers or pursuant to an employee membership entity must follow exacting requirements for the filing of PAC reports and accumulation of PAC monies. For example, an employer may accumulate voluntary contributions made by employees into a PAC through payroll deductions. Md. Code Ann., Elect. Law § 12-241. The employer must, however, keep the PAC money in a separate, segregated account and maintain accurate records of all payroll deductions, including: the names of contributors, the dates on which the payroll deductions and PAC contributions were made, and the disposition of the amounts withheld.

All campaign accounts (including a PACs) are prohibited from transferring more than \$6,000 to another campaign during the four-year cycle.

Remember, NO political contributions, either direct or in-kind, state or federal level, are tax deductible! **Keeping track**

Today all candidates are required to file all reports electronically, and therefore, all contributions are posted on the SBE Internet site. You can access the State’s campaign finance database, plug in your name or the name of

your company as directed, and check on the contributions attributed to you and/or your company so far during the current election cycle.

Keep in mind that the database will not reflect all of your applicable contributions until the campaign finance entities to which you have contributed have filed their reports with the SBE. If you need any further information, you may investigate the SBE's web site and find a number helpful reports and forms.

In Part II of this article we will examine reporting requirements mandated under state law and why, whether you max out or not, you may need to file a report with the State Elections Commission or risk civil penalties.

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