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ADVISORY OPINION 2018 - 3

The House Legislative Ethics Committee (Committee) received a request from a House Candidate for an advisory opinion questioning whether he or she may receive campaign contributions in the form of Bitcoin. The candidate explained that he or she has a supporter who has asked to contribute in cryptocurrency to the candidate's campaign as the supporter is paid and purchases primarily using Bitcoin. The candidate noted that the potential supporter deals chiefly in Bitcoin whereby most transactions for which he needs U.S. dollars are taxed for capital gains at exchange. The candidate questioned (1) what is legally required to collect donations in Bitcoin, and (2) how candidates are supposed to report such contributions. The candidate further explained that he or she understands the need to collect all necessary donor information required for traditional contributions prior to receiving the Bitcoin.

Pursuant to House Rule 4.16C.(4), the Committee renders the following advisory opinion.

DISCUSSION

This issue is a matter of first impression for the Committee. "Bitcoin" is a privately issued currency that was created in 2009. U.S. Gov't Accountability Office, GAO-13-516, Virtual Economies and Currencies 5 (2013), *available at* <http://www.gao.gov/assets/660/654620.pdf> ("GAO Report"). According to the Uniform Law Commission's proposed Regulation of Virtual Currency Businesses Act, "virtual currency can be simply defined as a form of electronic value, the value of which depends on the market. It is not backed by government (so that it lacks status as legal tender)." Bitcoins "act as real world currency in that users pay for real goods and services...with bitcoins as opposed to U.S. dollars or other government issued currencies." U.S. Gov't Accountability Office, GAO-13-516, Virtual Economies and Currencies 5 (2013), *available at* <http://www.gao.gov/assets/660/654620.pdf> ("GAO Report"). Bitcoins can be used to buy merchandise anonymously and are often bought as an investment that people hope will go up in

value based on the market. *What is Bitcoin?*, CNN tech, <http://money.cnn.com/infographic/technology/what-is-bitcoin/> (last visited Apr. 4, 2018). Each bitcoin transaction is public in that it is added to a “block chain,” which is a public ledger of all bitcoin transactions ever made. Although bitcoin transactions, identified by the addresses to and from which bitcoins are transferred, are public in the block chain, the transactors are not identified. A bitcoin user’s real-life identity, IP address, and even country of operation “cannot be reliably traced to a real human by an auditor of ordinary technical skill.” U.S. Gov’t Accountability Office, GAO-13-516, *Virtual Economies and Currencies 5* (2013), *available at* <http://www.gao.gov/assets/660/654620.pdf> (“GAO Report”).

In 2014, the Federal Election Commission (FEC) issued an advisory opinion regarding the issue of political campaigns accepting bitcoin contributions. Make Your Laws PAC, Inc. (MYL) requested an advisory opinion from the FEC concerning the PAC’s proposed acceptance, purchase, and disbursement of bitcoins under the Federal Election Campaign Act of 1971. In the FEC Advisory Opinion 2014-02, May 8, 2014, MYL proposed to accept up to a total of \$100 in bitcoins as contributions to its contribution and non-contribution accounts and accept the bitcoins only through an online form on which each bitcoin contributor, regardless of the proposed contribution amount, would have to provide his or her name, physical address, occupation, and employer. MYL also requested that each bitcoin contributor affirm that he or she owned the bitcoins that he or she will contribute and to affirm that he or she is not a foreign national. MYL noted that only after the bitcoin contributor had provided identity and ownership information, and associated affirmations, will the committee send that contributor a one-time only “linked address,” a bitcoin address that identifies the individual transaction, to use to send the bitcoins. *Id.* at pp. 2-3.

In their response, the FEC concluded that the requestor may accept bitcoin contributions as proposed in its advisory opinion request and supplemental filings subject to valuation and reporting procedures similar to those that the FEC has previously recognized in analogous circumstances. FEC Adv. Op. 2014-02, p. 3. The Commission noted that bitcoins are “money or ‘anything of value’ within the meaning of the [Federal Election Campaign] Act [of 1971] and that MYL may accept contributions as it proposes pursuant to the identification, deposit, and valuation procedures MYL described in the opinion.” *Id.* at 4 (emphasis added). The FEC determined that “MYL’s proposal, including the attestations and linked address, adequately addresse[d] MYL’s obligations to determine the eligibility of its contributors as required by the Act and Commission regulations.” *Id.* at 5. The Commission also made the following findings. The FEC noted that contributions of bitcoins need not be deposited in a campaign account within 10 days of receipt as required under Federal law. *Id.* at 6. “Like securities that a political committee may receive into and hold in a brokerage account, bitcoins may be received into and held in a bitcoin wallet until [MYL] liquidates them.” *Id.* The FEC held that “a political committee that receives a contribution in bitcoins should value that contribution based on the market value of bitcoins at the time the contribution is received.” *Id.* (emphasis added). The initial receipt of bitcoins as contributions, should be reported like in-kind contributions. *Id.* at 8 (emphasis added). MYL [and other political committees] “must treat the full amount of the donor’s contribution as the contributed amount for purposes of limits and reporting provisions of the Act,” even though MYL may receive a lesser amount because of any usual and normal processing fees. *Id.* at 9.

Although the FEC permitted acceptance of Bitcoin contributions by political campaigns for Federal public office through its advisory opinion in 2014, few states have allowed this

practice. Tennessee is one of the few states that allows candidates and political campaign committees to accept digital currency as a contribution. In 2015, the state of Tennessee passed Section 2-10-113 which provides:

- (a) A candidate or political campaign committee is allowed to accept digital currency as a contribution. Digital currency shall be considered a monetary contribution with the value of the digital currency being the market value of the digital currency at the time the contribution is received.
- (b) Any increase in the value of digital currency being held by a candidate or political campaign committee shall be reported as interest on any statement filed pursuant to § 2-10-105.
- (c) A candidate or political campaign committee must sell any digital currency and deposit the proceeds from those sales into a campaign account before spending the funds.

Tenn. Code Ann. § 2-10-113 (2015). To allow for this change, the state also amended Section 2-10-102(4) to include “digital currency” in its definition of “contribution.”

Other states like New Hampshire and Vermont have passed laws to update their money transmission rules and regulations to include “virtual currency.” *New Hampshire Governor Signs Bitcoin MSB Exemption Law*, Coindesk, Jun. 7, 2017, <https://www.coindesk.com/new-hampshire-governor-signs-bitcoin-msb-exemption-law/>; *Vermont Law Adds Bitcoin as ‘Permissible Investment’ for MSBs*, Coindesk, May 8, 2017, <https://www.coindesk.com/vermont-law-bitcoin-msbs-investment/>. However, in response to a request from a candidate questioning whether it was legal to accept bitcoin campaign contributions, the Kansas Governmental Ethics Commission determined that “the digital currency known as bitcoin is too secretive to be allowed as a form of campaign contributions in state and local elections.” *Bitcoin can’t be used for campaign contributions: Kansas Regulators*, Fox Business, Oct. 26, 2017, <https://www.foxbusiness.com/politics/bitcoin-cant-be-used-for-campaign-contributions-kansas-regulators>. See also *Worse than ‘the Russians’: Kansas Prohibits Bitcoin Campaign Contributions*, CNN, Oct. 27, 2017, <https://www.cnn.com/worse-than-the-russians-kansas-panel-prohibits-bitcoin-campaign-contributions/>. The Kansas Ethics Commission Executive Director noted that “there is no physical manifestation of this currency in any way. It’s just alphanumeric characters that exist only online. It is not backed by any government. The value is subjective and highly volatile.” *Id.*

The S.C. Ethics Act Section 8-13-100(9) provides the following definition for “contribution”:

- (9) “Contribution” means a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit of money or anything of value made to a candidate or committee, as defined in Section 8-13-1300(6), for the purpose of influencing an election; or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge. “Contribution” does not include volunteer personal services on behalf of a candidate or committee for which the volunteer receives no compensation from any source.

S.C. Code Ann. § 8-13-100(9). Unlike Tennessee, current S.C. law does not include “virtual” or “digital currency” in its definition of contribution. Thus, the Committee determines that it is not permissible for candidates for and Members of the S.C. House of Representatives to receive campaign contributions in the form of Bitcoin or other digital currency. The Committee notes that there are many issues that need to be resolved regarding the acceptance of Bitcoin as a contribution to a political campaign for House office. Therefore, it is the recommendation of the Committee that, should this practice be permitted in South Carolina, it should be done through legislation rather than through an HEC advisory opinion.

CONCLUSION

In summary, the Committee finds that no Bitcoin may be accepted as a campaign contribution at this time.

Adopted April 11, 2018.