

ARKANSAS ETHICS COMMISSION

William C. Bird III
Chairman

Anna Bray
Vice Chairman

Robert McCormack
Sharon K. Trusty
Sybil Jordan Hampton

910 West Second Street, Suite 100
Post Office Box 1917
Little Rock, Arkansas 72203-1917
(501) 324-9600 Fax (501) 324-9606
Toll Free (800) 422-7773



Graham F. Sloan
Director

Todd Elder
Senior Staff Attorney

Jill Rogers Barham
Staff Attorney

Teresa Keathley
Director of Compliance

Drew Blankenship
Director of Compliance

ADVISORY OPINION NO. 2014-EC-002

Issued May 23, 2014

The Arkansas Ethics Commission (the "Commission") has received a written advisory opinion request submitted by Mr. Steven Gold on behalf of ActBlue, LLC of Somerville, Massachusetts. The question presented is whether or not the information generated when a candidate receives a contribution using the Internet via an ActBlue account complies with the requirements contained in Ark. Code Ann. § 7-6-204(b)(3).

Ark. Code Ann. § 7-6-204 requires campaign contributions in excess of one hundred dollars (\$100) to be made by written instrument.¹ Paragraph (b)(3) of said statute reads as follows:

(b) All contributions or expenditures in behalf of a campaign activity, other than in-kind contributions and expenditures, in excess of the amounts mentioned in subsection (a) of this section shall be made:

(3) By transaction that results in an electronic record created or transmitted by the cardholder where a contribution or expenditure is made through the Internet, provided that the electronic record contains the following information for the cardholder *at the time of making the contribution*:

- (A) Valid name;
- (B) Complete address;
- (C) Place of business;
- (D) Employer; and
- (E) Occupation

In his request, Mr. Gold explains the role ActBlue plays with respect to Internet contributions. As a national political organization, ActBlue operates and maintains a website (www.actblue.com) for its users who want to make campaign contributions to candidates, and they are given the option of creating an ActBlue account.

¹ The term "written instrument", as used in Ark. Code Ann. § 7-6-204 in the case of a contribution made through the Internet, is defined in Ark. Code Ann. § 7-6-201(18)(B)(ii) to mean: "an electronic record created and transmitted by the cardholder, provided that the electronic record contains the following information for the cardholder *at the time of making the contribution*: (a) Valid name; (b) Complete address; (c) Place of business; (d) Employer; and (e) Occupation."

Mr. Gold goes on to state that to ensure compliance with a particular jurisdiction's campaign finance laws, ActBlue requires each user of its website to provide certain information before he or she can make a campaign contribution to a candidate. Under Arkansas' campaign finance laws, such information would include the contributor's name and address; principal place of business, employer, or occupation; the amount contributed; the date the contribution was accepted by the candidate or his or her campaign committee; and the aggregate contributed for each election in which the candidate's name appeared on the ballot for each contribution over fifty dollars (\$50).

As explained by Mr. Gold, ActBlue automatically creates an electronic record of all of the information inputted by the contributor "at the time the contribution is made." The electronic record ActBlue maintains for each campaign contribution made to a candidate is transmitted to that candidate for reporting purposes. For those contributors who choose not to set up an ActBlue account, they are required to submit the required information for each contribution made to a candidate. In those situations, there is an electronic record generated each time which reflects all of the contributor's personal information "at the time the contribution is made."

Mr. Gold's opinion request focuses on those contributors who choose to create an ActBlue account. In those situations, he states that the contributors are not required to enter their personal information each time a campaign contribution is made to a candidate because that information was already provided by the contributor at the time the ActBlue account was created. As a result, the contributor does not have to retype the information each time he or she subsequently makes a campaign contribution. In essence, the only new information being provided by the contributor "at the time of making the contribution" is the amount of the contribution.

It is the sufficiency of the electronic record ActBlue generates for those contributors who have an account with it that is the issue before the Commission. As previously explained, not all of the information which makes up that record is entered by the contributor at the same time as the making of the contribution. The personal information of the contributor was provided at an earlier point in time.

The question is whether or not the electronic record generated by ActBlue complies with the *at the time of making the contribution* portion of Ark. Code Ann. § 7-6-204(b)(3). The Commission concludes that the fact that some of the information contained in that record was provided by the contributor when the ActBlue account was established does not keep the record from meeting that requirement. Accordingly, it is the Commission's opinion that the manner in which ActBlue generates an electronic record for the campaign contributions made to Arkansas candidates using its account complies with the electronic record requirements set forth in Ark. Code Ann. § 7-6-204(b)(3).

This advisory opinion is issued by the Commission pursuant to Ark. Code Ann. § 7-6-217(g)(2).

ARKANSAS ETHICS COMMISSION

By: Todd Elder
Todd Elder, Senior Staff Attorney