

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2005-EC-009 Issued June 13, 2005

The Arkansas Ethics Commission has received a written advisory opinion request from Asa Hutchinson, who is a candidate for Governor of the State of Arkansas. Therein, Mr. Hutchinson requests an opinion as to whether a candidate for governor may transfer excess federal congressional campaign funds to the candidate's gubernatorial campaign account without being bound by the \$1,000.00¹ campaign contribution limitation.

In the opinion request, Mr. Hutchinson states that federal law specifically permits excess congressional campaign funds to be transferred to a state campaign account when it is not prohibited by state law.² He submits that "public policy should weigh in favor of such transfers" because: (1) the federal funds are "hard" dollars given for the political and campaign purposes of the same candidate; (2) there is no limit regarding the amount of personal contributions that a state candidate can contribute to his or her own campaign; and (3) any ambiguity under state campaign finance law should be construed in favor of such transfers to "accomplish fairness." Mr. Hutchinson also states that the Commission "seems to acknowledge uncertainty on this issue" according to press reports indicating that the Commission had requested legislative language that would specifically prohibit such transfers.

In reviewing the statutes under the Ethics Commission's jurisdiction, it is noted that there is no statute which expressly prohibits the receipt of federal campaign funds by a state candidate's campaign.³ There is however, a limit on the amount that such a committee may contribute to a campaign.

¹ Pursuant to Act 1695 of 2005, the contribution limit of \$1,000.00 has been increased to \$2,000.00, effective August 12, 2005.

² Pursuant to 2 U.S.C. 439(a)(5), as amended, a contribution accepted by a candidate for Federal office, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual... "for donations to State and local candidates subject to the provisions of State law."

³ Arkansas Ethics Commission Advisory Opinion No. 98-EC-010 states that the laws which govern the making and receiving of campaign contributions do not prohibit the campaign committee of a candidate for state office from receiving a contribution from a federal campaign committee.

Ark. Code Ann. § 7-6-203(a)(2) provides that it shall be unlawful for any candidate for the office of Governor or for any person acting on the candidate's behalf to accept campaign contributions in excess of one thousand dollars (\$1,000) per election from any person. Another subsection of that same statute prohibits any person from making a contribution to a candidate for the office of Governor "which in the aggregate exceeds one thousand dollars (\$1,000) per election." Ark. Code Ann. § 7-6-203(b)(2)(A).

There are certain exceptions to the \$1,000 campaign contribution limit. An organized political party⁴ may contribute up to \$2,500.00 to each of the party's candidates per election. Ark. Code Ann. § 7-6-203(d). Moreover, the limitation does not apply to a candidate's own contribution from his or her personal funds or to personal loans made by financial institutions to the candidate and applied to his or her campaign. Ark. Code Ann. § 7-6-203(c).

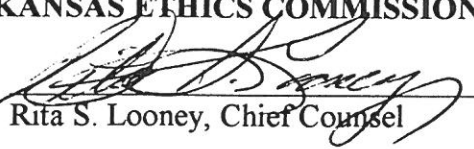
As used in the referenced statutes, a "person" means any individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, corporation, association, **committee**, or any other organization or group of persons acting in concert." Ark. Code Ann. § 7-6-201(12) (Emphasis supplied.) No additional legislative language was necessary to specifically include a federal campaign committee in the definition of a "person."

Based on the facts presented and the applicable law, it is the Commission's opinion that Arkansas law does not allow a transfer from a federal congressional campaign fund in excess of the applicable contribution limitation imposed by Arkansas law. Federal campaign funds are not the candidate's own personal funds and such funds were not raised pursuant to the applicable state campaign finance laws. Moreover, because a federal campaign committee is a "person" as defined in the referenced statute, the committee is limited in the amount it can contribute to a campaign, i.e., currently \$1,000.00 per "person," per election.

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

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By:


Rita S. Looney, Chief Counsel

⁴ An "organized political party" is defined in Ark. Code Ann. § 7-1-101(18) to mean any group of voters which at the last-preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office.