

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2007-EC-001 Issued February 16, 2007

The Arkansas Ethics Commission has received a written advisory opinion request from Cecile Bledsoe, a former member of the Arkansas House of Representatives. In her opinion request, Ms. Bledsoe asks whether or not it is permissible for a former officeholder to transfer carryover funds to an exploratory committee which he or she is establishing to explore running for a particular office.

The permissible uses of carryover funds are described in Ark. Code Ann. § 7-6-203(h)(3) which provides as follows:

(A) Carryover funds may be expended at any time for any purpose not prohibited by this chapter and may be used as campaign funds for seeking any public office. Nothing shall prohibit a person at any time from disposing of all or any portion of his or her carryover funds in the same manner as for surplus campaign funds. However, the candidate shall not take the funds as personal income or as income for his or her spouse or dependent children.

(B)(i) When a person having carryover funds files as a candidate for public office, his or her carryover funds shall be transferred to the person's active campaign fund. Once transferred, the funds will no longer be treated as carryover funds.

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(C)(ii) The person shall also file an expenditure report for the calendar quarter in which he or she transfers the carryover funds to an active campaign fund.

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(5)(i) A candidate may maintain his or her campaign funds in one (1) or more campaign accounts. Campaign funds shall not be placed in an account containing personal or business funds.

In reviewing the statutes under the Ethics Commission's jurisdiction, there is no specific reference to a transfer of carryover funds to an exploratory committee. Likewise, while the Commission's Rules on Campaign Finance & Disclosure contain several sections (§§ 220-223, 226 and 227) dealing with the permissible uses of carryover funds, there is no specific reference to the type of transfer contemplated by Ms. Bledsoe. Rule 227(b) states that if carryover funds are retained, the candidate is to retain such funds in an account separate from any personal or other account and such funds "shall be used only for future campaigns involving the candidate in a non-federal office and/or legitimate expenses in connection with the candidate's public office."

An "exploratory committee" is defined as a person that receives contributions which are held to be transferred to the campaign of a single candidate in an election. Ark. Code Ann. § 7-6-201(9). An "exploratory committee" is further described in § 252 (a) of the Rules on Campaign Finance & Disclosure as a committee "designated by a candidate to promote the candidate's campaign and to serve as recipient of all contributions and the distributor of all expenditures for a candidate prior to the time the candidate formally announces his intentions to run for office."¹ The funds raised by the exploratory committee will be treated as contributions if the individual elects to become a candidate, and if the candidate ultimately seeks the office being explored, the funds raised by the exploratory committee should be transferred to the candidate's campaign committee. Rules on Campaign Finance and Disclosure § 252(e) and (i)(1).

Because carryover funds may be transferred to an active campaign account and because funds contributed to an exploratory committee are required to be transferred to the campaign of a single candidate, the Commission concludes it would be permissible for the carryover funds to be transferred to the candidate's own exploratory committee. However, it would not be permissible to transfer carryover funds to an exploratory committee for someone other than the officeholder whose funds are being transferred.

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

¹ The rule makes reference to Arkansas Ethics Commission Opinion No. 97-EC-007 which provides extensive explanation about the purpose of an exploratory committee and the applicable registration and reporting requirements for such committees.