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ADVISORY OPINION NO. 2008-EC-002

Issued February 15, 2008

The Arkansas Ethics Commission has received a written advisory opinion request from Sheffield Nelson, Chairman of the Committee for a Fair Severance Tax. In his request, Mr. Nelson asks whether corporations are included under the heading, "individual person," and thus required under the ethics laws of Arkansas to report "all monies raised and spent in pushing for the passage or defeat of an initiated act or other proposal being presented to the people of Arkansas for them to vote on."

According to the opinion request, Mr. Nelson and his committee anticipate opposition to their proposal—"The Natural Gas Severance Tax Act of 2008"—from large corporations, and therefore the committee has inquired about the reporting requirements for corporations making expenditures to oppose such proposal.

The "Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters (hereinafter the "Disclosure Act"), codified at Ark. Code Ann. § 7-9-401 *et seq.*, requires registration and financial reporting by committees who receive contributions for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot question or passage or defeat of a legislative question. The Disclosure Act also requires the filing of financial reports by "an individual person" and by a "public servant or governmental body" when more than five hundred dollars (\$500) is spent for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot question or passage or defeat of a legislative question.

The term "person" is defined in Ark. Code Ann. § 7-9-402(9) as follows:

(A) "Person" means any individual, business, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting in concert.

(B) "Person" includes a public servant or governmental body using public Funds to expressly advocate the qualification, disqualification, passage, or defeat of any ballot question or the passage or defeat of any legislative question.

Ark. Code Ann. § 7-9-406 (b) states that an individual person who, on his or her own behalf, expends in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of any ballot question or the passage or defeat of any legislative question, shall file financial reports with the Arkansas Ethics Commission. Because the statute uses the phrase “individual person,” the Commission must determine whether the use of the term “individual,” along with the defined term “person” exempts other persons (i.e., “business, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization company, corporation, association, committee, or any other organization or group of person acting in concert”) from reporting requirements when spending more than five hundred dollars (\$500) to support or oppose a ballot or legislative question.

The question of whether a statute should be construed narrowly or broadly depends upon the interests with which the statute deals. “As a rule, statutes enacted for the public benefit are to be interpreted most favorably to the public.” *Laman v. McCord*, 245 Ark. 401, 432 S.W. 2d 753 (1968). As stated in its title, the Disclosure Act was enacted for the purpose of disclosure related to public initiatives, referenda and measures referred to voters. The emergency clause provided:

It is hereby found and determined by the General Assembly of this State that in order to serve the public interest it is immediately necessary to require disclosure of important matters related to the qualification, passage, or defeat of ballot questions or the passage or defeat of legislative questions referred to voters. Therefore, an emergency is declared to exist and the Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

Based upon the foregoing, it is the Commission’s opinion that the Disclosure Act was passed wholly in the public interest and should be liberally interpreted. In this regard, it is noted that the Arkansas Supreme Court, in interpreting the Freedom of Information Act (“FOIA”), has held that exemptions to the disclosure requirements must be narrowly construed. See *Arkansas Dep’t of Health v. Westark Christian Action Council*, 322 Ark .440, 443, 910 S.W.2d 199, 201 (1995) (“[l]ess than clear or ambiguous exemptions will be interpreted in a manner favoring disclosure.”)

In using a common sense approach and applying these interpretive principles, the Commission concludes that individuals and other entities included in the definition of a “person” set forth in Ark. Code Ann. § 7-9-402(9)(A) are required to file financial reports with the Commission if the person spends more than five hundred (\$500) of such person’s own funds to expressly advocate the qualification, disqualification, passage, or defeat of a ballot question or passage or defeat of a legislative question. Any other interpretation or construction would defeat public disclosure and the clear intent of the General Assembly. Accordingly, a corporation—as well as other “persons” as defined in

Ark. Code Ann. § 7-9-402(9)(A)—is required to comply with the Disclosure Act if the monetary threshold is met for the purposes as set forth in Ark. Code Ann. § 7-9-406.

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

ARKANSAS ETHICS COMMISSION

By:


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