

ARKANSAS ETHICS COMMISSION

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Opinion No. 92-EC-004

April 30, 1992

Honorable Mike Ross
Arkansas State Senator
P. O. Box 374
Prescott, AR 71857

Dear Senator Ross:

On April 1, 1992, this office received your request for an official opinion under authority of Initiated Act 1 of 1988 and Initiated Act 1 of 1990.

You correctly observe in your letter that the Ethics Commission has recently approved new campaign contributions and expenditure reporting forms, and those forms require the disclosure of the names and addresses of commercial lending institutions which make loans to a campaign. You note that during your 1990 candidacy the reporting forms did not provide for the disclosure of this information. In keeping with what you believed to have been proper practice during that 1990 candidacy, you contributed or loaned money to your campaign. Some of the money you loaned or contributed to your campaign came from personal loans you had taken out from a commercial lending institution. You explain that, as the money was in the form of personal loans to you--and not your campaign, that you're repaying them from your personal funds and not from that of the campaign.

Your question, paraphrased, is:

Did I act properly in listing the 1990 funds from myself to my campaign as "contributions" or "loans" even though part of the funds had come from personal loans taken out by me from a commercial bank?

The answer to your question is, yes, you acted properly.

(1) Arkansas' campaign finance law, as it existed during the election process in 1990 read in part:

ACA §7-6-207(b)(1). CONTENTS OF REPORTS. The campaign contribution reports required by subsection (a) of this section shall indicate the total amount of contributions received during the filing periods and the name and address of each person, including the candidate, who has made a contribution which, in the aggregate, exceeds two hundred fifty dollars (\$250), the contributor's principal place of business, employer occupation, and the amount contributed. The reports shall be filed with the Secretary of State and the county clerk in the county in which the candidate resides.

That section of the law did not require disclosure of loans taken out by the candidate from a commercial lending institution if the loans were personal in nature. That law would have required candidates to reflect on their contribution reports any money that he or she transferred from personal funds to the campaign account or expended toward the election. You indicate in your letter that you disclosed those amounts as either contributions or loans to your campaign. If the funds were, indeed, personal funds, it would not be the concern of this commission where you got the funds.

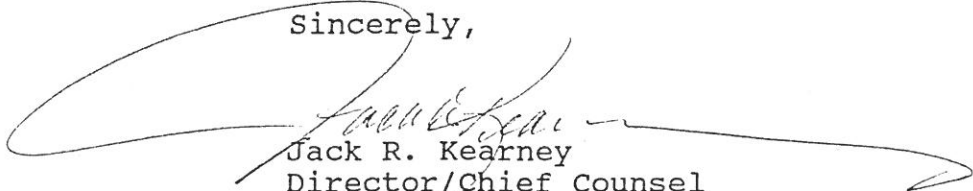
(2) Though your actions in 1990 appear to have fully complied with existing law, this Commission would not attempt to assume jurisdiction of any violation that may have occurred then anyway. That is so because; this Commission was created simultaneously with significant amendments made in Arkansas' campaign finance laws. We were granted authority only over the amended law.

(3) Finally, as you note, the Commission has approved newly designed candidate contribution and expenditure report forms. Those new forms do require disclosure of the source of loans to a candidate for campaign purposes. In keeping with the new forms and the law, funds borrowed from a commercial bank to aid in the candidate's campaign must be fully disclosed. Further, any of the candidate's personal funds used to further the campaign should be disclosed as a contribution or loan. The law allows a candidate to repay himself such contributions or loans, provided there is a surplus of campaign funds at the end of the election process. And though you indicate that you had no surplus campaign funds with which to repay such a loan, it would be improper to repay loans to the candidate

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beyond the amount actually contributed to the campaign. No repayment would be allowed for personal loans or contributions from the candidate unless the contributions or loan amounts were properly reflected in the reports at the time they were actually made.

Sincerely,



Jack R. Kearney
Director/Chief Counsel

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