

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 99-EC-013 Issued August 27, 1999

The Arkansas Ethics Commission has been asked to address a number of issues concerning political action committees ("PACs"). Before addressing those issues, some general information concerning PACs will be set forth.

The term "approved political action committee" is defined in Ark. Code Ann. § 7-6-201(9) to mean any person<sup>1</sup> who:

- (A) Receives contributions from one (1) or more persons in order to make contributions to candidates;
- (B) Does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and
- (C) Has been registered pursuant to § 7-6-215 for at least four (4) continuous months prior to making contributions to candidates.

The definition of "approved political action committee" set forth in § 7-6-201(9) excludes an organized political party as defined in § 7-1-101(1), a candidate's own campaign committee, or an exploratory committee.

The term "small donor political action committee" is defined in Ark. Code Ann. § 7-6-201(12) to mean any person who:

- (A) Receives contributions from one or more individuals in order to make contributions to candidates;

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<sup>1</sup> The term "person" is defined in Ark. Code Ann. § 7-6-201(1) as "any individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, corporation, association, committee, or any organization or group of persons acting in concert." Although the definition goes on to include organized political parties, Ark. Code Ann. § 7-6-201(9)(C) specifically excludes political parties from the definition of an approved PAC.

(B) Does not accept any contribution or cumulative contributions in excess of twenty-five dollars (\$25) from any individual in any calendar year; and

(C) Is registered pursuant to § 7-6-215 prior to making contributions to candidates.

The definition of small donor PAC set forth in Ark. Code Ann. § 7-6-201(12) likewise excludes an organized political party, a candidate's own campaign committee, and an exploratory committee.

Under current law, there are three differences between an approved PAC and a small donor PAC. The first such difference is that an approved PAC is allowed to receive contributions from "persons" while a small donor PAC can only receive contributions from "individuals." The second is that the single source contribution limit is \$5,000.00 per calendar year for an approved PAC and \$25.00 per calendar year for a small donor PAC. The third is that an approved PAC must be registered for four (4) continuous months prior to making contributions to candidates while a small donor PAC need only to register within fifteen (15) days after accepting contributions.

There used to be a fourth difference which was that the limit on contributions from approved PACs to candidates was \$1,000.00 per candidate per election while the limit on contributions from small donor PACs to candidates was \$2,500.00 per candidate per election. That \$2,500.00 limit was struck down on June 4, 1998, in the case of Russell v. Burris, 146 F.3d 563 (8<sup>th</sup> Cir. 1998). The limit applicable to contributions from small donor PACs to candidates is now \$1,000.00 per candidate per election.

**ISSUE # 1:**

Can a small donor PAC be converted to an approved PAC and, if so, by what process?

**ANSWER:**

Small donor PACs were created by Initiated Act One of 1996. Said Act made no provision for converting a small donor PAC into an approved PAC. In the absence of express authority, the Commission concludes that a small donor PAC cannot be converted into an approved PAC.

**ISSUE #2:**

If a small donor PAC cannot be converted to an approved PAC, what is the most appropriate method of dissolving the small donor PAC and reforming as an approved PAC?

**ANSWER:**

In order to dissolve a small donor PAC, the PAC would need to dispose of all of its funds and notify the Secretary of State in writing of its dissolution. The funds could be disposed of by either distributing them to candidates or refunding them to contributors on

a pro rata basis. An approved PAC could be formed by filing a PAC registration form with the Secretary of State.

**ISSUE #3:**

If a small donor PAC is dissolved, can an approved PAC be formed using the same name?

**ANSWER:**

Yes. Although two PACs cannot have the same name at the same time, the name of a dissolved PAC would be available for subsequent use by another PAC.

**ISSUE #4:**

If a small donor PAC can not be converted into an approved PAC, how can the small donor PAC's money be spent and can it be transferred to the approved PAC?

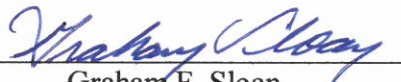
**ANSWER:**

As recognized in Advisory Opinion No. 98-EC-019, PACs serve to receive contributions in order to make contributions to candidates. In that regard, a PAC may use contributed amounts to pay administrative expenses for items such as office space, phones, legal and accounting fees to comply with reporting requirements, utilities, and office supplies.

In connection with its dissolution, a small donor PAC would need to pay any and all outstanding administrative expenses. The remaining balance of its funds would either have to be distributed to candidates or refunded to contributors on a pro rata basis. There is no provision for the funds to be transferred to an appropriate PAC.

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

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