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Post Office Box 1917
Little Rock, Arkansas 72203-1917
(501) 324-9600 Fax (501) 324-9606
Toll Free (800) 422-7773



Graham F. Sloan
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Jill Rogers Barham
Drew Blankenship
Josh Hardin
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Staff Attorneys

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Jennifer Mooney
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Executive Summary

Proposed Amendments to the Rules on Campaign Finance & Disclosure

PURPOSE:

The purpose of these proposed amendments is to bring the Rules on Campaign Finance & Disclosure into conformity with the legislation passed during the 93rd General Assembly of the Arkansas Legislature. The Rules on Campaign Finance & Disclosure are used as a resource when running for public office, so it is important that the rules are updated as soon as possible to help candidates for public office in Arkansas during the 2022 campaign cycle.

DISCUSSION:

The following is a summary of the changes made during the 93rd General Assembly that must be reflected in the Rules on Campaign Finance & Disclosure.

In keeping with *Jones v. Jegley*, 947 F.3d 1100 (8th Cir. 2020), Act 254 removed the two-year fundraising blackout window. Candidates for public office are now permitted to raise campaign contributions more than two (2) years before an election.

Act 254 required that a candidate and committee working on the candidate's behalf disclose each financial institution used for receiving contributions or making expenditures, specifically the financial institution's name and address, to the Secretary of State ("SoS") with the initial report to be filed with the SoS.

Likewise, Act 254 provided that the information shall be made available to the AEC upon request, is not a public record, and is exempt under FOIA. This Act did not address county, municipal, or school board candidates.

Act 254 provided that if the party filing period under § 7-7-203 ends before January 1 of the year of the general election, a candidate for elective office shall file a Statement of Financial Interest ("SFI") for the previous calendar year no later than January 31 of the year of the general election in addition to the SFI required under § 21-8-701.

However, Act 737 (discussed later), completely eliminated the concept of carryover funds, including repealing § 7-6-201(3), so Act 272 became irrelevant.

Pursuant to Act 324, if a candidate or officeholder is assessed a fine by the AEC under § 7-6-218(b)(4)(B) for the use of campaign funds or carryover funds as personal income, a candidate or officeholder shall not use campaign funds or carryover funds to pay that fine. If a candidate or officeholder uses campaign funds or carryover funds to pay a fine imposed by the AEC under § 7-6-218(b)(4)(B) for the use of campaign funds or carryover funds as personal income, the candidate or officeholder shall be deemed to have taken campaign funds as personal income. (Prior to the passage of Act 324, it would have been legally permissible to pay fines issued for taking campaign funds as personal income with campaign funds.)

Act 384 amended the campaign contribution limit from being a set dollar amount written into the Arkansas Code, to instead read as follows: “the maximum campaign contribution level established by rule of the Arkansas Ethics Commission under subsection (i) of this section...” Act 384 did not change the formula that must be used by the AEC to determine the contribution limit (pursuant to Ark. Code Ann. § 7-6-203(i)). This amendment will prevent the Arkansas Code from listing a potentially inaccurate and/or outdated/stale contribution limit every two years. It likewise reinforces that the AEC “shall” set the campaign contribution limit via rule.

The effective date for Act 385 is for all elections *after* January 1, 2023. The amendments found in Act 385 address the campaign contribution limit, adding the words “total” and aggregate “amount” per election, then go on to state that, “The total aggregate amount per election is based on the total contributions made to a candidate by a donor during an election regardless of which office or offices the candidate is seeking, and the aggregate amount during an election applies even if a candidate: (i) Seeks more than one (1) office during the election; or (ii) Concludes a campaign or otherwise withdraws from the election.” This amendment clarified, for example, that it would not be permissible for a candidate to accept a maximum campaign contribution from Contributor “A” to run for Office #1, and then switch races during the same election cycle to run for Office #2 and accept a second, maximum contribution from Contributor “A”, all while keeping both contributions. Put another way, the contribution limit from a single contributor to a single candidate for a single election cycle cannot be exceeded or circumvented by switching the office for which the candidate is running.

Act 540 expanded the types of offices that a person who has been convicted of a public trust crime is ineligible to file for, run for, or hold as a candidate beyond constitutional offices to also include a county elected office and an elected office in a municipality, city, township, or other political subdivision of the state.

Act 734 provided that the use of campaign funds to pay a candidate’s childcare expenses shall not be considered as taking of campaign funds as personal income if the campaign funds are used to pay for childcare for the time the candidate is engaging in campaign activity and the childcare expenses would not exist in the absence of the campaign.

Act 737 removed the term “surplus” campaign funds and replaces it with the term “remaining” campaign funds, and eliminated the term “carryover funds” whenever it appears.

Likewise, Act 737 removed the requirement that a candidate must dispose of surplus funds after the campaign has ended (i.e. dispose of the amount over the annual salary of the office sought.)

Act 737 removed all the current reporting requirements for carryover funds and instead provides, “If a candidate keeps remaining campaign funds after an election, the candidate shall continue filing the reports required by this subsection.” Likewise, with regard to reporting, it adds that the filer shall disclose on their report, “A list of all disbursements made under 7-6-203(g)(1).” Furthermore, with regard to reporting for candidates for school district, township, or municipal office, it added such candidates shall, “For each year in which a candidate is not listed on a ballot for election, file an annual report of all contributions received and expenditures made during that year, and that the annual report shall be filed no later than fifteen (15) days after the end of the year.”

Act 755 amended the law with regard to “Campaign signs, campaign literature, and other printed campaign materials” by removing the phrase “under this section”, clarifying that all such printed campaign materials (not just ones referenced earlier in the sub-section), shall clearly contain the words “Paid for by” followed by the name of the candidate, committee, or person who paid for the campaign sign, campaign literature, or other printed campaign materials. Likewise, Act 755 clarified accountability with regard to the “Paid for by” disclaimer: “The candidate printing the campaign sign, campaign literature, or other printed campaign materials shall be responsible for including the language required by this section.”

Act 1029 eliminated the requirement that Contribution & Expenditure Reports are filed in paper form only when (A) The candidate does not have access to the technology necessary to submit reports in electronic form; and (B) Submitting reports in electronic form would constitute a substantial hardship for the candidate.

It does not remove the requirement that paper filers submit an affidavit, but does eliminate the requirement that the affidavit declare: (i) The candidate does not have access to the technology necessary to submit reports in electronic form; (ii) Submitting reports in electronic form would constitute a substantial hardship for the candidate; and (iii) The candidate agrees to file all other reports in paper form for the duration of the election cycle.

Likewise, Act 1029 provided that the SoS shall develop electronic reporting forms, including without limitation: (i) A cover sheet for a reporting period; (ii) Campaign contribution reports; and (iii) Campaign expenditure reports.

Furthermore, Act 1029 provided that the SoS shall develop electronic reporting forms in a manner that allows a candidate to: (i) Fill out an electronic form for each reporting period in an electronic word processing file, portable document format, or equivalent format that may be saved in a read-only format; (ii) Upload the electronic reporting forms electronically by an upload to the internet or delivered by electronic media to the SoS; and (iii) Combine all electronic forms into a single document that is available to the public in an electronically searchable format.