

5. On November 14, 2005, the Commission received a Citizen Complaint against the Respondent concerning the annexation measure in question. The pertinent allegation of the complaint was that the Respondent violated the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters (Ark. Code Ann. §§ 7-9-401 *et seq.*) by receiving contributions or making expenditures in excess of \$500 for the purpose of expressly advocating the passage or defeat of the measure and failing to comply with (i) the registration requirements set forth in Ark. Code Ann. § 7-9-404 and (ii) the reporting requirements set forth in Ark. Code Ann. §§ 7-9-406 and 7-9-407.

6. On November 16, 2005, the Commission sent the Respondent a letter, via certified mail with a return receipt requested, to notify him that an investigation was being commenced concerning the allegations of the complaint.

7. On December 16, 2005, staff presented the preliminary results of its investigation to the Commission and was instructed to complete the investigation. On that same date, staff sent the Respondent a letter, via first class mail and certified mail with a return receipt requested, to notify him of the Commission's decision and that the results of the investigation would be presented to the Commission at its regular monthly meeting on January 20, 2006, for purposes of determining whether or not probable cause existed for the finding of a violation.

8. On January 20, 2006, the Commission considered the results of staff's investigation and determined, by a vote of 4-0, that probable cause existed for finding that the Respondent violated Ark. Code Ann. § 7-9-404 (a)(1) by failing to timely register as a legislative question committee but that the Respondent's financial reports were timely filed. The finding of probable cause was based upon evidence that the Respondent

did not file a statement of organization until November 23, 2005, which was more than five (5) days after the Respondent crossed the five hundred dollar (\$500) threshold.

9. On January 20, 2006, the Commission sent the Respondent a letter, via first class mail, notifying him of the finding of probable cause. In accordance with the Commission's Rules of Practice and Procedure, said letter contained a written Offer of Settlement. The proposed resolution was the issuance of a Public Letter of Caution, which is the lowest level of public letter issued by the Commission. Pursuant to the Commission's Rules of Practice and Procedure, the Respondent had ten (10) calendar days from the date the Offer of Settlement was issued to either accept same or request a public hearing. Otherwise, the complaint would be set for a final adjudication hearing.

10. On January 31, 2006, the Respondent sent the Commission's Director a letter in which he stated "I am looking forward to your public final adjudication hearing." This letter did not constitute a written request for a public hearing and, in any event, was sent outside the ten (10) day period of time required by the Commission's Rules of Practice and Procedure.

11. On February 2, 2006, the Respondent was sent a letter, via first class mail and certified mail with a return receipt requested, notifying him that a final adjudication hearing would be held on February 17, 2006. Said letter contained a separate written notice providing the information required in Ark. Code Ann. § 25-15-208(a)(2). The final adjudication hearing was scheduled as a result of the Respondent neither accepting the written Offer of Settlement nor requesting a public hearing within the ten (10) day period of time required by the Commission's Rules of Practice and Procedure.

12. The Respondent appeared at the final adjudication hearing which was held on February 17, 2006. This hearing was held in accordance with Ark. Code Ann. § 25-

15-213 and was conducted in the same manner as a public hearing, except that it was held in confidential session.

13. According to his own testimony, the Respondent first became aware of the annexation measure in question early during the month of October of 2005. Shortly thereafter, the Respondent began producing written materials which expressly advocated the defeat of the measure. These written materials were produced on a 4 color laser printer which was owned by the Respondent and cost four thousand six hundred dollars (\$4,600.00).

14. On October 7, 2005, the Respondent produced approximately twenty (20) 11x17 signs on chipboard backing. These signs read "No Shannon Hills Taxes / Vote Against Annexation". The Respondent also produced a number of 18x24 signs which read "No Shannon Hills Annexation / Fix Whats Here First! Mayor / Vote Against Annexation / December 13th, 2005". Both the 11x17 signs and the 18x24 signs contained language which constituted express advocacy of the defeat of the annexation measure.

15. On October 12, 2005, the Respondent produced four hundred (400) copies of an 11x17 handbill entitled "The Shannon Hills Scoop" which was designed to look like a newspaper. That handbill was printed in color and contained the following language "December 13, 2005 / Vote NO / Vote Against Annexation" which constituted express advocacy of the defeat of the annexation measure.

16. It was the Respondent's testimony that this handbill was printed using leftover materials which he had and that the cost of toner was \$0.1299 per copy.

17. Based upon an estimate obtained from Kwik-Kopy, the fair market value of an 11x17 color copy such as the Respondent's handbill entitled "The Shannon Hills Scoop" is \$1.00 per page.

18. In order to “keep his printer going”, the Respondent made a purchase of toner costing \$289.99 on November 3, 2005, and another purchase of toner costing \$169.99 on November 4, 2005. These were followed up by a purchase of miscellaneous office supplies costing \$48.16 on November 11, 2005. Prior to these purchases being made, the Respondent had begun expressly advocating the defeat of the annexation measure.

19. On November 7, 2005, the Respondent attended a meeting of a group of about 150 people who were opposed to the annexation measure. At that meeting, the Respondent received monetary contributions in the amount of three hundred sixty dollars (\$360) from persons in attendance. These contributions were made to the Respondent for purposes of expressly advocating the defeat of the annexation measure.

20. By receiving contributions for the purpose of expressly advocating the defeat of the annexation measure, the Respondent met the definition of “legislative question committee” set forth in Ark. Code Ann. § 7-9-402(8).

21. At the November 7th meeting, the Respondent distributed fifty (50) copies of another handbill entitled “The Shannon Hills Scoop”. This handbill was designated as “Issue No. 2” and was also printed in color. It contained the following language “December 13, 2005 / Vote NO / Vote Against Annexation” which constituted express advocacy of the defeat of the annexation measure.

22. On November 23, 2005, the Respondent filed a statement of organization as “LARRY HACKER / Committee of One / Vote NO Shannon Hills Annexation”. Although this Statement of Organization was filed using a ballot question committee form as opposed to a legislative question committee form, both forms call for the same

information. Accordingly, the Respondent effectively registered as a legislative question committee on November 23, 2005.

23. In accordance with Ark. Code Ann. § 7-9-404(a)(1), a legislative question committee is required to file a statement of organization within five (5) days of receiving contributions in excess of five hundred dollars (\$500) for the purpose of expressly advocating the defeat of a legislative question.

24. The four hundred (400) color copies of the 11x17 handbill entitled "The Shannon Hills Scoop" constituted an "in-kind" contribution from Larry Hacker the individual to the legislative question committee named "LARRY HACKER / Committee of One / Vote NO Shannon Hills Annexation". The date of this contribution was October 12, 2005.

25. The value of an "in-kind" contribution is its fair market value if it had been purchased, sold or leased in the ordinary course of business. Accordingly, the handbills produced on October 12th had a fair market value of four hundred dollars (\$400).

26. The cash contributions in the amount of three hundred sixty dollars (\$360) which the Respondent subsequently received caused him to cross the five hundred dollar (\$500) threshold for filing a legislative question committee statement of organization. This occurred on November 7, 2005, making the statement of organization due by November 12, 2005. ' Because that date fell on a weekend, the statement of organization was actually due no later than November 14, 2005. The Respondent did not file a statement of organization until November 23, 2005, which was nine (9) days after that deadline.

27. In accordance with Ark. Code Ann. § 7-9-404(a)(1), a legislative question committee is required to file a statement of organization within five (5) days of making expenditures in excess of five hundred dollars (\$500) for the purpose of expressly advocating the defeat of a legislative question.

28. After the Respondent became aware of the annexation measure, he made the following expenditures in connection with his expressly advocating the defeat of that measure: a \$289.99 expenditure for toner on November 3, 2005; a \$169.99 expenditure for toner on November 4, 2005; and, a \$48.16 expenditure for miscellaneous supplies on November 11, 2005.

29. The November 11th expenditure in the amount of \$48.16 caused the Respondent to cross the five hundred dollar (\$500) threshold for filing a legislative question committee statement of organization. This occurred on November 11, 2005, making the statement of organization due no later than November 16, 2005. The Respondent did not file a statement of organization until November 23, 2005, which was seven (7) days after that deadline.

30. The fact that "LARRY HACKER / Committee of One / Vote NO Shannon Hills Annexation" paid Larry Hacker \$177.95 on November 28, 2005, did not change the fact that the five hundred dollar (\$500) threshold for filing a statement of organization was crossed from a contribution perspective on November 7, 2005, and from an expenditure perspective on November 11, 2005.

31. Regardless of whether the Respondent's activities are measured from a contribution perspective or an expenditure perspective, the statement of organization filed by the Respondent was outside the five (5) day period of time set forth in Ark. Code Ann. § 7-9-404(a)(1).

32. Upon consideration of the evidence presented at the final adjudication hearing, the Commission found, by a vote of 4-0, that the Respondent violated Ark. Code Ann. § 7-9-404(a)(1) by failing to timely register as a legislative question committee in connection with expressly advocating the defeat of an annexation measure presented to voters at an election held on December 13, 2005.

33. With respect to this violation of Ark. Code Ann. § 7-9-404(a)(1), the Commission has determined that the Respondent should be issued a Public Letter of Caution. Although the Commission is authorized to also impose fines (from \$25 to \$1,000) pursuant to Ark. Code Ann. § 7-6-218(b)(4)(B) and/or late filing fees (of up to \$25 per day) pursuant to Ark. Code Ann. § 7-9-404, it is issuing a Public Letter of Caution only.

IT IS, THEREFORE, CONSIDERED, DECIDED and ORDERED by the Commission that the Respondent, Larry Hacker, committed a violation of Ark. Code Ann. § 7-9-404(a)(1) and shall be issued a Public Letter of Caution for failing to timely register as a legislative question committee in connection with his expressly advocating the defeat of an annexation measure presented to voters at an election held on December 13, 2005.

IT IS SO ORDERED this 8th day of March, 2006.



TED DICKEY, Chairman
Arkansas Ethics Commission