

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2017-EC-003 Issued October 20, 2017

The Arkansas Ethics Commission (the "Commission") has received a written advisory opinion request from City Attorney Thomas M. Carpenter which he submitted on behalf of the City of Little Rock, Arkansas. The question presented is whether it is permissible for a candidate for municipal office to use an exploratory committee to accept contributions outside of the time frame set forth in Section 2-387 of the Little Rock Code which provides, in pertinent part, as follows:

(a) Contributions to regular election campaigns for municipal office shall be limited to the period beginning June 1 immediately before the election and ending December 1 immediately after the election.

Earlier this year, the Commission received a citizen complaint, assigned Case No. 2017-CO-025, in which it was alleged that a candidate had solicited and accepted contributions outside the period of time set forth in Section 2-387 of the Little Rock Code. The Commission dismissed that case because that particular section of the Little Rock Code falls outside the Commission's jurisdiction. In reaching that decision, the Commission determined that it is not vested with enforcement powers with respect to municipal ordinances.

In his opinion request, Mr. Carpenter cites Ark. Code Ann. § 7-6-224 which is entitled "[a]uthority of local jurisdictions" and provides as follows:

Municipalities, counties, and townships shall have the authority to establish reasonable limitations on:

- (1) Time periods that candidates for local office shall be allowed to solicit contributions;
- (2) Limits on contributions to local candidates at amounts lower than those set by state law; and
- (3) Voluntary campaign expenditure limits for candidates seeking election to their respective governing bodies.

The Commission is well aware of the foregoing statute. It came into existence as part of Initiated Act Number One of 1996 which passed by a 2-1 margin and was popularly known as "The Campaign Contribution Limits and Disclosure Act" ("Act One").

Prior to Act One, Arkansas law limited persons to contributions of \$1,000 per candidate per election. The passage of Act One served to reduce the contribution limit to \$300 for the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Attorney General, and Commissioner of State Lands and to \$100 for all other state public offices. It also established Ark. Code Ann. § 7-6-224 which authorized local governments to set reasonable limitations on fund-raising for campaigns for local office.

The provisions of Act One were challenged in district court.¹ Following a bench trial, the district court held that the contribution limits of \$300 for certain statewide offices and \$100 for state judicial offices unconstitutionally violated the First Amendment's protection of freedom of speech. However, the district court upheld the \$100 contribution limit as to all other offices and found that Ark. Code Ann. § 7-6-224, the provision authorizing local governments to set reasonable limitation on fund-raising for campaigns for local office, was not ripe for a constitutional challenge.

On appeal², the Eighth Circuit found that the candidate contribution limits set forth in Act One were unconstitutionally low. With respect to the constitutionality of Ark. Code Ann. § 7-6-224, the Court of Appeals noted that the provision states only that local governments "shall have the authority to establish reasonable limitations" on campaign contributions and expenditures. Because such action had not yet been taken, the court ruled that Ark. Code Ann. § 7-6-224 did not present a federal constitutional controversy that was ripe for adjudication.

In discussing Ark. Code Ann. § 7-6-224, the Eighth Circuit Court of Appeals recognized that:

[t]his provision states only that local governments 'shall have the authority to establish reasonable limitations' on campaign contributions and expenditures and appears simply to be an allocation by the state of Arkansas of certain of its plenary powers to local governments[.]

Russell v. Burris, 146 F.3d at 572.

In Case No. 2017-CO-025, the Commission determined that it lacked enforcement powers with respect to municipal ordinances. Although Ark. Code Ann. § 7-6-224 authorizes local governments to establish reasonable limitations on campaign contributions and expenditures, that statute does not make the Commission the enforcement agency with respect to such local limitations. Accordingly, the Commission is not in a position to answer the question of whether it is permissible for a candidate for municipal office to set up an exploratory committee and accept contributions outside of the time frame set forth in Section 2-387 of the Little Rock Code.

Turning to the laws under the Commission's jurisdiction (and with respect to which it has enforcement powers), the Commission notes that Ark. Code Ann. § 7-6-203(e) provides, in pertinent part, as follows:

¹ Russell v. Burris, 978 F. Supp. 1211 (E. D. Ark., 1997).

² Russell v. Burris, 146 F.3d 563 (C. A. 8 (Ark.), 1998).

(e) It shall be unlawful for any candidate for public office, any person acting in the candidate's behalf, or any exploratory committee to solicit or accept campaign contributions more than two (2) years before an election at which the candidate seeks nomination or election.

In keeping with the foregoing and from the Commission's perspective, it is permissible for both a candidate for public office and an exploratory committee to begin soliciting and/or accepting contributions two (2) years before an election at which the candidate seeks nomination or election. Simply stated, nothing in the laws under the Commission's jurisdiction limits contributions to the period beginning June 1 immediately before the election and ending December 1 immediately after the election.

The Commission notes that the advisory opinion process is not a vehicle designed to make factual findings regarding events that have already occurred. An advisory opinion, by its very nature, is intended to provide guidance related to future conduct – not past events – and is prospective in its application. Accordingly, the Commission refrains from opining about the permissibility of a specific past event.

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

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By: 
Graham F. Sloan, Director