

ARKANSAS ETHICS COMMISSION

910 West Second Street, Suite 100
Post Office Box 1917
Little Rock, Arkansas 72203-1917
(501) 324-9600 Fax (501) 324-9606
Toll Free (800) 422-7773

Ben Allen
Chairman

Jack Kearney
Vice Chairman

Lacy Kennedy
Sally Kibler
Ted Dickey
Commissioners



Graham F. Sloan
Director

Melissa Dorn Bratton
Robert L. Roddey
Staff Attorneys

Todd Elder
Teresa Keathley
Directors of Compliance

ADVISORY OPINION NO. 2002-EC-007 **Issued August 23, 2002**

The Ethics Commission has received a written advisory opinion request from Mr. Christopher Thyer. Mr. Thyer resides in Jonesboro, Arkansas, and is a candidate for State Representative – District 74. He was successful in the primary election which was held on May 21, 2002, and the primary runoff election which was held on June 11, 2002. He is currently unopposed in the general election in November.

In his advisory opinion request, Mr. Thyer asks whether expenses incurred in connection with certain events he has recently attended are reimbursable from his campaign account. Specifically, he asked that the following events be analyzed:

1. Mr. Thyer asks if mileage for a June 18, 2002, trip to and from Little Rock to attend a meeting with other unopposed candidates running for the House of Representatives is reimbursable. This event was sponsored by the House of Representatives. He states that the primary purpose of this meeting, which was deemed a “newly-elected members” event, was to introduce the unopposed candidates to each other and discuss functions of the House of Representatives. Mr. Thyer estimates that 85% of his time was spent discussing officeholder topics including what to expect in January 2003, the Rules of the House, the House Caucus System, introduction of bills and resolutions, committee assignments, reimbursable expenses and salaries, and “day-to-day” workings of the House. He estimates that 15% of his time was spent on campaign related issues. The only campaign purpose Mr. Thyer reports is that he was able to meet other individuals who were successful in the primary election;
2. Mr. Thyer asks if mileage for a June 20, 2002, trip to and from Little Rock to attend a House Democratic Caucus meeting is reimbursable. This event was sponsored by the House Democratic Caucus. He states that the purpose of this meeting was to familiarize himself with the caucus and with other Democratic candidates for the House of Representatives. He goes on to state

that significant discussion of campaign related issues occurred, but declines to state specific topics citing such a disclosure might give Republican opponents unwarranted insight. He does estimate that 95% of his time involved campaign related issues, and the remaining 5% involved officeholder issues. Generally, he states that the topics discussed dealt with how to elect Democrats to office in the November General Election and how the House Democratic Caucus works during the session;

3. Mr. Thyer asks if the ticket price to a June 20, 2002, fund raising event for Jimmie Lou Fisher is reimbursable. The event was sponsored by the Jimmie Lou Fisher for Governor Campaign and took place in Little Rock. Mr. Thyer states that 100% of his time was spent on campaign related matters while attending this function. The purpose of the event was for him to familiarize himself with the Democratic Party's leadership. While at the event, Mr. Thyer stated that spoke to individuals relating to his campaign and the campaigns of other Democratic nominees; and
4. Mr. Thyer asks if mileage for a June 19, 2002, trip to and from Blytheville to meet with a member of the House of Representatives is reimbursable. He states that the meeting dealt with numerous issues including the relationships between Republicans and Democrats, relationships between the House and the Senate, living arrangements during the session and beyond, committee assignments, committee functions and purposes and specific bills likely to arise during the 2003 session. And although he attributes 50% of his time to both officeholder and campaign related discussion, the only campaign purpose he reports being discussed is the retirement of campaign debt.

The general provisions applicable to these questions are found in Ark. Code Ann. §§ 7-6-201(7) and 7-6-203(g)(1). The first such provision, § 7-6-201(7), defines the term "expenditure" to mean "a...payment...made for the purpose of influencing the nomination or election of any candidate." The second provision, § 7-6-203(g)(1), places restrictions on candidates with regard to the use of campaign funds. Specifically, it states that "[a] candidate shall not take any campaign funds as personal income." The Commission has provided further guidance concerning the personal use of campaign funds in §§ 207 through 210 of the Rules on Campaign Finance and Disclosure.

Generally speaking, § 208(a) provides campaign funds are taken as personal income when a candidate uses "campaign funds to fulfill any commitment, obligation or expense that would exist regardless of the candidate's campaign or responsibilities as an officeholder." This subsection is applicable to both active campaign funds and to carryover funds since campaign funds which are retained as carryover funds are treated the same as campaign funds for purposes of determining whether personal usage has occurred. § 207(b), Rules on Campaign Finance and Disclosure. If an expense arises during a campaign and furthers the campaign, then a candidate may use campaign funds to pay the expense. If a candidate retains carryover funds, such funds

may be used to pay legitimate officeholder expenses or in future campaigns in which the candidate seeks a non-federal office.

The Commission has provided a specific list of prohibited personal uses in § 209 of the Rules on Campaign Finance and Disclosure. In that regard, subsection (f) provides as follows:

Generally, campaign funds may not be used to make a contribution to another candidate's campaign. Contributions are construed as a personal matter and transferring a contribution from one campaign to another person's campaign is considered a "personal use" of the funds. However, this general rule is a rebuttable presumption. There could be times and circumstances when a candidate may attend a fund raiser for another candidate and the purpose of attending would be to further the candidate's own campaign. Therefore, buying a ticket to the fund raiser would be permitted. Factual circumstances thus may indicate a need to deviate from the general rule that campaign contributions are personal uses of funds. As noted in § 210 below, for this reason, the Commission will approach each such situation on a case-by-case basis with the rebuttable presumption that such use is prohibited as a personal use of campaign funds.

As mentioned above, § 210 of the Rules on Campaign Finance and Disclosure provides that the determination of whether or not campaign funds were used as personal funds is a factual question to be decided by the Commission. To that end, any person may request a written advisory opinion to ascertain if a particular expense may be paid for with campaign funds. Mr. Thyer has exercised that right by requesting this opinion.

Mr. Thyer's first question asks if mileage for a trip to and from Little Rock to attend a meeting with other unopposed candidates running for the House of Representatives is reimbursable. This event appears to be one tailored for officeholders and not candidates. The discussion of officeholder activity encompassed 85% of the event according to Mr. Thyer. Although the remaining 15% of the time was devoted to campaign activity, it does not appear to be an event which would have significantly furthered Mr. Thyer's campaign. As such, the Commission concludes it is not reimbursable from campaign funds.¹

The second question posed to the Commission is whether or not mileage for a trip to and from Little Rock to attend a House Democratic Caucus meeting is reimbursable. The stated purpose of this meeting was to familiarize Mr. Thyer with the caucus and with other Democratic candidates for the House of Representatives. Mr. Thyer reported that significant discussion of campaign related issues occurred, but declined to state the specific topics which were discussed. This event appears to have been planned to assist candidates in their campaigns and influence the election of Democratic candidates. Accordingly, it would fit the definition of "expenditure" and be an allowable expense of the campaign.

¹ The Commission notes, however, that had this event taken place after the election at a time when Mr. Thyer had carryover funds, this expense could have been paid with such funds.

Next, Mr. Thyer asks if the purchase of a ticket to a fund raiser held in Little Rock for Jimmie Lou Fisher's campaign is reimbursable. Ms. Fisher is the Democratic candidate for governor. This general topic has been discussed in three previous advisory opinions. In Advisory Opinion 92-EC-013, the Commission held that allowing a candidate to use his or her own campaign funds to make a contribution to another candidate amounted to personal use of campaign funds and was therefore prohibited. In Advisory Opinion 97-EC-001, the Commission revisited this subject and reaffirmed that generally the use of a candidate's own campaign funds to make contributions to another candidate's campaign is prohibited as a personal use. However, the Commission set forth the following rebuttable presumption which would be decided on a case-by-case basis:

[T]here could be times and circumstances when a candidate may attend a fund raiser for another candidate, which would involve a contribution to the other campaign, and the primary purpose of this effort would not be a personal one but one designed to further his own campaign.

In Advisory Opinion 2000-EC-012, the Commission again reaffirmed that normally a candidate may not use campaign funds to make a contribution to another candidate's campaign. It also reaffirmed the rebuttable presumption that there could be times when such a contribution was allowed if it furthered the candidate's own campaign. This is a factual determination to be decided on a case-by-case basis.

Furthermore, § 209(f) of the Rules on Campaign Finance and Disclosure also addresses circumstances such as these. The general rule is that a candidate may not contribute money from his or her own campaign to other candidate's campaign. If the contribution was made to purchase tickets to a fund raiser and attendance at that fund raiser furthers the candidate's own campaign, such a contribution is allowed.

Although the fund raiser in question was held outside Mr. Thyer's district, it would appear that Mr. Thyer's attendance furthered his campaign. Since Ms. Fisher is a statewide candidate, the event was covered by numerous press organizations. Such coverage would most likely be to Mr. Thyer's advantage. Additionally, Mr. Thyer would have had the opportunity to continue to discuss campaign issues with leaders of the Democratic Party and with persons in attendance from his district.

Finally, Mr. Thyer asks if mileage for a trip to and from Blytheville to meet with a member of the House of Representatives is reimbursable. Mr. Thyer stated that he received advice on numerous issues including the relationships between Republicans and Democrats, relationships between the House and the Senate, living arrangements during the session and beyond, committee assignments, committee functions and purposes and specific bills likely to arise during the 2003 session. And although he attributes 50% of his time to both officeholder and campaign related discussion, the only campaign purpose he reports being discussed is the retirement of campaign debt. The primary purpose of this activity does not appear to further Mr.

Thyer's campaign, but rather assist with what are typically officeholder activities. Therefore, it is not reimbursable from his campaign funds.

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

ARKANSAS ETHICS COMMISSION

BY: Melissa Dorn Bratton
Melissa Dorn Bratton
Staff Attorney