

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

Jack Kearney
Chairman

Lacy Kennedy
Vice Chairman

Sally Kibler
Ted Dickey
Joe Ball
Commissioners



Graham F. Sloan
Director

Rita S. Looney
Chief Counsel

Robert L. Roddey
Staff Attorney

Todd Elder
Teresa Keathley
Directors of Compliance

ADVISORY OPINION NO. 2003-EC-003

Issued July 18, 2003

The Arkansas Ethics Commission has received a written advisory opinion request from the Republican Party of Arkansas. Therein, Mr. Marty Ryall, State Chairman of the Republican Party, asks two questions related to the hiring by a political party of an unsuccessful candidate as a consultant. The first such question is whether it is permissible for a political party to hire an unsuccessful candidate as a consultant in order to help the candidate pay his or her campaign debts.

The Commission is not aware of any specific statute or rule which would prohibit a political party from hiring an unsuccessful candidate as a consultant. However, if a political party hires an unsuccessful candidate for the intended purpose of making payment on the campaign debt without any expectation of real services from the consultant, then any payment in excess of the contribution limits could be viewed as an illegal campaign contribution. Intent is a factual question which must be decided on a case by case basis. Absent detailed factual information, the Commission cannot opine regarding the permissibility of a political party hiring a particular unsuccessful candidate as a consultant.

Assuming it is permissible for a political party to hire an unsuccessful candidate as a consultant, the second question is whether persons who have contributed the maximum amount to the candidate may be asked to make contributions to the party with the understanding that the money will be used to pay the candidate.

Arkansas law places limitations on the amount of campaign contributions candidates may accept. Specifically, Ark. Code Ann. § 7-6-203(a) states that it shall be unlawful for any candidate to accept a campaign contribution in excess of one thousand dollars (\$1,000) per election from any person. Conversely, Ark. Code Ann. § 7-6-203(b) prohibits any person from making a contribution which, in the aggregate, exceeds one thousand (\$1,000) per election. Pursuant to Ark. Code Ann. § 7-6-203(d), an organized political party, may contribute up to two thousand five hundred dollars (\$2,500) to each candidate per election.

Prohibited contributions and contribution amounts are also addressed in §§ 202 and 203 of the Commission's Rules on Campaign Finance and Disclosure. The relevant parts of those sections provide as follows:

§ 202 Prohibited Contributions

* * *

- (b) No campaign contribution shall be made to a candidate, a political action committee, an independent expenditure committee, an exploratory committee, or a political party unless such contribution is made directly to the intended recipient, provided that it shall be permissible to make a contribution to a candidates' campaign committee instead of directly to the candidate.
- (c) No contribution shall be made to or knowingly accepted by a candidate or his campaign committee, a political action committee, an independent expenditure committee, an exploratory committee, or a political party unless the contribution is made in the name by which the person providing the funds of the contribution is identified for legal purposes.

§ 203 Contribution Amounts

* * *

- (g) All contributions on behalf of a campaign activity, other than in-kind contributions, in excess of \$100 shall be made by a written instrument containing the name of the donor and the name of the payee.

Whether a political party may accept contributions which will be used to pay the salary of an unsuccessful candidate hired as a consultant depends upon the true nature of the employment. The Commission concludes that a political party may solicit contributions from persons who have contributed the maximum amount to the an unsuccessful candidate employed by the party so long as the money will be used to pay the unsuccessful candidate for providing tangible, legitimate services to the party as its employee. If, on the other hand, the hiring of the unsuccessful candidate is merely a fiction and no valid or genuine services are provided, any payment from the party in excess of the statutory limitations would be prohibited.

Additionally, the law requires that contributions be made directly to the intended recipient. Therefore, if the intended recipient has already accepted the maximum amount from a particular contributor, that contributor may not make an indirect contribution to the party for the purpose of retiring the campaign debt of the unsuccessful candidate hired as a consultant by the party if that person is not providing genuine services to the party.

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

ARKANSAS ETHICS COMMISSION

By:


Rita S. Looney, Chief Counsel