

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2005-EC-006 **Issued April 15, 2005**

The Arkansas Ethics Commission has received a written advisory opinion request from Michael W. Langley, attorney for the Democratic Party of Arkansas. Therein, Mr. Langley asks three (3) questions.

QUESTION #1:

Is there any restriction as to when a Senator, Congressman, Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, Commissioner of State Lands, State Senator or State Representative may raise funds for an "organized political party" as defined in Ark. Code Ann. § 7-1-101(18)(A)?

ANSWER:

The statutes under the Commission's jurisdiction do not contain any provisions which specifically address when a person holding public office¹ may raise funds for an organized political party. It is noted, however, that Ark. Code Ann. § 7-1-103(a)(1)-(7) contain a number of prohibitions or restrictions regarding campaign activities by public servants and other persons.

One such provision is Ark. Code Ann. § 7-1-103(a)(2)(A) which makes it unlawful for any public servant to devote any time or labor during usual office hours toward the campaign of any other candidate for office or for the nomination to any office. Another is Ark. Code Ann. § 7-1-103(a)(3) which makes it unlawful for any public servant to use any office or room furnished at public expense to distribute letters, circulars, or other campaign materials (unless such office or room is regularly used by members of the public without regard to political affiliation) and for any public servant to use for campaign purposes any item of personal property provided with public funds.

¹ The term "public office" is defined in Ark. Code Ann. § 7-6-201(14) to mean any office created by or under authority of the laws of the State of Arkansas, or of a subdivision thereof, that is filled by the voters, except a federal office. It is noted that the Commission does not regulate United States Senators or Congressmen.

Pursuant to Ark. Code Ann. § 21-8-402(18) public officials are deemed public servants. § 245(a) of the Commission's Rules on Campaign Finance & Disclosure further provides that public servants who have usual office hours but are on call 24 hours a day are prohibited from campaigning for another candidate during their usual office hours. Caution should be used by any public servant raising funds for a political party to insure that such activities do not violate the above-referenced provisions.

QUESTION #2:

Do any restrictions exist limiting the use of the funds raised by the individuals holding the offices listed in the above question?

ANSWER:

Pursuant to Ark. Code Ann. § 7-6-223, each political party as defined in § 7-1-101(18) is required to file quarterly reports regarding contributions and disbursements. The statutes under the Commission's jurisdiction do not contain any restrictions or prohibitions regarding expenditures by a political party other than Ark. Code Ann. § 7-6-203(d) which prohibits contributions by a political party to a candidate exceeding twenty-five hundred dollars (\$2,500.00) per election, including debt retirement.

QUESTION #3:

Are organized political parties allowed to make independent expenditures as defined in Ark. Code Ann. § 7-6-201?

ANSWER:

Ark. Code Ann. § 7-6-201(10) defines an "independent expenditure" as any expenditure which is **not a contribution** and:

- (A) Expressly advocates the election or defeat of a clearly identified candidate for office;
- (B) Is made without arrangement, cooperation, or consultation between any candidate or any authorized committee or agent of the candidate and the person making the expenditures; and
- (C) Is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of the candidate.

(Emphasis added.)

There is no statute under the Commission's jurisdiction which specifically addresses the making of independent expenditures by an organized political party. In reviewing the Commission's Rules on Campaign Finance & Disclosure, it is noted that § 205(d) provides that a political advertisement by a political party on behalf of one of its

candidates expressly advocating the election of the candidate or the defeat of the candidates' opponent constitutes an in-kind contribution.

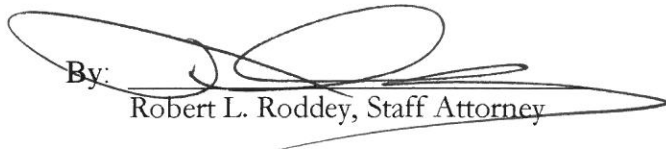
When a party takes out an ad for one of its candidates, even without expressly consulting the candidate, the party is deemed to have made an "in-kind contribution" to the candidate's campaign. Because an independent expenditure is defined as any expenditure which is "not a contribution," § 205(d) would serve to prohibit a political advertisement by a political party on behalf of one of its candidates from qualifying as an independent expenditure.

Even in the absence of § 205(d), the answer to this third question would likely be the same. The inherently close relationship that exists between an organized political party and its nominees would appear to amount to a *de facto* prohibition. It seems hard to imagine that cooperation or consultation does not exist between a party and its candidates.

While the Commission has concluded that a party is not able to make an independent expenditure expressly advocating the election or defeat of a clearly identified candidate, there does not appear to be any prohibition against a party making a contribution to an independent expenditure committee. The term "independent expenditure committee" is defined in Ark. Code Ann. § 7-6-201(11) as any person who receives contributions from one (1) or more persons in order to make an independent expenditure and is registered pursuant to Ark. Code Ann. § 7-6-215 prior to making expenditures.

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

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By: 
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