

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2006-EC-005 Issued June 16, 2006

The Ethics Commission has received a written request for an advisory opinion from Clint Reed, Executive Director of the Republican Party of Arkansas. In the advisory opinion request, Mr. Reed references a recent political advertisement and asks whether or not such an advertisement would constitute a nonmoney (or "in-kind") contribution from the candidate who is running the ad to another candidate who is also referenced in the ad. The text of the ad is as follows:

"...Senator Tim Wooldridge has more actual state government experience than all of the other lieutenant governor candidates combined, making him the most qualified to partner with Mike Beebe to lead Arkansas."

This particular ad advocates the election of Tim Wooldridge as Lieutenant Governor while also referencing an unopposed Democratic gubernatorial candidate, Mike Beebe. Accordingly, the situation presented requires an analysis of the content of political advertising and what, if any, regulatory authority this Commission has regarding the language used in such advertisements and the consequence of using certain words or phrases in campaign ads.

In a recent opinion, the Commission specifically addressed the applicable laws regulating certain political speech, primarily focusing on the arena of issue advocacy advertisements. However, the Commission noted that "[p]aid advertisements which expressly advocate the election or defeat of a clearly identified candidate are regulated through the law as applied to independent expenditures or as political contributions reported by the candidate benefited." When done in cooperation with the candidate benefited, an ad that expressly advocates the election or defeat of a candidate constitutes a contribution to the candidate benefited and such a nonmoney (or "in-kind") contribution is limited to \$2,000 per election. If an ad contains express advocacy but is done independently (no cooperation with the candidate), then reporting is required as an independent expenditure.

The statutory definitions of the relevant terms are defined by Ark. Code Ann. § 7-6-201. These terms are defined as follows:

(4)(A) “Contribution” means, whether direct or indirect, advances...or anything of value...to a candidate, [or] committee...made for the purpose of influencing the nomination or election of any candidate.”

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(8) “Expenditure” means a purchase...or anything of value...made for the purpose of influencing the nomination or election of any candidate.”

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(11) “Independent expenditure” means 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 ... and the person making the expenditure...; and (C) Is not made in concert with or at the request or suggestion of any candidate...”

In the Commission’s Rules on Campaign Finance and Disclosure, an “in-kind contribution” is defined in § 200 (l) as “a contribution of goods, services, or any other thing of value, or its use, other than money and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution in the future.” Further guidance regarding political advertisements as “in-kind” contributions is given in Rules § 205 (d) and (f):

(d)...A political advertisement by a political party on behalf of a specifically named candidate expressly advocating the election of the candidate or the defeat of the candidate’s opponent constitutes an in-kind contribution....

(f) Political advertising, as detailed in subsection (d) above, supporting more than one candidate and other forms of political marketing may be an in-kind contribution. If political advertising or other mass political marketing technique supports more than one candidate and is determined to be an in-kind contribution, the amount of the contribution shall be determined and reported by dividing the full value of the political advertising or marketing by the number of persons benefited. Each candidate specifically listed by the advertisement shall assume the pro rata share of the costs of the contribution.

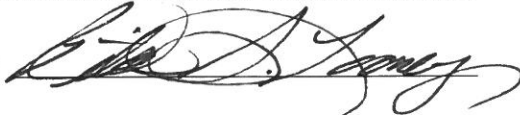
Although the referenced ad is not one placed by a political party, it nevertheless makes reference to a candidate other than the one who is expressly advocating his own election. When an ad expressly advocates the election of more than one candidate, the rule is clear that each shall assume a pro rata share of the cost of the ad. However, the specific language in this advertisement does not rise to the level of express advocacy as it relates to the referenced candidate, Mike Beebe.

While it is likely true that Mr. Wooldridge hopes to gain favor by pairing himself with the unopposed Democratic candidate for governor, this ad does not expressly advocate Mr. Beebe's election. Therefore, based on the facts presented and the applicable law, it is the Commission's opinion that the content of the ads as described in the opinion request does not expressly advocate the election of Mike Beebe and therefore does not amount to an in-kind contribution to his campaign. Likewise, because there is no express advocacy, no independent expenditure has occurred.

It is noted that this opinion is being issued based on the provisions set forth above as applied specifically to the ads as described in the request. Paid advertisements which expressly advocate the election or defeat of a clearly identified candidate are regulated as either independent expenditures or as in-kind contributions reported by the candidate benefited.

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

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By: 

Rita S. Looney, Chief Counsel