

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2007-EC-002

Issued March 16, 2007

The Arkansas Ethics Commission has received a written advisory opinion request from Robert T. Rogers II, the Prosecuting Attorney for the 19th Judicial District East. In his opinion request, Mr. Rogers states that he is involved in an election contest which resulted from the 2006 Democratic primary election and asks the following questions:

1. Is an elected official permitted to raise money or receive donations to pay attorney's fees, expert witnesses, etc. for his legal defense?
2. If it is allowed, what are the rules, if any, on disclosure?

After reviewing the statutes under the Ethics Commission's jurisdiction, it is noted that there are no specific provisions addressing this particular type of fundraising or the disclosure requirements applicable to the receipt of funds by an elected official to pay for the legal defense of an election contest.

It is clear, however, that the law allows contributions to be solicited and accepted by public officials in the form of campaign contributions within two years before an election when the public official is running for public office. See Ark. Code Ann. § 7-6-203(f). Moreover, a candidate whose campaign ended in debt may solicit funds for retirement of that debt, and the contributions received are to be reported pursuant to Ark. Code Ann. § 7-6-219.

This particular statute requires the filing of a campaign contribution and expenditure report concerning a campaign debt if, since the last report concerning the debt, the person has received cumulative contributions in excess of five hundred dollars (\$500). The report is to be filed not later than fifteen (15) days after a calendar quarter in which such report is required to be filed.

It is the Commission's opinion that the legal expenses incurred by Mr. Rogers in connection with the election contest are directly related to his campaign for prosecuting attorney. Accordingly, the Commission concludes it would be permissible for Mr. Rogers to receive contributions to pay such expenses as a debt of the campaign.

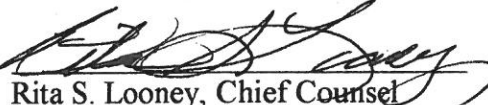
The contributions received will be treated as campaign contributions to his previous campaign, and all campaign contribution limits will continue to apply. Ark. Code Ann. § 7-6-219. All contributions received for the legal expenses of the election contest should be reported as contributions on a Campaign Contribution and Expenditure quarterly report pursuant to Ark. Code Ann. § 7-6-219.

In the event that Mr. Rogers had ended his campaign with carryover funds, it would have been permissible for him to have used such funds to defend the election contest. The use of carryover funds to defend an election contest would be reported on a Carryover Fund Reporting Form.

This opinion should not be read to imply that it would be permissible for Mr. Rogers or any other public official to use carryover funds or receive contributions for any other type of legal defense fund. This is an issue of first impression before the Commission and the opinion is limited to the specific situation described herein.

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

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By: 
Rita S. Looney, Chief Counsel