

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2008-EC-005 Issued May 16, 2008

The Arkansas Ethics Commission has received a written advisory opinion request from William A. Waddell, Jr., an attorney in private practice who represents the Arkansas Farm Bureau Federation (the "Federation"). Therein, Mr. Waddell asks four questions concerning an "issues fund" which the Federation plans to establish.

The opinion request was accompanied by a written statement outlining how the proposed fund will operate. The statement reflects that the fund is being established for purposes of advancing the Federation's positions on issues that affect the economic and social well-being of Farm Bureau members. The primary source of funding will be voluntary contributions solicited from Farm Bureau members as part of the membership application and renewal process.

According to the statement, the fund will be used for advocacy of the Federation's position on pending or threatened issues, including ballot questions¹ and legislative questions,² which may affect Farm Bureau members. It is the Commission's understanding, however, that the fund will not be used to directly engage in express advocacy regarding ballot and legislative questions, but rather to make contributions to ballot and legislative question committees.

The foregoing is an important distinction. It is expressly noted that the Federation's receipt of contributions for purposes of expressly advocating either the qualification, disqualification, passage, or defeat of any ballot question or the passage or defeat of any legislative question would subject it to possible regulation under the Disclosure Act for

¹ The term "ballot question" is defined in Ark. Code Ann. § 7-9-402(1) as "a question in the form of a statewide, county, municipal, or school district initiative or referendum which is submitted or intended to be submitted to a popular vote at an election, whether or not it qualifies for the ballot."

² The term "legislative question" is defined in Ark. Code Ann. § 7-9-402(7) as "a question in the form of a measure referred by the General Assembly, a quorum court, a municipality, or a school district to a popular vote at an election."

Public Initiatives, Referenda, and Measures Referred to Voters (Ark. Code Ann. § 7-9-401 *et seq.*).

The statement concerning the fund specifically lists the following as being prohibited uses: making contributions to or for the benefit of a candidate for public office; making contributions to or for the benefit of public officials; making contributions to or for the benefit of public appointees and public employees; and making independent expenditures³ or contributions to independent expenditure committees.⁴

The first question asked is whether or not any political action committee ("PAC") registration and reporting requirements will be triggered if the Federation collects funds in the manner proposed, segregates those funds in the "Arkansas Farm Bureau Voluntary Issues Fund," and uses those funds solely to make contributions to ballot and legislative question committees. In the Commission's opinion, such activity will indeed trigger PAC registration and reporting.

The term "approved political action committee" is defined in Ark. Code Ann. § 7-6-201(1)(A) to mean any person that:

- (i) Receives contributions from one (1) or more persons in order to make contributions to candidates, *ballot question committees*, *legislative question committees*, political parties, county political party committees, or other political action committees;
- (ii) Does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and
- (iii) Registers pursuant to Ark. Code Ann. § 7-6-215 prior to making contributions (emphasis added).

In accordance with Ark. Code Ann. § 7-6-215(a)(1)(A), the Arkansas Farm Bureau Voluntary Issues Fund will need to register as an approved political action committee within fifteen (15) days after accepting contributions during a calendar year that exceed five hundred dollars (\$500) in the aggregate. Thereafter, it will need to comply with the reporting requirements set forth in Ark. Code Ann. § 7-6-215(d).

³ The term "independent expenditure" is defined in Ark. Code Ann. § 7-6-201(11) 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 expenditure or any authorized agent of that person; 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."

⁴ The term "independent expenditure committee" is defined in Ark. Code Ann. § 7-6-201(12) as "any person that 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."

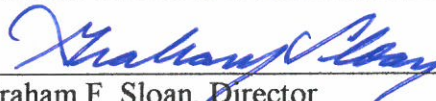
The second question asked is whether the acronym "PAC" has to be included in the name of the Arkansas Farm Bureau Voluntary Issues Fund. A review of the statutes under the Commission's jurisdiction reflects that there is no provision which requires the name of a political action committee to include the words "political action committee" or the acronym "PAC." The only provision even remotely related to this question is Ark. Code Ann. § 7-6-215(b)(1) which provides that "if the political action committee's name is an acronym, then both it and the words forming the acronym shall be disclosed."

The third question asked is whether itemization is required with respect to a person who does not contribute more than five hundred dollars (\$500) in a calendar year to the Arkansas Farm Bureau Voluntary Issues Fund. The answer to this question is found in Ark. Code Ann. § 7-6-215(d)(1)(C). Pursuant thereto, a PAC is required to list certain information, including name and address, of each person that made a contribution or contributions to it that exceeded five hundred dollars (\$500) in the aggregate. There is no requirement, however, that such information be provided with respect to persons contributing five hundred dollars (\$500) or less in a calendar year.

The fourth question asked is whether the Commission notes any other restrictions which may apply to the fund in question. In this regard, it is noted that the Commission has promulgated a set of Rules on Political Committees which details the registration and reporting requirements applicable to PACs. As set forth in § 500(a) of said Rules, a political action committee may not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year.

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

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By: 
Graham F. Sloan, Director