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MAR 29 2019

BEFORE THE ARKANSAS ETHICS COMMISSION

ARKANSAS ETHICS
COMMISSION

BY 277

**In Re: Jeremy Hutchinson
Respondent**

Case No. 2018-CO-053

FINAL ORDER

Came for a final adjudication hearing on March 15, 2019, the complaint filed in this case against the Respondent, Jeremy Hutchinson, and based upon due consideration of both the evidence presented at that hearing and the applicable law, the Arkansas Ethics Commission (hereinafter the "Commission") hereby makes the following findings of fact and conclusions of law:

1. The Commission has jurisdiction over this matter pursuant to Ark. Code Ann. § 7-6-218.

2. The Respondent is a citizen of the State of Arkansas who, at all times relevant to this case, was a State Senator and candidate for reelection to the office of State Senator.

3. The Commission is charged with enforcing Ark. Code Ann. § 7-6-203 which, at all times relevant to this case, provided, in pertinent part, as follows:

(f)(1) A candidate shall not take any campaign funds as personal income. This subdivision (f)(1) shall not apply to campaign funds that were:

(A) Accumulated prior to the passage of Initiated Act 1 of 1990; or

(B) Disposed of prior to July 28, 1995.

(2) A candidate shall not take any campaign funds as income for his or her spouse or dependent children, except that:

(A) This subsection shall not prohibit a candidate who has an opponent from employing his or her spouse or dependent children as campaign workers; and

(B) Any candidate who has an opponent and who, during the campaign and before the election, takes a leave of absence without pay from his or her primary place of employment shall be authorized to take campaign funds during the campaign and before the election as personal income up to the amount of employment income lost as a result of such leave of absence.

(3) A candidate who takes campaign funds during the campaign and before the election under a leave of absence pursuant to the provisions of subdivision (f)(2) of this section may elect to treat the campaign funds as a loan from the campaign fund to the candidate to be paid back to the campaign fund by the candidate.

(4)(A) For purposes of this subsection, a candidate who uses campaign funds to fulfill any commitment, obligation, or expense that would exist regardless of the candidate's campaign shall be deemed to have taken campaign funds as personal income.

(B) The use of campaign funds to purchase a cake or other perishable item of food at a fund-raising event held by a volunteer agency, as defined in § 16-6-103, shall not be considered a taking of campaign funds as personal income.

(C) The use of campaign funds to purchase advertising prior to the date the final report is due to be filed thanking voters for their support shall not be considered a taking of campaign funds as personal income.

(D) The use of campaign funds to pay a candidate's own personal expenses for food, lodging, or travel to attend a national presidential nominating convention shall not be considered a taking of campaign funds as personal income.

(g)(4)(A) Carryover funds may be expended at any time for any purpose not prohibited by this chapter and may be used as campaign funds for seeking any public office. Nothing shall prohibit a person at any time from disposing of all or any portion of his or her carryover funds in the same manner as for surplus campaign funds. However, the candidate shall not take the funds as personal income or as income for his or her spouse or dependent children.

(h) A candidate may maintain his or her campaign funds in one (1) or more campaign accounts. Campaign funds shall not be placed in an account containing personal or business funds.

(i)(1) The contribution limits under subdivision (a)(1)(A) and subdivision (b)(1) of this section shall be adjusted at the beginning of each odd-numbered year in an amount equal to the percentage certified to the Federal Election Commission by the

Bureau of Labor Statistics of the United States Department of Labor under 52 U.S.C. § 30116(c) as existing on January 1, 2015.

(2) If the amount after adjustment under subdivision (i)(1) of this section is not a multiple of one hundred dollars (\$100), the Arkansas Ethics Commission shall round the amount to the nearest multiple of one hundred dollars (\$100).

(3) The Arkansas Ethics Commission shall promulgate rules identifying the adjusted contribution limit under subdivision (i)(1) of this section.

4. The Commission is also charged with enforcing Ark. Code Ann. § 7-6-207 which, at all times relevant to this case, provided, in pertinent part, as follows:

(a) Reports Required.

(1) Except as provided in subsections (c) and (e) of this section, each candidate for state or district office, including a district judge, or a person acting in the candidate's behalf, shall file with the Secretary of State:

(A) For each quarter during a calendar year in which a candidate is not listed on any ballot for election, a quarterly report of all contributions received and expenditures made during that quarter. The quarterly report shall be filed no later than fifteen (15) days after the end of each quarter;

(E)(i) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed.

(ii) If a candidate withdraws from the campaign, the candidate shall notify the Secretary of State in writing of the withdrawal.

(b) Contents of Reports.

(1) The contribution and expenditure reports required by subsection (a) of this section shall indicate:

(A) The total amount of contributions received with loans stated separately, the total amount of expenditures made during the filing periods, and the cumulative amount of those totals for the entire election cycle;

(B) The name and address of each person, including the candidate, who made a contribution or contributions that in the aggregate exceeded fifty dollars (\$50.00);

(C) The contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the candidate, and the aggregate contributed for each election;

(D) The name and address of each person, including the candidate, who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(E) An itemization of all single expenditures made that exceed one hundred dollars (\$100), including the:

(i) Amount of the expenditure;

(ii) Name and address of any person, including the candidate, to whom the expenditure was made; and

(iii) Date the expenditure was made;

(F) A list of all paid campaign workers and the amount the workers were paid;

(G) A list of all expenditures by categories, including, but not limited to:

(i) Television, radio, print, or other advertising;

(ii) Direct mail;

(iii) Office supplies;

(iv) Rent;

(v) Travel;

(vi) Expenses;

(vii) Entertainment; and

(viii) Telephone;

(H) The total amount of all nonitemized expenditures made during the filing period; and

5. On September 4, 2018, the Commission received a complaint against the Respondent in his capacity as a candidate for Arkansas State Senate. Briefly restated, the pertinent allegations of that complaint were as follows:

- (a) The Respondent took campaign funds as personal income;
 - (b) The Respondent placed campaign funds in a bank account containing personal or business funds;
 - (c) The Respondent failed to properly report campaign contributions;
- and
- (d) The Respondent failed to properly report campaign expenditures.

6. On September 17, 2018, the Commission sent the Respondent a letter, via certified mail with a return receipt requested, to notify him that an investigation was being commenced concerning the allegations set forth above. The letter went on to state that the focus of the investigation with regard to those allegations would be whether or not he violated Ark. Code Ann. §§ 7-6-203(f), 7-6-203(h), 7-6-207(b)(1)(A) - (D), and/or 7-6-207(b)(1)(E) - (H). The September 17, 2018 letter was returned to the Commission marked “undeliverable”.

7. On September 27, 2018, the Commission sent the Respondent a second letter, via certified mail with a return receipt requested, to notify him that an investigation was being commenced concerning the allegations set forth above. The letter went on to state that the focus of the investigation with regard to those allegations would be whether or not he violated Ark. Code Ann. §§ 7-6-203(f), 7-6-203(h), 7-6-207(b)(1)(A) - (D), and/or 7-6-207(b)(1)(E) - (H).

8. The Respondent’s attorney, Tim Dudley, subsequently accepted service of the complaint on behalf of the Respondent on November 6, 2018.

9. On November 16, 2018, staff presented the preliminary results of its investigation to the Commission at its regular monthly meeting and was instructed to complete the investigation. The Respondent and his attorney were notified of the Commission's decision by letter dated December 4, 2018.

10. On January 30, 2019, the Commission sent the Respondent and his attorney a letter, via first-class mail, as written notice that the scope of the investigation had been expanding to also include whether or not the Respondent violated Ark. Code Ann. § 7-6-207(a)(1)(A) and (E) by failing to file Campaign Contribution and Expenditure ("C&E") Reports for the 2nd Quarter of 2016, the 3rd Quarter of 2016, the 1st Quarter of 2017, the 2nd Quarter of 2017, and the 3rd Quarter of 2017, and a Final Report, all for the 2018 primary election.

11. On February 5, 2019, the Commission sent the Respondent and his attorney a letter, via first-class mail, to notify them that the results of the investigation would be presented to the Commission at its regular monthly meeting on February 15, 2019, for purposes of determining whether or not probable cause existed for the finding of a violation. The February 5, 2019 letter also served as written notice that the scope of the investigation had been expanded to include another potential violation, as follows:

With respect to the allegation that the Respondent took campaign funds as personal income, also whether or not he violated Ark. Code Ann. § 7-6-203(g) by taking carryover funds as personal income, specifically with respect to expenditures to Netflix and D1 Sports Training.

12. On February 15, 2019, the Commission considered the results of staff's investigation and decided by a vote of 3-0, with Commissioners Younger and Eastwood not present, that probable cause existed for finding that the Respondent violated the following statutory provisions:

1. Ark. Code Ann. § 7-6-203(f) - (h) by taking campaign funds and carryover funds as personal income in connection with the following disbursements:
 - a. Netflix subscription;
 - b. D1 Sports Training membership;
 - c. Shiloh Christian School for tuition; and
 - d. Sissy's Log Cabin for the purchase of a woman's ring;
2. Ark. Code Ann. § 7-6-207(b)(1) (A) - (D) by failing to properly report campaign contributions in the form of money from the Respondent and/or his law firm;
3. Ark. Code Ann. § 7-6-207(b)(1)(E) - (H) by failing to properly report campaign expenditures, as seen in approximately twenty-four (24) expenditures/ disbursements that were not reported and/or itemized in a report; and
4. Ark. Code Ann. § 7-6-207(a)(1)(A) and (E) by failing to file C&E Reports for the 2nd Quarter of 2016, the 3rd Quarter of 2016, the 1st Quarter of 2017, the 2nd Quarter of 2017, and the 3rd Quarter of 2017, and a Final Report, all for the 2018 primary election.

13. On February 20, 2019, the Commission sent a letter to the Respondent and his attorney, via first-class mail, notifying them of the Commission's decision that probable cause existed for finding that the Respondent violated Ark. Code Ann. § 7-6-203(f) - (h), Ark. Code Ann. § 7-6-207(b)(1)(A) - (D), Ark. Code Ann. § 7-6-207(b)(1)(E) - (H), and Ark. Code Ann. § 7-6-207(a)(1)(A) and (E) in his capacity as a candidate for Arkansas State Senate.

14. In accordance with the Commission's Rules of Practice and Procedure, the February 20th letter contained a written Offer of Settlement with the proposed outcome being the issuance of a Public Letter of Reprimand and the imposition of seven (7) fines totaling Eleven Thousand Dollars (\$11,000.00). The breakdown of those fines was as follows:

1. In connection with Ark. Code Ann. § 7-6-203(f) - (h) (taking campaign funds and carryover funds as personal income):
 - a. The imposition of a fine in the amount of \$500 for payments to Netflix;
 - b. The imposition of a fine in the amount of \$2,000 for payments to D1 Sports Training;

- c. The imposition of a fine in the amount of \$2,000 for a payment to Shiloh Christian School for tuition; and
 - d. The imposition of a fine in the amount of \$2,000 for a payment to Sissy's Log Cabin for purchase of a women's ring;
- 2. In connection with Ark. Code Ann. § 7-6-207(b)(1)(A) - (D) (failing to properly report campaign contributions in the form of money from the Respondent and/or his law firm), the imposition of a fine in the amount of \$2,000;
- 3. In connection with Ark. Code Ann. § 7-6-207(b)(1)(E) - (H) (failing to properly report campaign expenditures, as seen in approximately twenty-four (24) expenditures that were not reported and/or itemized in a report), the imposition of a fine in the amount of \$2,000; and
- 4. In connection with Ark. Code Ann. § 7-6-207(a)(1)(A) and (E) (failing to file C&E Reports for the 2nd Quarter of 2016, the 3rd Quarter of 2016, the 1st Quarter of 2017, the 2nd Quarter of 2017, and the 3rd Quarter of 2017, and a Final Report, all for the 2018 primary election), the imposition of a fine in the amount of \$500.

15. On March 5, 2019, the Commission sent the Respondent and his attorney a letter, via first-class mail, advising that the Respondent had failed to accept the Offer of Settlement within the time allowed and, therefore, a final adjudication hearing would be held on March 15, 2019. Said letter contained a separate written notice providing the information required in Ark. Code Ann. § 25-15-208(a)(2).

16. Neither the Respondent nor his attorney appeared at the final adjudication hearing which was held during the Commission's confidential session on March 15, 2019. Said hearing was conducted in accordance with Ark. Code Ann. § 25-15-213.

17. At all times relevant to this case, the Respondent was a State Senator and candidate for reelection to the office of State Senator.

18. The Respondent took campaign and/or carryover funds as personal income by using funds to pay for a subscription to Netflix streaming video service in the amounts of Eight Dollars

and Seventy-One Cents (\$8.71) on August 25, 2014; Eight Dollars and Seventy-One Cents (\$8.71) on September 24, 2017; Thirteen Dollars and Seven Cents (\$13.07) on October 23, 2014; Thirteen Dollars and Seven Cents (\$13.07) on November 7, 2017, and Thirteen Dollars and Seven Cents (\$13.07) on December 23, 2014.

19. The Respondent took campaign funds and/or carryover funds as personal income by using funds to pay for membership with D1 Sports Training - Little Rock in the amount of One Hundred Sixty Dollars (\$160.00) on August 27, 2014, September 24, 2014, October 27, 2014, November 28, 2014, December 29, 2014, and January 27, 2015. The Respondent did not itemize said expenditures to D1 Sports Training - Little Rock on any Report.

20. The Respondent took campaign funds as personal income by using funds to pay for his child's school tuition at Shiloh Christian School in the amount of Two Thousand Dollars on August 18, 2016.

21. The Respondent took campaign funds as personal income by using funds to pay for the purchase of a woman's ring from Sissy's Log Cabin in the amount of Eight Hundred Seventeen Dollars and Twenty Cents (\$817.20) on February 14, 2017. The Respondent did not itemize said expenditure to Sissy's Log Cabin on any Report.

22. The Respondent failed to properly report campaign contributions in the form of money received from himself and/or his law firm.

23. The Respondent failed to properly report the following expenditures in the Report he filed for the period of time June 1, 2016 through December 31, 2016:

- Expenditure in the amount of One Thousand, Three Hundred Dollars (\$1,300.00) made to 1836 Club for "fundraiser" on June 20, 2016.
- Expenditure in the amount of One Thousand, Five Hundred Dollars (\$1,500.00) made to RPA for "Capitol Club" on June 27, 2016.

- Expenditures in the amount of One Hundred One Dollars and Twenty-Five Cents (\$101.25) made in Cleveland, Ohio for the Republican National Convention on July 28, 2016.
- Expenditures in the amount of One Thousand, Eight Hundred Thirty-Six Dollars and Seventeen Cents (\$1,836.17) made in Cleveland, Ohio for the Republican National Convention on July 28, 2016.
- Expenditure in the amount of Three Hundred Forty-Five Dollars (\$345.00) made to Dorothy Gamble for “loan” on August 17, 2016.
- Expenditure in the amount of Two Thousand Dollars (\$2,000.00) made to “Shiloh” for “tuition” on August 18, 2016, which was deposited by Shiloh Christian School.
- Expenditure in the amount of Two Thousand Dollars (\$2,000.00) made in the form of a cash withdrawal on August 30, 2016.
- Expenditure in the amount of One Hundred Dollars (\$100.00) made for golf tournament to Saline Memorial on September 4, 2016.
- Expenditure in the amount of One Thousand, Six Hundred Dollars (\$1,600.00) made in the form of a cash withdrawal on September 10, 2016.

24. The Respondent failed to file C&E Reports for the 2nd Quarter of 2016, the 3rd Quarter of 2016, the 1st Quarter of 2017, the 2nd Quarter of 2017, and the 3rd Quarter of 2017, and a Final Report, all for the 2018 primary election.

25. When it returned to public session, the Commission voted on the following matters:

A motion was made by Commissioner Juneau and seconded by Commissioner Hampton to find as follows:

- A. That the Respondent, Jeremy Hutchinson, violated the following statutory provisions:
 - 1. Ark. Code Ann. § 7-6-203(f) - (h) by taking campaign funds and carryover funds as personal income:
 - a. Netflix subscription,
 - b. D1 Sports Training membership,
 - c. Shiloh Christian School for tuition, and
 - d. Sissy’s Log Cabin for purchase of a women’s ring;

2. Ark. Code Ann. § 7-6-207(b)(1)(A) - (D) by failing to properly report campaign contributions in the form of money from himself and/or his law firm;
 3. Ark. Code Ann. § 7-6-207(b)(1)(E) - (H) by failing to properly report approximately ten (10) campaign expenditures in the report he filed for the period of time June 1, 2016 through December 31, 2016; and
 4. Ark. Code Ann. § 7-6-207(a)(1)(A) and (E) by failing to file C&E Reports for the 2nd Quarter of 2016, the 3rd Quarter of 2016, the 1st Quarter of 2017, the 2nd Quarter of 2017, and the 3rd Quarter of 2017, and a Final Report, all for the 2018 primary election.
- B. That the following fines (totaling \$11,000) be imposed with respect to those violations:
1. a. \$500
b. \$2,000
c. \$2,000
d. \$2,000
 2. \$2,000
 3. \$2,000
 4. \$500
- C. That the Respondent be issued a Public Letter of Reprimand with respect to those violations.

26. The foregoing motion passed by a vote of 3-0, with Commissioners Younger and Eastwood not present.

27. The Respondent committed a violation of Ark. Code Ann. Ark. Code Ann. § 7-6-203(f) - (h) by taking campaign funds and carryover funds as personal income:

- a. Netflix subscription,
- b. D1 Sports Training membership,
- c. Shiloh Christian School for tuition, and
- d. Sissy's Log Cabin for purchase of a women's ring.

28. The Respondent committed a violation of Ark. Code Ann. § 7-6-207(b)(1)(A) - (D) by failing to properly report campaign contributions in the form of money received from himself and/or his law firm.

29. The Respondent committed a violation of Ark. Code Ann. § 7-6-207(b)(1)(E) - (H) by failing to properly report the following campaign expenditures in the Report he filed for the period of time June 1, 2016 through December 31, 2016:

- Expenditure in the amount of One Thousand, Three Hundred Dollars (\$1,300.00) made to 1836 Club for “fundraiser” on June 20, 2016.
- Expenditure in the amount of One Thousand, Five Hundred Dollars (\$1,500.00) made to RPA for “Capitol Club” on June 27, 2016.
- Expenditures in the amount of One Hundred One Dollars and Twenty-Five Cents (\$101.25) made in Cleveland, Ohio for the Republican National Convention on July 28, 2016.
- Expenditures in the amount of One Thousand, Eight Hundred Thirty-Six Dollars and Seventeen Cents (\$1,836.17) made in Cleveland, Ohio for the Republican National Convention on July 28, 2016.
- Expenditure in the amount of Three Hundred Forty-Five Dollars (\$345.00) made to Dorothy Gamble for “loan” on August 17, 2016.
- Expenditure in the amount of Two Thousand Dollars (\$2,000.00) made to “Shiloh” for “tuition” on August 18, 2016, which was deposited by Shiloh Christian School.
- Expenditure in the amount of Two Thousand Dollars (\$2,000.00) made in the form of a cash withdrawal on August 30, 2016.
- Expenditure in the amount of One Hundred Dollars (\$100.00) made for golf tournament to Saline Memorial on September 4, 2016.
- Expenditure in the amount of One Thousand, Six Hundred Dollars (\$1,600.00) made in the form of a cash withdrawal on September 10, 2016.

30. The Respondent committed a violation of Ark. Code Ann. § 7-6-207(a)(1)(A) and (E) by failing to file C&E Reports for the 2nd Quarter of 2016, the 3rd Quarter of 2016, the 1st

Quarter of 2017, the 2nd Quarter of 2017, and the 3rd Quarter of 2017, and a Final Report, all for the 2018 primary election.

31. With respect to the Respondent's violations, the Commission found that fines totaling Eleven Thousand Dollars (\$11,000.00) shall be imposed, as follows:

A. With respect to the Respondent's violations of Ark. Code Ann. § 7-6-203(f) - (h), a fine of Five Hundred Dollars (\$500.00) for the Netflix subscription, a fine of Two Thousand Dollars (\$2,000.00) for the D1 Sports Training membership, a fine of Two Thousand Dollars (\$2,000.00) for the tuition paid to Shiloh Christian School, and a fine of Two Thousand Dollars (\$2,000.00) for the women's ring purchased from Sissy's Log Cabin.

B. With respect to the Respondent's violation of Ark. Code Ann. § 7-6-207(b)(1)(A) - (D), a fine of Two Thousand Dollars (\$2,000.00) shall be imposed.

C. With respect to the Respondent's violation of § 7-6-207(b)(1)(E) - (H), a fine of Two Thousand Dollars (\$2,000.00) shall be imposed.

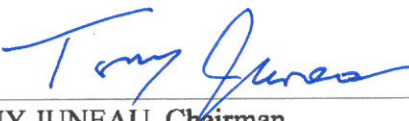
D. With respect to the Respondent's violation of § 7-6-207(a)(1)(A) and (E), a fine of Five Hundred Dollars shall be imposed.

32. The Eleven Thousand Dollars (\$11,000.00) in fines imposed shall be due and payable within thirty (30) days from the entry of this Order.

33. With respect to the Respondent's violations of Ark. Code Ann. §§ 7-6-203(f) - (h), 7-6-207(b)(1)(A) - (D), 7-6-207(b)(1)(E) - (H), and 7-6-207(a)(1)(A) and (E), the Commission found that a Public Letter of Reprimand shall be issued.

IT IS, THEREFORE, CONSIDERED, DECIDED and ORDERED by the Commission that the Respondent, Jeremy Hutchinson, shall be found in violation of Ark. Code Ann. §§ 7-6-203(f) - (h), 7-6-207(b)(1)(A) - (D), 7-6-207(b)(1)(E) - (H), and 7-6-207(a)(1)(A) and (E) in his capacity as a State Senator and candidate for reelection to the office of State Senator, that the Respondent shall be issued a Public Letter of Reprimand, and that in accordance with Paragraph 31 of this Order fines totaling Eleven Thousand Dollars (\$11,000.00) shall be imposed against the Respondent, with that amount due and payable within thirty (30) days from the entry of this Order.

IT IS SO ORDERED this 29th day of March, 2019.



TONY JUNEAU, Chairman
Arkansas Ethics Commission