

ARKANSAS ETHICS COMMISSION

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EC-002

June 18, 1991

Mr. Joe D. Bell
Friday, Eldredge & Clark
Attorneys at Law
2000 First Commercial Building
400 West Capitol
Little Rock, AR 72201-3493

Dear Mr. Bell:

You have requested two (2) opinions under authority of Initiated Act 1 of 1990. I have paraphrased your question number one (1) as:

If on the effective date of Initiated Act 1 of 1990, a Political Action Committee had in its reserves individual campaign contributions above the two-hundred dollar (\$200.00) limit set by Initiated Act 1 of 1990, may the Political Action Committee dispense these funds as an "approved" political action under the Initiated Act 1 of 1990?

The sections of Initiated Act 1 of 1990 (The "Act") pertinent to your requests, state:

"Section 1. Arkansas Code 7-6-201 is hereby amended to add the following new subdivisions:

(9) 'Approved political action committee' means any person who (A) receives contributions from one or more persons in order to make contributions to candidates. (B) does not accept any contribution or cumulative contributions in excess of two hundred dollars (\$200) from any person in any calendar year, and (c) has been

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register pursuant to Arkansas Code 7-6-215 for at least four (4) continuous months prior to making contributions to candidates. 'Approved political action committee' shall not include an organized political party as defined in Arkansas Code 7-1-101 (1), the candidate's own campaign committee, or an exploratory committee.

(10) 'Prohibited political action committee' means any person who receives contributions from one or more persons in order to make contributions to candidates but who does not meet the requirements of an approved political action committee. 'Prohibited political action committee' shall not include an organized political party as defined in Arkansas Code 7-1-101 (1), the candidate's own campaign committee, or an exploratory committee."

These sections of the Act clearly render a political action committee (PAC), which accepts contributions from one or more persons in excess of two hundred dollars (\$200.00) a "prohibited" PAC. Section 9 of the Act provides, further, that these provisions become effective November 7, 1990, and the Arkansas Attorney General has opined, previously, that the Act applied retroactively to the 1990 campaign year. (See Attorney General's opinion #90-289, attached hereto.) The Political Action Committee you describe became "prohibited" from contributing to candidates for state office in Arkansas on that date.

Although the Act does not specifically address the disposal of funds received by the Political Action Committees before the law's effective date, it's quite clear that the people of Arkansas intended that from November 7, 1990, Arkansas' campaign process would be governed by the requirements of the initiative they passed. It is my opinion, therefore, that the Political Action Committee you describe is rendered "prohibited" by the individual campaign contributions it holds which are above the limit set out in Initiated Act 1 of 1990.

Your second question, paraphrased, is:

If the commingling of contributions which are above the present limit set out in Initiated Act 1 of 1990 with those contributions which comply with the law renders a Political Action Committee "prohibited", may the defect be cured by transferring the amounts above the limit to a separate fund?

The specific answer to your question is no. Simply transferring improperly accepted contributions to a separate fund would not cure the original defect, which was accepting funds in excess of the limit set out in the law. The Act does not seek to limit the amount of funds a PAC may have at its disposal. Rather, the

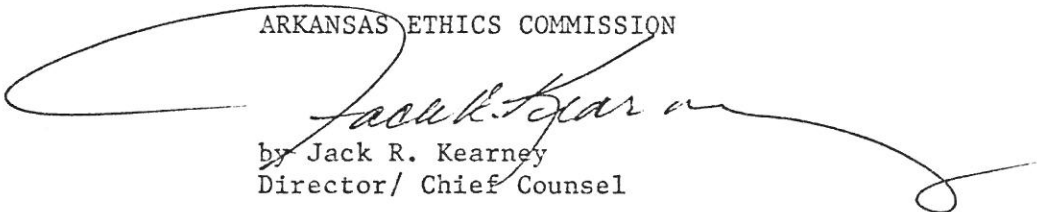
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Act does limit contributions that individuals and their families may make to Political Action Committees. To allow a PAC to accept contributions above the legal limit, and then credit a separate fund for those funds, would circumvent the law.

It is my opinion, however, that were your committee able to identify each individual who contributed more than the limit set in the law, and return the specific amounts contributed above the limit, then your committee would meet the criteria set out in Initiated Act 1 of 1990 to be an "approved Political Action Committee".

Sincerely,

ARKANSAS ETHICS COMMISSION



by Jack R. Kearney
Director/ Chief Counsel

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Enclosure