

ARKANSAS ETHICS COMMISSION

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Opinion No. 91-EC-010

October 15, 1991

Mr. Robert D. Smith, III
Attorney at Law
P. O. Box 3238
Little Rock, AR 72203

Dear Mr. Smith:

On August 21, 1991, this office received your request for an official opinion under authority of Initiated Act 1 of 1990 and Initiated Act 1 of 1988 (as amended).

To preface your request you describe a private corporation among whose employees are those who have formed a Political Action Committee (PAC). Beginning in 1976 and prior to the passage of Initiated Act 1 of 1990, which regulates the approval and activities of political action committees within Arkansas, this committee received funds from its members to fund the committee's activity.

I have paraphrased your question #3 to answer first:

Assume that the committee has complied with all other aspects of Initiated Act 1 of 1990; but that it failed to comply with ACA § 7-6-215, which requires the committee "within fifteen (15) days after accepting contributions during a calendar year which in the aggregate exceed five hundred dollars (\$500.00)"; an amount which the committee received in February, 1990.

The committee has made no contributions to candidates nor attempted to register as a PAC, to date, because it has needed direction and interpretation of the law from the Arkansas Ethics Commission. Assuming the

Ethics Commission finds no other obstacles to your committee becoming an "approved Political Action Committee", may the Ethics Commission waive the requirement of filing within fifteen (15) days of receipt of five hundred dollars (\$500.00), and permit this commission to now register.

As you are aware the law you refer to is unprecedented in Arkansas law, having been approved by popular vote in the general election of November, 1990. Among the critical new aspects of the law is the present limit set on the amount of money individuals may contribute to political action committees (PACs), and the requirement that these PACs register with the state before participating in the electoral process. (A "Person" in the context of Arkansas law includes a business, group or corporation.) What had been legal operating procedures before the November 7, 1990, election became improper and illegal at the time this act became effective.

Because of the sparse manner in which the statutes are written, many of the new limitations set out in the law require interpretation by the newly created "Arkansas Ethics Commission."

Complicating the situation is the fact that the requirements of the law were imposed on candidates, lobbyists, public officials and PACs beginning either immediately upon passage of the new act in November, 1990, or on January 1, 1991. The law provided for this Commission to be created January 2, 1991, but funding and administrative obstacles allowed for it to begin operations only on May 1, 1991. Therefore, between January and May or June of 1991 no agency existed with authority and responsibility to interpret the new law. Because the law is, in many cases, completely new, and there are no answers written into the law for many practical situations, obvious problems have been created.

As to your particular situation, the directives of the statutes appear clear and direct. The requirement of the law imposed upon you to register has little to do with when this Commission was created because the law requires registration with the Secretary of State. This Commission is fully aware, however, that many aspects of this new law require some interpretation by the Commission. We're also aware that, though the Secretary of State has accepted some PAC registrations, the law requires this Commission to approve the official form to be used for such registration, and we have not yet given our official approval to such a form. In addition, as your request indicates, there is no instruction in the written law as to how to register and/or report funds that PACs accumulated prior to the existence of this law. This Commission has, since its formation, interpreted several

aspects of the PAC law which has allowed "committees" to go forward with their plans to register or decide that they will not qualify as "approved Political Action Committees".

For these reasons, the Commission is of the opinion that clear guidelines have not heretofore been set forth for PAC registration. We are of the opinion that those PACs which meet or amend their registrations to meet our finding in this and other opinions should be allowed to register; and that the failure to have been in total compliance prior to these guidelines should, for this year only, not be a bar to being an "approved" political action committee. Please note that this "window" within which to correct the problems with PAC will only be allowed for this, the first year of the effect of our new law.

For purposes of your opinion request, and based upon the facts you present, this commission is of the opinion that, if you have met all other requirements of the act except that you failed to register within fifteen (15) days of receipt of five hundred dollars (\$500.00), then you may operate as an approved Political Action Committee.

Further, any PAC which has conformed to the requirements of the law, except for some procedural matter, may present the facts of that procedural non-compliance to the Commission for clearance, on a case by case basis.

Your question number two is paraphrased here as request #2:

Records of the committee can show for certain that no contributions to the committee within the past three (3) years exceeded the \$200.00 limit set out in the statute. The committee's officers are reasonably certain that the limit has never been exceeded by any contributor, but with records which go back only three years, are not prepared to certify, under oath, that no funds above the limit have ever been contributed. Since the law requires retention of records for a two-year period only, how may a committee which has operated legally within Arkansas for more than two years become approved when records for more than two years are unavailable?

Again, this question identifies a problem brought on, not by the language contained in our ethics and disclosure statutes, but rather the omission of language or the lack of guidelines in those statutes. The statutes themselves give no hint of what is to be done with monies accepted by PACs in previous years, when an Mr.

otherwise law-abiding PAC attempts to participate in the current political process. Furthermore, though the law specifically requires that PACs retain the records for a period of two years, there are no guidelines as to whether there exists a "statute of limitation" which would clear "old money"¹ if it exists in a given PAC, to be used in the current political process.

In the absence of specifics in the statutes, however, these questions have effectively been answered by previous opinions of the Arkansas Attorney General and this Commission. In our opinion number 91-EC-002, this Commission opined that contributions held from 1990 which were in excess of the limit set out in ACA § 7-6-201 rendered the PAC holding the same "prohibited" from participating in the current political process. That opinion rested in part on Attorney General's opinion number 90-289, and in part upon our interpretation of what the voters intended in enacting the current law. Our reasoning, and therefore our opinion, remains the same regarding funds gathered prior to 1990. That is, any funds which consists of contributions to a PAC which are above the two-hundred dollar (\$200) limit render the PAC non-"approved", unless and until the prohibited funds are disposed of in some legal manner.

This Commission will, as a common-sense accommodation to administration of this new law, limit itself to review of the past two years records, should occasion arise to challenge the certification of any registered PAC on the basis of its registration for 1991.

Specifically, as to the PAC you refer to: since its records indicate that the PAC has not received contributions above the legal limit for the past two years, there is no apparent bar to it becoming an "approved" political action committee, provided it meets all other requirements set out in the law.

Your third request is prefaced by the following facts:

Since formation of the committee, the sponsoring corporation has incurred certain operating expenses on behalf of the committee. The committee's officials are certain that in some years since 1976 such expenses incurred by the corporation have exceeded \$200. In addition, at the

¹Money which may be proven to have been accepted in violation of present law, but which was properly accepted more than two years ago, which is the time the law requires records be maintained.

commencement of several legislative sessions the committee organized a legislative reception attended by committee members and their guests along with members of the Arkansas Legislature, the Governor and his staff, other constitutional officers, several county elected officials and their guests. These receptions did not revolve around any formal program or speakers, but simply provided a social occasion for people to meet and talk informally with their elected officials. The corporation paid the expenses for the receptions and all costs associated with the event were reported pursuant to Section 21-8-604(b)(3) of the Disclosure Act for Lobbyists and State and Local Officials, on a Lobbyist Activity Report filed by a lobbyist registered on the corporation's behalf.

In 1991, the legislative reception was opened up by the corporation to employees generally (not just members of the committee), and the corporation rather than the committee sponsored the reception. Again, proper reporting was done in accord with the Disclosure Act for Lobbyists and State and Local Officials. However, the committee now believes it is more desirable to go back to having the committee sponsor the reception just for committee members and guests, but it would still like to have the corporation pick up the expenses of the event, which are in excess of \$200. Please provide an opinion on the propriety of the practices described.

Regarding this question, I have taken the liberty of dividing your request into four (4) parts, as follows:

A. May a corporation hold a social event to which local elected officials, state legislators and some executive branch constitutional officers and their

guests are invited, without violating Arkansas ethics and disclosure or campaign finance laws?

Under Arkansas law the mere expenditure of money, for whatever purpose, does not render an individual, corporation or other entity a "Political Action Committee" as long as the expenditure is on behalf of the corporation.² Among state campaign laws this relatively unique exclusion allows a corporation to finance the event you describe without registration as a PAC and without apparent violation of our campaign finance law. Further if the general public is invited to attend the functions along with committee members and the corporation's employees, then the occasion need not be reported as a lobbying event. Despite our view that financing of a forum for candidates and office-holders to meet with voters and constituents could be included under the general heading of "campaign finance or lobbying", our laws do not include this act under the definition of either lobbying or campaign activity.

We are not prepared to declare or assume that a corporation which invites practically all elected officials and the public to a social gathering is engaged in lobbying simply by financing the affair. We do recognize that individual acts of lobbying of these officials may occur at such a gathering, and we would expect all lobbyist laws to be obeyed if such lobbying does occur by the individual engaged in lobbying.

B. Would the opinion differ if the entity which sponsored or paid the costs of the occasion referred to above was the Political Action Committee rather than a corporation?

As it is my opinion that simply sponsoring the event referred to does not amount to lobbying a public official, nor, incidently do we consider it to be contributing to a candidate or another PAC, the mere fact that a political action committee pays does not change the nature of the occasion. Again, note should be made that, even if this were to occur during a season when the public officials were also candidates for office, Arkansas' present law would not prohibit, restrict or require disclosure of the expenditure you describe by a PAC, unless the facts show that the

²Arkansas law defines Political Action Committee as a "person" (defined to include a corporation, group, etc.) who accepts donations or contributions in order to contribute to candidates for public office." The law does not include in that definition a person or group which expends money to influence an election.

affair was a "contribution" to a candidate or candidates. Arkansas' campaign finance laws simply do not require disclosure, nor does it appear to prohibit expenditures of monies in any amount, for or against candidates or ballot questions, whether by a corporation, PAC or other entity. It does not require disclosure of the amounts of money expended by these entities, unless the facts of the situation suggest that expenditure was indeed a "contribution" made, and then only to a candidate or another committee. Such "expenditures" could be viewed under proper circumstances, as lobbying, however. This would be especially true if the expenditures were limited to the benefit of specific candidates or office holders.

C. Would the opinion based on these facts be altered by the fact that the Political Action Committee, rather than the corporation, paid the costs of the occasion and invited only the Political Action Committee members and financial contributors to meet with the elected officials listed above?

Yes. Limiting the occasion to an organization with specific political aims such as a PAC, would make the political or lobbying nature of the occasion obvious. This is because we consider a group with a specific political aim, such as a PAC, which engineers a captive audience of legislators and public officials to engage in lobbying. This latter version of your description of events would clearly amount to lobbying, and unless the committee was previously registered as a lobbyist, would be an illegal act. If the committee has previously registered as a lobbyist, then the event must be reported on the proper lobbyist activity reports.

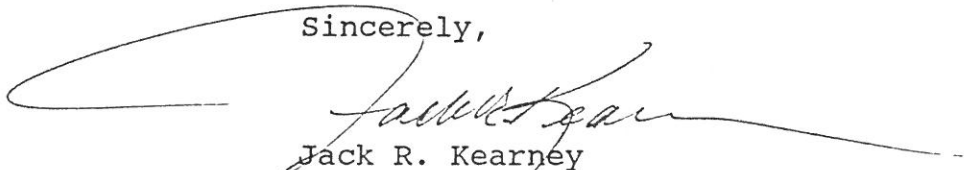
D. Would your opinion based on these facts be altered by the fact that the corporation paid all the costs of the occasion and the corporation restricted attendance to the Political Action Committee members and financial contributors and elected officials listed above?

Yes. As we opined in request 'C' above; we could consider to be engaged in a lobbying effort by restricting the affair to a captive audience of government officials, but the corporation will have contributed to the PAC to the extent that it assumes any of the costs of the gathering. This amount, when aggregated with all other contributions the corporation makes to this committee within

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a calendar year, must not exceed two hundred dollars (\$200.00) in order to avoid violating Arkansas campaign finance laws.

Sincerely,



Jack R. Kearney
Director/Chief Counsel

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