

ARKANSAS ETHICS COMMISSION
2020 WEST THIRD, SUITE 300
LITTLE ROCK, AR 72205
(501) 324-9600

ORIGINAL

JACK R. KEARNEY
Director/Chief Counsel

RICHARD L. MAYS
Commission Chairman



Commissioners:
MACK R. KOONCE
RONALD A. MAY
KEMAL E. KUTAIT
MARY LYNN REESE

Opinion No 91-EC-011

October 15, 1991

Mr. Charles R. Camp
Ivester, Skinner & Camp, P. A.
Attorneys at Law
111 Center Street, Suite 1200
Little Rock, AR 72201

Dear Mr. Camp:

On August 27, 1991, this office received your request for an official opinion, under authority of Initiated Act 1 of 1988 (as amended) and Initiated Act 1 of 1990. You seek an opinion on two general areas of Arkansas law regulating Political Action Committees. Your specific questions are:

"1. Does Arkansas Statutory law authorize the creation of multiple political action committees which are managed by a single entity and which allow one person to make contributions up to the statutory limitation of \$200 to each political action committee created?

2. May a person make a contribution directly to a candidate for public office in the sum of \$1,000 and then additionally make a contribution to a political action committee in the sum of \$200 without exceeding the \$1,000 contribution limit established by Ark. Code Ann. §337-6-203(b) if the political action committee to which the \$200 contribution is made also makes contributions to the same candidate?

3. Does the phrase "in the aggregate" within Ark. Code Ann. §7-6-203(b) encompass contributions made to the political action

C

committees thereby limiting the total contribution of one person to \$1,000 regardless of whether the direct recipient of the contribution is a candidate or a political action committee contributing to a candidate?"

Initiated Act 1 of 1990, which regulates Political Action Committees, contains the following statutes addressing Political Action Committees:

ACA § 7-7-201: (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 registered 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.

ACA § 7-6-215: (a) To qualify as an approved political action committee, the committee shall register with the Secretary of State within fifteen (15) days after accepting contributions during a calendar year which, in the aggregate, exceed five hundred dollars (\$500). Each such committee shall annually renew its registration by January 15, unless it has ceased to exist. Registration shall be on forms provided by the Secretary of State

and the contents therein shall be verified by an affidavit of an officer of the committee. The committee shall verify that it will maintain for a period of two (2) years the name, address, and place of employment of each person who contributed to the committee, along with the amount contributed.

(b) The approved political action committee shall disclose on the registration form the following information:

(1) The name, address and, where available, phone number of the committee and the name, address, phone number, and place of employment of each of its officers, provided that if the committee's name is an acronym then both it and the words forming the acronym shall be disclosed.

(2) The professional, business, trade, labor, or other interests represented by the committee, including any individual business, organization, association, corporation, labor organization or other group or firm whose interests will be represented by the committee.

(3) The name of each candidate, if any, to whom the committee contributed during the previous calendar year, with the amount contributed and the office sought for each candidate.

The statutes cited above are all the law that Arkansas has to create, define, and regulate "Political Action Committees". A simple reading of those statutes reveals two things: (1) that the language is very sparse, providing little detail and guidelines, and (2) that there is no language which directly prohibits the practice of an individual contributing to multiple Political Action Committees. Except for the contribution limit of two hundred dollars (\$200.00) per PAC an individual may make, and a limit of \$1,000 the PAC may make to candidates, the law does not appear to prohibit or restrict PAC contributions at all.

Indeed the language of the statute would seem to allow a single corporation, with many employees, to informally have dozens of employees declare themselves "PACs" all of whom may accept up to the two hundred dollars (\$200) limit in contributions from every other employee, then each such "PAC" contribute to the same

candidate. Or for a single individual to identify dozens of PACs which help a particular candidate, and contribute the limit to each such PAC. It would not seem, however, that such a development is what the Arkansas electorate intended when it voted to establish the political action committee registration portion of its new ethics and disclosure statutes.

To the other extreme, there are other statutes, some of which pre-date Initiated Act 1 of 1990, which seem to counter this apparent license to create or contribute to unlimited numbers of PACs:

ACA § 7-6-203:

(a) It shall be unlawful for any candidate for any public office, or any person acting in the candidate's behalf, to accept campaign contributions in excess of one thousand dollars (\$1,000) per election from any person

(b) It shall be unlawful for any person to make a contribution to a candidate for public office or to any person acting in the candidate's behalf which, in the aggregate, exceeds one thousand dollars (\$1,000) per election.

ACA § 7-6-203:

(e) It shall be unlawful for any candidate for any public office or any person acting in the candidate's behalf to accept any contribution from a prohibited political action committee for any election. It shall be unlawful for any prohibited political action committee to make a contribution to a candidate for public office in an election.

ACA § 7-6-205:

(a) No campaign contribution shall be made in support of or opposition to a candidate other than directly to the candidate or to the candidate's campaign committee.

(b) No contribution shall be made, directly or indirectly, by any person in a

name other than the name by which the person is identified for legal purposes.

These later statutes, if taken literally, would prohibit any donation to a PAC which, in turn, contributed to candidates for public office -- if the individual's share of the PAC's contribution, when aggregated with other contributions, raised the individual's contribution above one thousand dollars (\$1000). This solution, or interpretation of the statutes, seems unworkable and could hardly have been the voters' or the legislators' intent when they voted to enact these statutes. First, it would be a paperwork and man-hour nightmare to attempt to keep track of all of an individual's direct contributions and all those given to PACs. A mathematician would have to be employed to sift out the percentages of an individual's share of each given PAC's contributions to a candidate. In addition, many contributors to PACs have no idea who the PACs they make contributions to may eventually support for public office. It is the exception - that is, the individual who may seek to exploit the loophole in the law to skirt the apparent intent of the law, which makes your opinion request so important.

This commission, then is faced with two dilemmas: (1) to attempt to interpret the existing law so that it makes sense, and is fair to all contributors, (2) to interpret only the law which exists, without legislating into the law that which we may wish that it said. We recognize that we are not authorized to legislate, though the solutions to our sparse statutes are fairly simple and widely used.¹

¹The Council on Governments Ethics Laws, which has a model ethics, lobbying and campaign finance law, for example, has these provisions to its Political Action Committee and Campaign Finance laws: (Paraphrased, and not inclusive of all aspects of campaign finance in the Model Act):

(1) All contributions are considered to have been made by a single PAC if: (a) separate PACs share a majority of members or directors, (b) separate PACs share two (2) or more officers, (c) separate PACs are owned or controlled by the same shareholders, (d) more than one PAC is in a parent/subsidiary relationship, (e) the PAC has a candidate or member of a candidate's family as an officer,

(2) All contributions made by PACs, which have their activity financed or controlled by a corporation, person, committee, or party is considered to have been made by a single PAC.

(3) A "contribution" includes any expenditure made by a person or a committee with the cooperation of, in consultation with, in

In the absence of any language written into the law to reconcile these sets of statutes, or precedent which guides this Commission, we are of the opinion that the plain language of our statutes does not prohibit an individual from contributing the limit of one thousand dollars (\$1000) to a candidate for public office, and also contributing to Political Action Committees which may, eventually, also make contributions to the same candidate.

At the same time, we believe we would not do the people and the legislature of Arkansas justice if we do not interpret ACA §§ 7-6-205(a) so as to restrict or prohibit the practice of making contributions to committees such as single-candidate PACs, for the sole purpose of exceeding the individual contribution limit. Therefore, we are of the opinion, and will view as violations of law, any practice or scheme which involves contributing to numerous PACs by an individual or group of individuals, if the practice or scheme evidences an intent to make contributions indirectly to a candidate which violates the campaign contribution limit set out in

concert with, or at the suggestion of a political action committee, candidate or candidates agent.

(4) A "controlled committee" is any committee which (a) is controlled directly or indirectly by a candidate, or one which acts jointly with the candidate or another "controlled committee" or (b) one over which a candidate, his agent or any committee he or she controls has significant influence over.

(5) A Political Action Committee is a person or combination of persons who receives contributions and makes contributions to candidates or other committees, or makes "independent expenditures" on behalf of or against candidates or ballot questions.

(6) A person is limited to (a certain dollar amount) in contributions per election cycle.

(7) A PAC is limited to (a certain dollar amount) in contributions per election cycle.

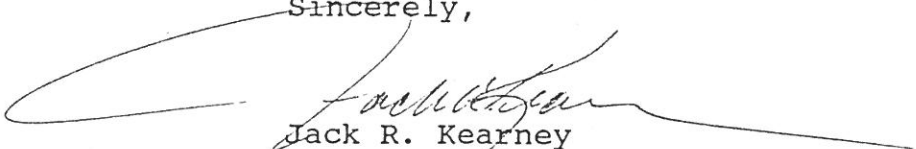
(8) A candidate is limited to (a certain dollar amount) he/she may accept from "non-individuals" (corporations, PACs, etc.) per election cycle.

These regulations, which are widely used in states with campaign finance laws, would answer many of your questions.

Mr. Charles R. Camp
Opinion No. 91-EC-011
Page 7

the law. This involves an investigation of the facts of each such instance which may be brought to this Commission's attention. While such a factual conclusion, in the broad sense, may be tenuous, we will vigorously pursue such practices when the facts convince us that an individual or group is intentionally circumventing the law.

Sincerely,



Jack R. Kearney
Director/Chief Counsel

JRK/at