

ARKANSAS ETHICS COMMISSION

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Opinion No. 92-EC-006

April 30, 1992

The Arkansas Ethics Commission has met with and fielded inquiries from public officials, candidates, lobbyists, and political action committee officials to determine what practical concerns are of the most urgent need for guidance during this, the first full political campaign cycle. The Commission, on its own initiative, is issuing interpretive opinions to frequently raised questions.

One of the most urgent questions is:

What does the law and the Arkansas Ethics Commission anticipate a candidate will reflect on his initial campaign contribution statement report in the space marked "total contributions amount carried forward"?

For candidates who did not run for political office in the preceding election cycle (in this instance the 1990 election), the entry should be "N/A" (not applicable) or "-0-".

For those candidates who ran for office in 1990, Arkansas law dictates that:

"ACA §7-6-203 (j). Within thirty (30) days following a general election, a candidate shall turn over to either (1) the State Treasurer for the benefit of the general revenue fund of the state apportionment fund, (2) an organized political party as defined in Arkansas Code 7-1-101 (1), or (3) the contributors to the candidate's campaign any balance of campaign funds over expenses incurred as of the day of the election except for (1) an amount equal to the yearly salary, excluding expense allowances, set by Arkansas law for the office sought and (2) any funds required to reimburse the candidate for

personal funds contributed to the campaign or to repay loans made by financial institutions to the candidate and applied to the campaign."

This Commission has previously interpreted this provision of the law to allow a candidate to retain from any surplus funds remaining after the general election, an amount equal to the yearly salary for the office sought. The candidate may do whatever he chooses with these funds. More important, we opined that the candidate may opt to leave the retained funds (or any portion thereof) in his or her on-going campaign account, and this Commission would not consider the funds as a "contribution" when a new campaign for office was activated.

It has become obvious to this Commission that some candidates were not sufficiently aware of, and thus did not comply with the above statute. However, in keeping with the statutes' dictates incumbents and other candidates who waged a campaign in the preceding campaign cycle must account for all the contributions and expenditures for the past (in this case, 1990) campaign.

He or she shall account for contributions as follows: total all contributions up to the primary election, and all contributions received up to any primary runoff (if applicable), and all contributions received up to the date of the general election. (The amount should include itemized as well as unitemized contributions.) This will be the "total contributions".

The candidate shall total all expenditures for the past election (1990) campaign. This amount should include all expenditures up to the primary election, and all expenditures leading to any primary run-off (if applicable), and any expenditures leading to the general election. This total will be the "total expenditures".

The candidate must subtract the "total expenditures" from his or her "total contributions" for the past election. If there is a negative amount or zero, the candidate should place "-0-" on the "amount carried forward" space on the contribution and expenditure form approved for 1992.

If the amount is a positive number, the candidate may subtract and withhold up to, but not more than an amount equal to the yearly salary set by law for the office sought in the election. Any amount which remained of "total contributions" after expenditures, repayment to the candidate for contributions he or she made to the campaign, and the amount equalling up to a year's salary, should be turned over to either (1) the State Treasurer for the benefit of the general revenue fund of the state apportionment fund, (2) an organized political party as defined in Arkansas Code 7-1-101 (1), or (3) the contributors to the candidate's campaign.

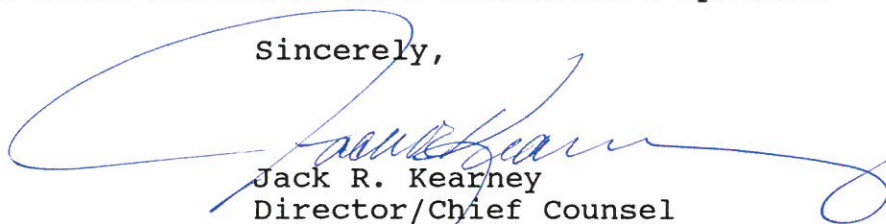
The "withheld" funds, totalling a year's salary, may be used by the candidate for any purpose. Any portion of this amount which the candidate wishes to carry forward to the next election, must be left in the candidate's campaign account until the next election cycle is initiated. This amount, plus any interest accrued and less any legitimate expenditures, will be the amount shown on the "amount carried forward" line on the form approved for the 1992 election campaign.

A candidate may take any portion of the "carry forward" funds deposited in a campaign account out for personal use during the period before the next campaign is initiated. However, once removed it cannot be replaced into the account unless it is disclosed as a contribution from the candidate. Once the candidacy in a new campaign cycle is initiated, the candidate may not take any of the funds from the carry forward fund for personal use. It is suggested that all candidates keep accurate and complete records of this carry forward fund in order to show compliance with this provision.

The Commission is aware that after the 1990 election no form existed on which to account for disbursement of excess funds. There is not one approved even today. However, each candidate to whom this statute applies must make a declaration by memo or addendum to their 1992 campaign contribution and expenditure form to show compliance with the requirements of this opinion. The Commission will approve such a form for use following the general election of 1992.

Because this interpretive opinion is issued after the date on which the first contribution and expenditure report is due for the 1992 election, affected candidates may file amended contribution and expenditure reports which conform to this Commission's opinion.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jack R. Kearney", is written over the typed name and title.

Jack R. Kearney
Director/Chief Counsel

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Example

Contributions

Amount raised leading to 1990 Primary Election	10,000	
Additional amount raised leading to 1990 Primary Run-Off Election	3,000	
Additional amount raised leading to 1990 General Election	<u>22,000</u>	
Total Contributions		35,000

Total amount expended leading to 1990 Primary Election	8,000	
Additional total amount expended leading to 1990 Primary Run-Off Election	3,000	
Additional total amount expended leading to 1990 General Election	<u>4,000</u>	
Total Expenditures		<u>15,000</u>

Subtract total expenditure from total contributions	(surplus)	20,000
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Subtract amount repaid to candidate for contributions and loans taken out and contributed to campaign	<u>3,000</u>	
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Remainder		<u>17,000</u>
Amount "withheld" as candidate ran for office of <u>Representative</u>	* <u>7,500</u>	

Amount which must be returned to state, party or contributors		9,500
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*This amount, or any portion thereof, may be converted to the candidate's personal use or left in candidate's campaign.

Amount converted to personal use	3,000
Amount to remain in campaign	4,500