

ARKANSAS ETHICS COMMISSION

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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:

If a candidate has funds in a pre-1990 campaign account/CD's, what must he do to utilize this amount in the 1992 campaign?

The practice in Arkansas, prior to the passage of Initiated Act 1 of 1990, was that a candidate for public office could convert any funds, remaining in his campaign account after an election, to any purpose he or she chose. That option included conversion to the candidate's personal use.

A provision of Initiated Act 1 of 1990, which was adopted by majority vote of the Arkansas electorate in the general election on November 7, 1990, provided:

(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.

Shortly after that election, the Attorney General was asked to provide guidance to those candidates who have accumulated sums of money under the law and practice in existence prior to the passage of the act. Specifically, that opinion requested was whether the campaign accounts accumulated prior to the passage of the act had "vested" in the candidates holding the account as to funds accumulated before the 1990 electoral season.

The Attorney General issued a legally sound opinion interpreting the retroactivity of Initiated Act 1 of 1990. His opinion was that (a) much of the Initiated Act became effective immediately upon its passage, (b) the act applied retroactively to the 1990 campaign, and any funds which a candidate raised during that campaign, and (c) the act could not apply to any funds which a candidate raised prior to the 1990 campaign and which were kept separate and apart from the 1990 fund. This new commission, in effect, had no authority over the pre-1990 accounts. This Commission adopts that opinion in replying to this question.¹

It has now come to this Commission's attention that certain officials retained these "pre-1990" accounts, and have maintained them since the issuance of the Attorney General's opinion. These individuals have not converted the funds from these accounts to their personal use, as would have been their right under the Attorney General's opinion mentioned. Instead, they now seek to enter these funds into this, the first election held since 1990.

These officials understand that interjecting these funds into an ongoing campaign gives the Ethics Commission immediate jurisdiction over those funds. However, there appears to be some confusion as to whether this Commission will consider the funds to have come from the individual controlling the account, as his or her personal money, or whether the Commission will consider the funds to have originated from some separate source i.e. a corporate "person". Attributing the funds to the individual subjects him to the federal and state personal income tax laws for money he or she has never considered personal funds. Attributing the funds to a corporate person subjects the funds to Arkansas laws restricting

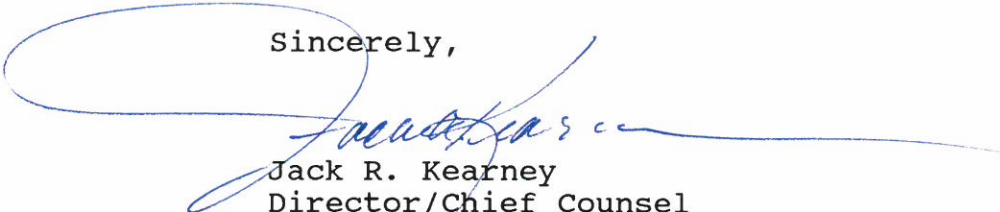
¹Attorney General's Opinion #90-289 issued November 21, 1990

the manner and amounts a person may contribute to political campaigns. Primary among these laws, here, is the restriction to \$1,000 any person, corporate, or otherwise, may contribute to candidate's campaign.

The Ethics Commission deems it beneficial that candidates holding such accounts should decide to put the funds to a political use or convert them to their personal use. Thus, as this is the first election since 1990, the Commission will treat these funds simply as campaign funds from a corporate "person" if interjected into an ongoing campaign this year. Any candidate holding such an account may transfer the full amount to his campaign without regard to the \$1,000 personal limit.

Conversely the Commission will not view these accounts as campaign funds at any time after the general election of 1992. Thereafter, these funds will be considered to be the personal funds of the person controlling the account, and any use of them in an ongoing campaign will be considered a personal contribution from the person controlling the account.

Sincerely,



Jack R. Kearney
Director/Chief Counsel

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