

ARKANSAS ETHICS COMMISSION

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

JACK R. KEARNEY
Director/Chief Counsel

MACK R. KOONCE
Commission Chairman

Commissioners:

MARY LYNN REESE
KERRY F. PENNINGTON, M.D.
RONALD A. MAY
JEROME GREEN

Opinion No. 92-EC-019

August 27, 1992

Honorable Doug Wood
Arkansas State Representative
P. O. Box 7078
Little Rock, AR 72116

Dear Representative Wood:

On August 17, 1992, this office received your request for an official opinion under authority of Initiated Act 1 of 1988 and Initiated Act 1 of 1990.

Your question, paraphrased, is: May a candidate accept a check written on a corporation's account, but which has attached a note which attributes the amount of the check to several persons who are employees of the company? To whom must the candidate attribute the funds, if the practice is legal?

Pertinent statutes relating to your question include these:

7-6-201 (1) "Person" means any individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert. It shall also include organized political parties as defined in 7-1-101 (1);

(2) (A) "Contribution" means, whether direct or indirect, advances, deposits, or transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payment for services, dues, advancements, forbearance,

loans, pledge or promise of money or anything of value, whether or not legally enforceable, to a candidate, committee, or holder of elective office, made for the purpose of influencing the nomination or election of any candidate;

(9) "Approved political action committee" means any person who:

(A) Receives contributions from one (1) 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 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 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 7-1-101 (1), the candidate's own campaign committee, or an exploratory committee;

§7-6-215. Registration by approved political action committees.

(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.

A careful reading of our statutes reveals first, that any "person" who collects money for the purpose of contributing the money to a political candidate is a political action committee under Arkansas law. A corporation, such as the one you describe in your letter, is a "person". We must interpret the intent of the statute as it applies to the corporation's actions, to determine if its actions has made it a political action committee.

We realize that there are any number of practices by which corporations, firms, partnerships, associations, and other groups of people collect contributions from their employees, associates, members, and other voluntary and involuntary donees for purposes altogether unrelated to political candidacies. These firms or groups may decide at some point to contribute sums of money to a candidate for public office. We do not believe our statutes anticipated treating all such groups making a contribution as a "political action committee".

However, we do believe that the people of Arkansas became concerned with the myriad ways groups of persons pooled their money, or solicited others to contribute through the group in order to enhance their influence on the candidacy of persons furthering the groups interests. The statutes the people passed did not prohibit the practice of one group of persons pooling their contributions or soliciting others to contribute to the group and its aims. However, the law does now require the groups to register with the state before engaging in this practice. It also places limits on the amount of contributions such "persons" may accept from other persons or the amount they may give to a candidate. These groups are "political action committees" and are required to be "approved" before they may contribute and are required to maintain records of the candidates to whom they contribute and to report the same on public disclosure forms. The candidate receiving the funds must also report the contributions.

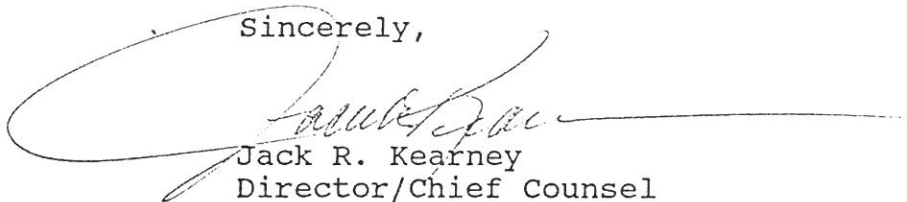
The corporation you describe has collected contributions from its employees in order to make a contribution to a candidate. Its

Honorable Doug Wood
Opinion No. 92-EC-019
Page 4

actions are, therefore, precisely that of a political action committee.

Because it has not taken the steps necessary to become an "approved" PAC, it is a "prohibited" PAC, and its actions and the contributions made by it are illegal. Further, even a political action committee cannot attribute portions of its contribution to specific donors. Corporations are allowed to make contributions under Arkansas law, as are PACs and individuals. Once the corporation writes a check on its corporate account, it is a contribution from the corporation and cannot be attributed to others. That practice is prohibited as to either corporations or political action committees.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jack R. Kearney", is written over a horizontal line. The signature is fluid and cursive.

Jack R. Kearney
Director/Chief Counsel

JRK/at