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Opinion No. 95-001

November 9, 1995

Ms. Jacque Alexander
Director of Elections
Office of the Secretary of State
State Capitol
Little Rock, AR 72201

Dear Ms. Alexander:

The Commission is in receipt of your request for an official opinion concerning the application of the Arkansas ethics and disclosures laws to candidates for district delegate positions to the proposed Constitutional Convention of 1996. Since these candidates will be conducting their campaign activities for a five week period during the months of November and December 1995, the Commission has agreed to issue this immediate response to your request.

The Commission has interpreted the specific questions raised by your request to be the following:

1. Are candidates for district delegate positions required to file campaign contribution and expenditure reports pursuant to Ark. Code Ann. §7-6-207 (State and District Candidates)?
2. Are candidates for district delegate positions required to file a Statement of Financial Interest pursuant to Ark. Code Ann. §21-8-702?

The proposed Constitutional Convention will be the first such meeting to take place since the adoption of either Initiated Act 1 of 1988 or Initiated Act 1 of 1990, whereby the voters of our state created and refined the disclosure requirements of public officials and candidates for public office. Therefore, the question of whether candidates for delegate positions are governed by the disclosure requirements mandated by these Acts is a matter of first impression for this Commission.

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The Arkansas Supreme Court has held on several occasions that the position of delegate to a constitutional convention is not a "civil" office as comprehended by the Arkansas Constitution. See Harvey v. Ridgeway, 248 Ark. 35 (1970). The Court has consistently viewed delegate to a constitutional convention as representatives of the people, acting in an advisory capacity, and not "office holders" who exercise some power granted to one of the three branches of government. This reasoning would imply that such delegates would not be subject to the requirements made of other public officials under Arkansas campaign finance and disclosure laws.

However, the case law in Arkansas on constitutional conventions predates most of the Arkansas statutes which currently govern political activities and those who seek and/or hold political office in Arkansas. This statutory law came about as a result of a strong public policy concerned about the need for openness in government and for the disclosure by those involved in government of all financial and other conflicts of interest. This Commission was also the product of the movement towards strengthening the ability of the electorate to have access to all information needed in order to make informed decisions about their public officials.

Further, the Commission regards the campaign reporting requirements as procedural devices to regulate the conduct of elections, and not as substantive regulations or prohibitions on the rights of candidates, as discussed in the Arkansas convention case law.

It is for these reasons that the Commission believes that any candidate who appears on a ballot for a public position, including delegate to a constitutional convention, must comply with the basic financial and conflict of interest disclosure requirements under Arkansas law. These include the filing of campaign contribution and expenditure reports and statements of financial interest.

Due to the very brief campaign period for district delegates, the Commission recommends that each delegate candidate file the following reports with the Secretary of State and the County Clerk in the county in which the candidate resides:

1. A ten (10) day pre-election report, due December 4, 1995;
2. A thirty-day (30) post-election report, due by January 11, 1996;
3. A Statement of Financial Interest, also due December 4, 1995.

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We realize this procedure dispenses with the \$500 threshold specified by Ark. Code Ann. §7-6-207, as amended by Act 1263 of 1995 for requiring state or district candidate to file a ten-day pre-election report. It is the Commission's opinion that the nature of this election and time constraints involved require this deviation from the current statutory procedures

Sincerely,

A handwritten signature in cursive script that reads "Norton Wilson".

Norton Wilson
Commission Chairman

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