

ARKANSAS ETHICS COMMISSION

ADVISORY OPINION 96-EC-004

ISSUE PRESENTED

APRIL 26, 1996

*How may a candidate or public official expend surplus campaign funds if such funds were raised through efforts to retire a legitimate campaign debt?*

SUMMARY OF FACTS

A candidate has ended his/her 1994 campaign in debt and holds a fundraiser in the summer of 1995 to raise funds to retire the debt. The fundraiser was successful and the candidate raised more money than the size of the debt, plus reasonable administrative expenses related to the fundraiser. Presently, the candidate has a surplus of approximately \$4,000.00 in the campaign account, and wants to use the money to offset future officeholder expenses which may arise.

DECISION

Arkansas statutes do not provide clear guidance in this matter. However, there is a prior Commission Opinion which has addressed this issue in part. In Opinion No. 91-EC-012, the Commission was faced with the issue whether a candidate holding a fundraiser to retire a debt may receive contributions sufficient to cover not only the debt but also administrative expenses and other costs related or attributable to the effort to retire the debt. The Commission held that the reasonable and legitimate costs or expenses related to conducting the fundraiser or administering the past debt fund may be paid from funds raised to retire the campaign debt. The Commission went on to note that "[I]f after all the past debt and legitimate expenses have been paid, there is money remaining in the debt-retirement fund, the former candidate is expected to return the excess" through one of the choices outlined in Ark. Code Ann. §7-6-203(j). (At the time of this Opinion, there were only three options available. Since then §203(j) has been amended by Act 863 of 1995 to allow for a fourth option - disbursement to a charitable institution).

It appears uniformly accepted that the receipt and handling of funds received after someone is elected is a matter which should be strictly construed and thereby limited. Contributions to a successful candidate or officeholder are those which naturally are most suspect, as the officeholder will be receiving funds when in a position of public trust and power.

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Ark. Code. Ann §7-6-203(j)(1)(D)(i) provides that a candidate may retain funds remaining after an election up to an "amount equal to the yearly salary, excluding allowances, set by Arkansas law for the office." §203(j)(3) further states that campaign funds retained under this subsection may be "expended at any time for any purpose not prohibited by this chapter."

The Commission's prior opinion (91-EC-012) concerned a related issue. The opinion addressed the particular issue at hand only as dicta near the end. It appears this opinion may not have been distributed adequately to place candidates on notice and this Commission believes it prudent, at this time, to treat the present inquiry as one of first impression.

Beginning with the 1996 campaign and any debts associated with any election thereto, the Commission is of the opinion that a candidate who ends a campaign in debt and raises more money than needed to retire the debt, must, after paying reasonable and legitimate administrative expenses related to retiring the debt, return any surplus of funds as outlined by §7-6-203(j).

In the present situation, the Commission believes it prudent to waive requiring the candidate to return the surplus as this candidate held off spending money pending an opinion. This is a complex matter and the Commission intends to address it and related debt retirement matters through its rulemaking authority in 1996. Until such time, however, the Commission believes the candidate should be able, if s/he so chooses, to retain the amount (up to the amount of the salary) and use it for officeholder expenses.

In summary, Ark. Code Ann. §7-6-203 anticipates the use of a surplus obtained by the end of the election campaign. Candidates who end their campaign in debt, may retire the debt along with reasonable expenses related to retiring the debt, but excess or surplus money should not be retained by the candidate either as personal income or to use for officeholder expenses. The Commission, however, decides that, in light of the controversy and confusion surrounding the issue of debt retirement and surplus funds, candidates, prior to the 1996 election cycle, who have heretofore obtained and/or used a surplus through debt retirement efforts, may use such funds to offset officeholder expenses in addition to the other four enumerated purposes in §7-6-203(j).

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