

ARKANSAS ETHICS COMMISSION

ADVISORY OPINION 96-EC-005

ISSUES PRESENTED

- (1) *May an accounting firm provide services to a candidate at a discounted rate without being credited with having provided a contribution to the candidate?*
- (2) *Is it proper for a partner and an associate to provide volunteer work, outside the normal course of business, for free to a candidate and, if so, does such work constitute an "in-kind" contribution to the candidate?*

SUMMARY OF FACTS

An accounting firm supports a particular candidate and is also interested in becoming involved in the handling of campaign finances for this candidate as well as other candidates in the future. The firm agrees to handle the candidate's campaign account at a rate 25% of their usual rate. The rate, while a substantial discount, is justified on the basis that the firm is inexperienced and considers the chance to perform the work as having value in the future in securing other work. Additionally, one of the firm's partners and one of the associates intends to assist the campaign in its bookkeeping after regular work hours, on their own time, without compensation. The firm wishes to know if its discounted rate and/or the work by two of its members will operate as an "in-kind" contribution to the candidate.

DECISION

These are issues of first impression for this Commission. In analyzing these issues, the Commission has reviewed the relevant state law on the matter of contributions, decisions of the Federal Ethics Commission (FEC) and its interpretations of legal contributions.

Under Arkansas law, a contribution is the giving of anything of value. See A.C.A. §7-6-201 (2)(B). A contribution includes not only money, but also goods and services. Under relevant federal law and regulations, whenever a service is provided to a candidate (a) without charge or (b) at a charge which is less than the "usual and normal charge" for such service, an "in-kind" contribution of something of value has probably been exchanged.

In the present situation, it appears that the candidate will pay a reduced rate for associates' work while two of the persons involved will handle accounting duties outside normal business hours. The associates' employer will bill the candidate who in turn will be obligated to report the expenditure.

11 CFR §§ 100.7(b) specifically provides exceptions for accounting services. Accounting services rendered free are exempted from the general definition of "contribution." The FEC reasons that candidates will incur accounting fees as a result of their candidacy and gives candidates a great degree of latitude in handling these matters. In those instances where a discounted rate was paid, it is not reasonable or proper to look behind the fee agreement between the parties. As long as the candidate pays a reasonable rate for professional accounting services, there has been no "in-kind" contribution. In the present case, while 25% of the normal rate may be a substantial discount, the firm has provided a rationale that the discount is due to a lack of experience in this area and with a design to promote the firm in future campaigns.

With respect to the first inquiry, the Arkansas Ethics Commission finds that an accounting firm may provide services to a candidate at a discounted rate without being credited with having provided a contribution to the candidate.

The second issue involves whether a person may volunteer his or her services without such services being treated as a contribution. Whether a contribution has occurred depends upon whether the work performed is considered "volunteer services". The general rule is that the value of service provided on a volunteer basis by a candidate is not an "in-kind" contribution. This applies both to manual tasks (i.e. licking envelopes, answering phones, etc.) and to specialized services (i.e. musicians, accountants, etc.).

Whether the time is spent on a "volunteer basis" depends upon whether the services are rendered during time that is the individual's own time to spend as she or he sees fit. In the present circumstance, the two members providing free services are performing their tasks "outside the normal course of business." It would appear that the services of those employees working after regular business hours meet the first and most basic test of "volunteer" and therefore should be exempted and not treated as an "in-kind" contribution.

Ethics and election laws value the ability of an individual to volunteer services on his/her own time in an effort to become involved in the electoral process. With this in mind and for the reasons stated herein, the Arkansas Ethics Commission finds that it is proper for a partner and an associate of an accounting firm to provide volunteer work outside the normal course of business to a candidate. This volunteer work is not an in-kind contribution to the candidate by the volunteers and does not need to be reported as such. The value of such volunteer work is not to be credited against the maximum amount the volunteer may contribute to the candidate's campaign.



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