

**ARKANSAS ETHICS COMMISSION
ADVISORY OPINION NO. 97-EC-03(A)**

ISSUED DATE: April 1997

ISSUE PRESENTED:

Is a legislator, who is serving his final term of office, required to file, either monthly or quarterly, supplemental campaign finance reports indicating the sum of money in his carryover fund and/or how monies from that fund are spent?

BRIEF RESPONSE:

Yes. Any legislator who retained carryover campaign funds, subsequent to the effective date of Ark. Code Ann. §7-6-203(i)(1) as amended in 1995, is required to report expenditures from this fund quarterly on supplemental campaign reporting forms indicating the current status of the carryover fund and describing the nature of the expenditures made. Similarly, insofar as pre-1995 funds could have been retained as personal funds, reporting expenditures of personal funds is not required.


FACTS PRESENTED:

A State Senator has requested assistance from the Ethics Commission as to how he may spend and/or report his expenditures of funds from a carryover account. He has been a successful candidate in the past and more than one campaign has ended with a surplus/carryover amount. He is presently serving his last term as Senator due to term limits. He has carryover funds from an election prior to 1995 and carryover funds from his 1996 election. Over three years ago, pursuant to discussions with this Commission, he transferred money from his campaign account to a public relations account following the election when he had a surplus or carryover fund available. The Senator ran in 1996 and retained an amount equal to his yearly salary. He intends to transfer these carryover funds to his public relations account. If he does, he contends he should no longer be required to report quarterly how the money was spent, provided he did not use the funds for personal use (which is prohibited under the law.) His contention rests on his explanation that, as he is in his last term of office, he is no longer a "candidate" and that the campaign finance laws, concerning the need for supplemental reporting of campaign contributions and expenditures, applies to candidates.

DISCUSSION:

The State Senator argued that he is no longer a candidate and therefore excused from compliance with §207(a)(3). The recently passed Act 491 of 1997, discussed below, appears to foreclose any debate on this issue. Clearly its language requires the reporting of expenditures from carryover accounts when the aggregate total of such expenditures exceeds \$500 during a given calendar quarter. The Act refers to any person who retains funds in a carryover account and makes no mention of whether the person is a candidate for any future office.

Whether the Senator's status as a non-candidate exempts him from reporting requirements, could only be an inquiry for situations prior to the effective date of Act 491 of 1997. Under present law (§7-6-201) the definition of "candidate" includes any person who has taken affirmative action to seek election. This would seem to attach, perhaps indefinitely, to anyone once s/he elects to run for office. Campaign finance reporting laws involve times and conditions of reporting after an election has ended. Candidates who lose the election, for instance, are required to make filings as are the candidates who were successful. The interest of the public in knowing how funds received during a campaign are used exists beyond the election. Without any reporting of post election spending, it would be impossible for the law preventing personal use of campaign funds to be enforced. It is appropriate to hold that monies received by a candidate, during his candidacy, are subject to reporting requirements after election and even after a person's status as candidate ceases.



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