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

ISSUED DATE: April 1997

ISSUE PRESENTED:

Did law changes in 1995 affect his handling or reporting of pre-1995 carryover funds? Does it matter if the funds are maintained in a personal relations account?

BRIEF RESPONSE:

No. To the extent that funds retained prior to 1995 were maintained as personal funds, supplemental reporting was not required. The relevant law does not cover personal funds. If the funds were not retained as personal funds, supplemental reporting was required before and after the law changes of 1995. The issue is not determined by the name of the account, but by whether the funds were converted to personal use prior to 1995.

FACTS PRESENTED:

A State Senator, in his last term of office as a Senator, has requested assistance from the Ethics Commission as to how he may report his expenditures of funds from a carryover account. Funds from prior elections have been retained in a public relations account. 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:

Campaign finance laws concerning how campaign funds could be used were amended, effective July 28, 1995, to prohibit personal use of campaign funds. Pursuant to this, all funds retained after that date became campaign funds and subject to the

reporting requirements for campaign funds. Prior to July 28, 1995, candidates who had an opponent in an election were allowed to retain a carryover fund and expend it as personal income. Supplemental reporting of personal income was not required. Reporting was only required of funds retained as campaign funds, as in the case of candidates who ran unopposed. Since the 1995 amendment of Ark. Code Ann. §7-6-203(i), funds received during a campaign may not be converted to personal use and retain their character as campaign funds.

Campaign funds retained by candidates after an election are specifically addressed by Act 491 of 1997. Act 491 defines carryover funds as the "amount of campaign funds retained from the last election by the candidate for future use but not to exceed the annual salary..." Under Act 491, a person, who retains carryover funds is required to file an expenditure report if, since the last report concerning the carryover funds, the person has expended in excess of $500. If a person does not expend the requisite threshold amount of $500 during a calendar year, s/he is required to file an annual report outlining the status of the carryover fund account. This obligation applies to any person who retains carryover funds and applies whether the funds are transferred to a personal relations account or not. The obligation extends for ten years after the last election at which the person was a candidate. After ten years the carryover funds shall be disposed as surplus funds pursuant to Ark. Code Ann. §7-6-203(j). Act 491 also provides that the personal use restrictions of §7-6-203(i)(1) do not apply to funds accumulated prior to the passage of Initiated Act 1 of 1990 or which were disposed of prior to July 28, 1995, the effective date of §7-6-203(i)(1).

Prior to the passage of Act 491, the Commission routinely interpreted the context of the campaign finance laws, including §7-6-207, as holding that the requirement for filing reports of expenditures from carryover funds, not taken as personal funds, followed the candidate until such time as s/he has no surplus/carryover funds from which to make expenditures and until such time as the candidate is no longer seeking contributions for, among other things, retirement of debt.

Over the past few years, some language changes in §207 have tended to cloud the issue. Prior to 1995, §7-6-207 (a)(3) required candidates to file supplemental quarterly reports for any expenditures made after the time period covered by the final monthly report. By an amendment in 1995 (Act 1263 of 1995) this section was reworded to state that "[n]o later that fifteen (15) days after the end of the quarter, a quarterly supplemental report of all contributions received and expenditures made between the final monthly report and the first quarterly report" was required. The Commission is of the opinion that this new wording was designed not to delete a lawful reporting requirement. The change

of wording is not significant. The remainder of the subsection of §507(a)(D) restates verbatim the older language that no supplemental report is required in any quarter in which there has been no contributions or expenditures by the candidate. The complete meaning of this statute is to instill that the requirement begins immediately after the election and is lifted for any quarter in which there is no activity. This interpretation is consistent with the other changes in §207 as the result of Act 1263 of 1995. For instance, §207(d)(2) notes that the Secretary of State is not required to advise the Commission when a late or incomplete supplemental report is filed and §212(c) still requires candidates (not covered by §207) to disclose any subsequent expenditures (those made after the filing of the final report) within 30 days after the expenditure.

Finally, the Commission notes that the status of the Senator as a "candidate" is discussed in the companion opinion 97-EC-003(A) and is hereby adopted by reference. As the companion opinion states, the Senator's duty to report exists although he is in his last term of office.

Therefore, it is the conclusion of the Commission that all persons, including former candidates, who retain an amount of funds as a carryover fund are required to file expenditure reports reflecting post election activity. Until July, 1997, there is no minimum threshold which triggers this requirement and all expenditures from carryover funds should be reported quarterly. After the effective date of Act 491, the reporting requirement comes into play only upon reaching the threshold of $500 since the last quarterly report filed, or annually if there has been no reports filed. This is true whether the money is maintained in a campaign account or transferred to a public relations account.

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