

ARKANSAS ETHICS COMMISSION
OPINION NO. 97-EC-007

DATE ISSUED: July 14, 1997

The Arkansas Ethics Commission has received a request for an opinion concerning exploratory committees. The request is a series of questions involving a variety of issue about the aspects of exploratory committees. The request is general in nature and seeks an overall interpretation of Ark. Code Ann. §7-6-216. By this Opinion, the Commission has attempted to organize the requests into similar areas of concern.

1. *What is the purpose of an exploratory committee?*

A. There is no statutory defined purpose of an exploratory committee. The Ethics Commission, in its previously issued "Practical Guide to the Arkansas Ethics and Disclosure Laws", defined an exploratory committee as a committee designated by a candidate to promote the candidate's campaign and to serve as recipient of all contributions and the distributor of all expenditures for a candidate prior to the time the candidate formally announces his intentions to run for office.

2. *What are the legal limitations on the activities of an exploratory committee?*

A. There are few specific limitations to the activities of an exploratory committee. Ark. Code Ann. §7-6-216 requires exploratory committees to register with the Secretary of State within fifteen (15) days after receiving contributions during a calendar year which, in the aggregate, exceed \$500.00. The committee must also disclose the name, address and telephone numbers of the committee and its officers as well as the name of the person who, upon becoming a candidate, is intended to receive the contributions received by the committee. §216(c) requires the committee to file timely monthly reports of contributions received with the Secretary of State indicating the total amount of all contributions during the previous month and disclosing the names and addresses of persons contributing in excess of \$ 50.00.¹ A final report is due when the committee either transfers the contributions received to the candidate or no longer intends to accept contributions on behalf of the candidate.

An exploratory committee essentially is under the same guidelines as a candidate's campaign committee. Ark. Code Ann. §7-6-201(2)(A) defines "contributions" as the direct or indirect giving of funds to a candidate or committee for the purpose of influencing the election or nomination of any candidate. §201(11) defines "exploratory committees" as a person who receives contributions held to be transferred later to a single candidate. Contributions to an

¹ Initiated Act 1 of 1996 requires itemization of all contributions to campaign committees in excess of \$ 50.00.

exploratory committee count toward the maximum limit a candidate may receive. Expenditures from it must be for campaign purposes. Ark. Code Ann. §7-6-203 prohibits a candidate from using **any campaign funds** as personal income or for personal purposes.

3. *May an exploratory committee and a candidate's campaign committee exist at the same time? As a related matter, if the officeholder has a campaign fund, can an exploratory committee be formed on his or her behalf?*

A. Arkansas law does not provide a definite answer to this inquiry. An exploratory committee may not include the candidate's own campaign committee. Ark. Code Ann. §7-6-201(11). There is no time frame for the establishment of a candidate's campaign committee. While it appears that the two may exist at the same time, the Commission warns that once a candidate has made a commitment to run, which generally includes the formation of his campaign committee, contributions should be given directly to the candidate or his committee pursuant to Ark. Code Ann. §7-6-205 and the coexistence of an exploratory committee would appear to make enforcement of this difficult.

On the related inquiry, an exploratory committee may be formed on a candidate's behalf even if the candidate is presently an officeholder and has an existing campaign fund. The exploratory committee must not be formed for the same office as currently held by the officeholder. The monies which make up the existing campaign fund relate to a prior election. Funds contributed to an exploratory committee will apply toward the contribution limits of the election for which the exploratory committee was formed and are exclusive from funds already maintained in an officeholder account.

4. *What are the contribution limits, if any, for giving to an exploratory committee?*

A. An individual who is considering running for office and establishes an exploratory committee to "test the waters" does not have to register as a candidate. Nevertheless, funds raised by the exploratory committee on the candidate's behalf will be treated as contributions if the individual elects to become a candidate. The contribution limits for the election/office being sought by the individual will apply. If the exploratory committee is for a constitutional state-wide office, the contribution limit is \$300 per person/contributor. For all other offices, the limit is \$100.00 per person/ contributor. The money contributed will apply against the limits applicable to the primary election for the candidate when, and if, the person decides to run for office.

If the individual establishes more than one exploratory committee, or if the person elects to run for an office other than the one for which the exploratory committee was receiving contributions, the candidate must dispose of the funds received by the exploratory committee for the office not sought pursuant to Ark. Code Ann. §7-6-203(j)(1)(A) - (D) within fifteen (15) days of the close of filing for public office.

5. *What are the reporting requirements, if any, for an exploratory committee?*

A. Ark. Code Ann. §7-6-216 requires exploratory committees to register with the Secretary of State within fifteen (15) days after receiving contributions during a calendar year which, in the aggregate, exceed \$500.00. At that time, the committee must disclose the name, address and telephone numbers of the committee and its officers as well as the name of the person who, upon becoming a candidate, is intended to receive the contributions received by the committee. §216(c) requires the committee to file timely monthly reports of contributions received with the Secretary of State indicating the total amount of all contributions during the previous month and disclosing the names and addresses of persons contributing in excess of \$ 50.00.² A final report is due within fifteen (15) days after the end of the month in which the committee either transfers the contributions received to the candidate or no longer intends to accept contributions on behalf of the candidate. Ark. Code Ann. §7-6-216(c).

6. *Must an exploratory committee maintain a separate bank account?*

A. Yes. Pursuant to Act 116 of 1997, (codified at Ark. Code Ann. §7-6-203(1)) campaign committees, including exploratory committees, must maintain bank accounts separate from the candidate's personal account and, in the case of an exploratory committee, also separate from any concurrent officeholder/candidate's account. When the candidate announces for election, the exploratory committee may convert the funds remaining in its account to the candidate's campaign account.

7. *Must an exploratory committee identify the potential candidate and the campaign it is exploring?*

A. Yes. Ark. Code Ann. §7-6-216(b) requires an exploratory committee, at the time of registration, to disclose the name of the person who, upon becoming a candidate, is intended to receive the contributions received by the committee. The Registration form, provided by the Secretary of State's office and approved by the Arkansas Ethics Commission, requires the candidate to identify the office being sought.

8. *If the potential candidate ultimately decides not to seek the office for which the exploratory committee was formed, is the potential candidate prohibited from seeking another office?*

A. No. See answers to questions 4, 7 and 10.

9. *Can more than one exploratory committee for a potential candidate exist simultaneously which designates the same or different campaigns to be explored?*

² Initiated Act 1 of 1996 requires itemization of all contributions in excess of \$50.00.

A. Yes. If the committees are for the same office (e.g. different committees in different counties) the contributions received will be applied toward the limitations for contributions as contained in Initiated Act 1 of 1996. The committees should keep accurate and separate bank accounts and be able to verify that no contributor has given more than the maximum in the aggregate to any exploratory committees. If a person gives \$300 to the candidate's Pulaski County Exploratory Committee for Governor, such person could not give any money to any other exploratory committee for the same candidate, same office.

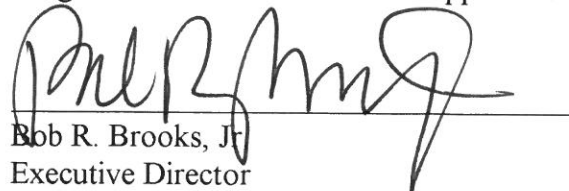
If the committees are for different offices, the candidate must insure that the funds retained by the committee for the office not sought are disposed pursuant to Ark. Code Ann. §7-6-203(j)(1)(A) - (D) as outlined in answers to questions 4 and 10 herein.

10. *What is to be done with the residue of funds raised by an exploratory committee if the potential candidate (1) seeks the designated offices, (2) seeks another office or (3) does not seek office?*

A. (1) If the candidate ultimately seeks the office being explored, the funds raised by the exploratory committee should be transferred to the candidate's campaign committee and reported in the final report pursuant to Ark. Code Ann. §7-6-216 with the maximums applicable remaining in tact for those persons who contributed to the exploratory committee. (2) If the candidate seeks another office, the committee should file a final report and note this on the report and dispose of the funds pursuant to Ark. Code Ann. §7-6-203(j)(1)(A) - (D). (3) If the person elects not to seek office, the committee must file a final report and note this on the report. Since the person is not going to be a candidate, any funds remaining in the exploratory committee's account should be disposed pursuant to Ark. Code Ann. §7-6-203 (j)(1)(A) - (D). Pursuant to Ark. Code Ann. §7-6-206(c), within fifteen days after the end of the month in which the candidate decides not to run for office or the committee no longer intends to accept contributions on his behalf, the committee must file its final report and note how the residue of funds were disposed. The funds should be disposed pursuant to one of the four options in §7-6-203(j)(1). The Commission encourages exploratory committees to consider refunding the contributions on a pro rata basis to the contributors. The funds must not be used by the candidate for personal purposes.

11. *If a contributor gives money to an exploratory committee, does that contribution count against the contribution limit the same as the contributor can give to a "candidate" under Ark. Code Ann. §7-6-203, 205?*

A. Yes. It will be treated as a contribution against the contribution limits applicable to the candidate's primary election.


Bob R. Brooks, Jr.
Executive Director