

ARKANSAS ETHICS COMMISSION
OPINION NUMBER 97-EC-09

ISSUED: August 21, 1997

The Arkansas Ethics Commission has been requested to address three related questions involving the ability of a candidate to seek contributions or use prior campaign funds for future elections.

ISSUE No. 1: *May a candidate who is ineligible to hold an office due to term limits raise money for that office?*

BRIEF RESPONSE: No. Under Arkansas law, a person may not solicit or accept contributions more than two (2) years before an election at which the person seeks nomination or election. Since the candidate is ineligible to seek the office, s/he should refrain from seeking money or contributions.

DISCUSSION: Ark. Code Ann. § 7-6-203(f) prohibits any candidate from soliciting or accepting contributions more than two years prior to any election for which the candidate seeks nomination or election. Since, in the present example, the candidate may not seek nomination or election to the office s/he held, s/he cannot solicit nor receive contributions for it. The only exception to this law allows candidates and/or officeholders to seek contributions to retire debts associated with previous elections pursuant to Ark. Code Ann. § 7-6-219. Otherwise, a candidate must wait until two years prior to an election for which s/he may legally seek nomination or election before receiving contributions for the election.

ISSUE No. 2: *May a candidate who is ineligible to hold an office due to term limits transfer money from an old campaign account for that office to a new campaign account for a different office for which the candidate is eligible?*

BRIEF RESPONSE: Yes. Pursuant to Ark. Code Ann. § 7-6-203(j) a candidate is allowed to retain in his/her campaign account, an amount no greater than the annual salary for the position sought. The Ethics Commission has long held that such funds retained as "carryover funds" may be used for future campaign purposes. This is true for any other state campaign. Federal law prohibits converting such funds for a future federal campaign because Arkansas law allows corporate contributions and federal law does not.

DISCUSSION: Candidates, including incumbent officeholders, are allowed under Ark. Code Ann. § 7-6-203(j) to maintain a "carryover" account consisting of campaign funds from the prior

election.¹ For all elections prior to July 1, 1997, this account could be increased from one election to another provided at no one time the candidate "carried over" more than an amount equal to the salary for the position sought.² These carryover funds may be used for officeholder expenses and future campaigns. The Ethics Commission has long held that future campaigns includes any campaign for any office other than federal office since federal law has different regulations and restrictions on what funds may be used to create a campaign account for a federal office. Although a candidate may be ineligible to seek one office due to term limits, as long as the office s/he seeks is not a federal office, s/he may transfer campaign funds carried over from past elections into an active campaign account for an office which s/he has not previously sought or is not currently holding. Pursuant to Ark. Code Ann. § 7-6-203(j)(3)(C)(ii), as amended by Act 491 of 1997, any person electing to transfer prior campaign carryover funds must also file an appropriate expenditure report for the calendar quarter in which he or she transfers the carryover funds to an active campaign fund.

ISSUE No. 3: *May a candidate transfer money from an old campaign account for one office to an exploratory committee for a different office?*

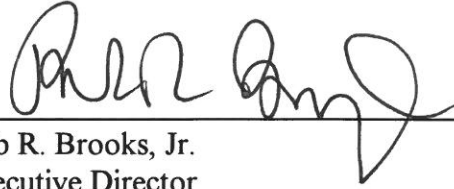
BRIEF RESPONSE: Yes. As long as the exploratory committee is for an office other than a federal one, see discussion above, monies retained from prior state elections may be transferred to an exploratory committee for a different office.

DISCUSSION: Monies given to an exploratory committee are considered contributions and must be reported by the committee. As the Ethics Commission recently stated in Opinion 97-EC-007, 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 monies which make up the existing campaign carryover fund relate to a prior election. Funds contributed to an exploratory committee, by sources other than the candidate, 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. This does not prohibit a candidate from transferring funds from an old campaign account into an exploratory account. The transaction simply needs to be reported. 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 an exploratory committee is formed, the candidate or office may seek to transfer the old campaign account funds into the exploratory committee's account. Similarly, when the candidate announces for election, the exploratory

¹ See also, Act 491 of 1997, amending Ark. Code Ann. § 7-6-203, which further defines the available usages and restrictions for "carryover funds."

² Act 491 of 1997 requires that carryover funds attributed to elections after July 1, 1997, be converted to the next campaign account. Ark. Code Ann. § 7-6-203(j)(3)(B). Also see, Ethics Opinion Nos. 97-EC-003(A),(B) and (C) which set out restrictions and allowances concerning surplus funds and carryover funds following the enactment of Act 491.

committee may convert the funds remaining in its account to the candidate's active campaign account. As noted above, pursuant to Ark. Code Ann. § 7-6-203(j)(3)(C)(ii), as amended by Act 491 of 1997, when prior campaign funds are ultimately transferred into an active campaign account, the person must report the transfer on the appropriate Contribution and Expenditure Report.

A handwritten signature in black ink, appearing to read "Bob R. Brooks, Jr.", written over a horizontal line.

Bob R. Brooks, Jr.
Executive Director