

**ARKANSAS ETHICS COMMISSION  
OPINION NUMBER 97-EC-015**

ISSUED: October 16, 1997

The Arkansas Ethics Commission has been requested to address five related questions involving the ability of a candidate, following the passage of Initiated Act 1 of 1996, to accept and/or designate contributions during the primary and general election cycles.

**ISSUE No. 1:** *Under what circumstances may candidates accept and deposit a check that maximizes the contribution limit for the primary election and designate the remainder of the check for the general election?*

**BRIEF RESPONSE:** A candidate may accept and deposit a check that maximizes the contribution limit for the primary election and use the remainder for the general election only if the contribution is received prior to the primary, placed in a separate account and the check has been previously designated by the contributor for use in the general election.

**DISCUSSION:** A candidate may accept a contribution during the primary election cycle for an amount which exceeds the maximum limit and use the remainder during the general election only under limited circumstances. Each of the circumstances must exist or overage of the check must be refunded to the contributor. The circumstances are:

A) The check/contribution must be received on or before the date of the primary election. In the case of 1998, the primary election is set for May 19, 1998. Checks received after the primary election cannot be designated for use during the primary unless the candidate is seeking to retire a campaign debt and has followed the dictates of Ark. Code Ann. § 7-6-219 for the purpose of retiring a debt.

B) The candidate must open and maintain a separate campaign account into which the overage (any amount over the \$1000 maximum for a statewide campaign or any amount over \$100 for all other campaigns) must be deposited for the general election. Any monies designated by the contributor for the general election, must not be used until after the primary election. For the 1998 election this means the funds cannot be utilized in any manner prior to May 20, 1998.

C) The candidate cannot designate a contribution. **The designation must be made in writing by the contributor.**<sup>1</sup> A notation on the memo portion of the check/draft is sufficient. If the contributor fails to make a designation, it is assumed that the contribution will be for the next election (i.e. in this example, the primary election) and that the overage (for the general election) must be refunded; and

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<sup>1</sup> Pursuant to Ark. Code Ann. § 7-6-203(f), no candidate may accept a contribution more than two (2) years before an election at which s/he may seek nomination. Similarly, no contributor may designate portion of a contribution for an election more than two (2) years prior to the election.

D) If the candidate fails to make it past the primary election (as a result of losing or withdrawing), the overage must be refunded to the contributor.

**ISSUE No. 2:** *May a candidate designate the maximum amount for both the primary and general elections, even if the candidate does not know if he or she will have a primary opponent?*

**BRIEF RESPONSE:** A candidate cannot designate the contribution. However, if the contributor designates the maximum amount for both elections, the candidate may retain it, following the four steps noted above in response to Issue (1) even if the candidate has no opponent in the primary election.

**DISCUSSION:** Whether a candidate has an opponent has no effect on the amount of contributions he may receive for the particular election. Under the law, a candidate may receive up to the maximum amount for each election in which his name appears on a ballot. If the candidate becomes involved in a runoff(s), he may receive contributions for that election from persons who may have given the maximum amount appropriate to the primary election. However, a candidate in receipt of a contribution which is twice the maximum amount applicable under the law for a particular election is not free to receive the amount for both the primary and general election, regardless whether he has an opponent, unless the candidate follows the four steps as outlined in response to Issue (1) above.

**ISSUE No. 3:** *Does the check for the contribution have to specify for which election it is to be made (primary or general), or can the campaign notify the contributor how the contribution has been designated by the campaign?*

**BRIEF RESPONSE:** The check must be designated by the contributor if a campaign intends to use it for an election other than the one during which it is received.

**DISCUSSION:** If a contribution is received prior to the primary election, it is presumed to apply to the primary election for maximum contribution limits purposes unless the check is specifically designated by the contributor for use in the general campaign. If it is so designated, the campaign is free to apply it to the general provided it follows the four steps outlined in response to Issue (1) above. The campaign is not free to choose to which election the contribution will apply. If a contribution is received after the primary, it can only apply to a runoff (if the candidate is involved in one and the contribution was received prior to the runoff election) or the general election, if there is no runoff. Money received after any election cannot be retroactively applied to a previous election unless the candidate is seeking contributions for the sole purpose of retiring a campaign debt related to the previous election and has followed the dictates of Ark. Code Ann. § 7-6-219 which sets out the procedures for seeking contributions to retire a campaign debt.

**ISSUE No. 4:** *If all the money that has been designated for the primary is not spent by the candidate, can the remainder in the primary account be rolled over into the general election account after the primary election is completed?*

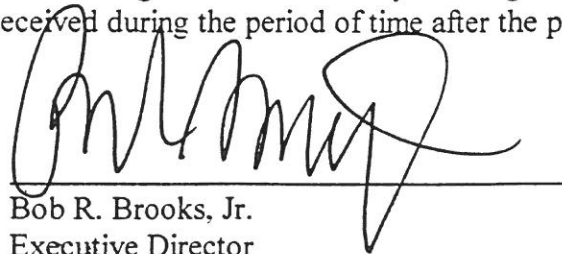
**BRIEF RESPONSE:** Yes. Monies from a primary account can be rolled over into a general election account after the primary election. Contributors who gave the maximum amounts during the primary election may contribute up to the maximum for the general election even if the funds rolled over included all or part of their contribution from the primary.

**DISCUSSION:** Under campaign finance laws in Arkansas, contribution maximums are "per election", "per contributor." Ark. Code Ann. § 7-6-203, as amended by Initiated Act 1 of 1996. Monies left over from a primary election may be rolled over completely into the general election account. The amount carried over from the primary should be reflected on the first Contribution and Expenditure report filed by the candidate for his/her general election as the "cash on hand at the beginning of the reporting period" for the general election. Following the last election, a candidate is allowed to retain up to the amount of the annual salary for the position sought and may be maintained as a "carryover account." Ark. Code Ann. § 7-6-201(15). Amounts in excess of the annual salary are known as surplus campaign funds and must be disposed of pursuant to Ark. Code Ann. § 7-6-203(j)(1)(A)-(D) within thirty (30) days following the end of the month in which the general election is held.

**ISSUE No. 5:** *Under what circumstances can a campaign designate a contribution limit for a runoff election?*

**BRIEF RESPONSE:** None. As noted above, only contributors can designate contributions. Candidates can solicit or receive contributions for a runoff election if the candidate is in a runoff election and the funds are contributed after the primary, during the runoff election cycle.

**DISCUSSION:** A candidate involved in a runoff election is free to solicit and accept contributions, up to the applicable maximum amount, from anyone, including those who gave him a contribution during the prior election, who have not given the maximum yet during the runoff election period. The contributions must be received during the period of time after the primary and before or on the date of the runoff.



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