

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 98-EC-005 Issued March 27, 1998

### ISSUES:

Whether Ark. Code Ann. § 7-6-203(j)(1) permits the donation of carryover funds to a city beautification project? Whether Ark. Code Ann. § 7-6-203(j)(3) permits expenditures of carryover funds for the same purposes which campaign funds can be expended?

### BRIEF ANSWER:

Because a municipality is not an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, it is impermissible to donate carryover funds to it under Ark. Code Ann. § 7-6-203(j)(1)(C). Ark. Code Ann. § 7-6-203(j)(3) does permit the expenditure of carryover funds in the same manner as campaign funds.

### FACTS PRESENTED:

A state legislator seeks use of carryover funds for a city beautification project that is sponsored by his hometown. Specifically, the legislator proposes to buy several bricks with his name engraved thereon at the cost of \$30 per brick. These bricks will be displayed as a part of the sidewalk paving the beautified area, which was once blighted, and then condemned by the city.

### DISCUSSION:

#### A. Use of Carryover Funds

Act 491 of 1997 established the definition of "carryover funds" as follows:

the amount of campaign funds retained from the last election by the candidate for future use but not to exceed the annual salary, excluding expense allowances, set by Arkansas law for the office sought.

*See Ark. Code Ann. § 7-6-201(15).*



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The legislator seeking this opinion ran for re-election in 1996 and ended up his campaign with a surplus. The surplus campaign funds, within the meaning of Ark. Code Ann. § 7-6-201(16), were refunded to his contributors pursuant to Ark. Code Ann. § 7-6-203(j)(1)(D) and he retained an amount equal to his salary in a carryover fund as permitted by Ark. Code Ann. § 7-6-201(15). The legislator is not a candidate for public office in 1998. He wants to expend an undetermined amount from carryover funds on a city beautification project.

Ark. Code Ann. § 7-6-203(j)(3)(D) allows retention of carryover funds for up to ten (10) years after the last election at which the person was a candidate. This section also mandates that carryover funds be disposed of in the same manner as for surplus campaign funds. Ark. Code Ann. § 7-6-203(j)(1)(A)-(D) outlines four permissible options to dispose of surplus campaign funds after a general election:

(A) The Treasurer of the State of Arkansas for the benefit of the General Revenue Fund Account of State Apportionment Fund;

(B) An organized political party as defined in Ark. Code Ann. § 7-1-101(1) or a political party caucus of the Arkansas General Assembly, the Senate or the House of Representatives;

(C) A nonprofit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; or

(D) The contributors to the candidate's campaign.

Because a donation to a city does not comply with category (C) above<sup>1</sup>, carryover funds cannot be expended under Ark. Code Ann. § 7-6-203(j)(1) in this circumstance. The Commission's analysis of this request, however, does not stop here.

The use of carryover funds is also governed by Ark. Code Ann. § 7-6-203(j)(3)(A) which provides:

Carryover funds may be expended at any time *for any purpose not prohibited by this chapter* and may be used as campaign funds for seeking any public office. Nothing shall prohibit a person at any time from disposing of all or any portion of his or her carryover funds in the same manner as for surplus campaign funds. However, the candidate shall not take the funds as personal income or as income for his or her spouse or dependent children (emphasis added).

Because carryover funds may be "expended ... for any purpose not prohibited" by chapter 6 of title 7 of the Arkansas Code, the Commission will focus on allowable campaign expenditures.

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<sup>1</sup> Municipalities are not tax exempt organizations under 26 U.S.C. § 501(c)(3). It is the Commission's understanding, however, that cities are not subject to federal taxation under the concept of "dual sovereignty."



B. Allowable Campaign Expenditures

The Commission recently promulgated rules interpreting subchapter 2, chapter 6 of title 7 on campaign financing. Allowable expenditures of campaign funds are addressed in §§ 214-223 and the permitted uses of carryover funds are addressed in §§ 226-228.

Commission Rule § 220(a) parallels this request for an advisory opinion, and states as follows:

Candidates and officeholders may purchase advertisement in publications of charitable, civic and educational organizations. This is permissible for officeholders even if the expenses are related to their holding office and not reimbursable by the state. Campaign and post-campaign surplus and carryover funds may be used to buy items such as ads in school yearbooks *as these purchases serve to increase public visibility for the candidates and the officeholders* (emphasis added).

Another Commission Rule that is closely related is § 227(c) dealing with carryover funds used as officeholder expenses. It states, in part, that “[carryover] funds may be used to ... purchase advertisements for the office in such publications as the school’s yearbook.”

It is the belief of the Commission that the situation described in this request for an advisory opinion is analogous to the purchase of an advertisement in a school yearbook. To the extent that Commission Rule § 220(a) allows an expenditure for an advertisement that “increases the visibility of an officeholder”, the proposed expenditure here is indistinguishable. A brick with the officeholder’s name engraved thereon is no different from an advertisement in a school yearbook .

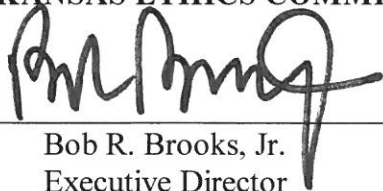
Therefore, the Commission finds that this proposed expenditure is permitted under Ark. CodeAnn. § 7-6-203(j)(3)(A) as intepreted by Commission Rules § 220(a) and § 227(c).

C. Reporting Requirements

Expenditures from carryover funds must be reported within fifteen (15) days after the quarter in which the expenditure was made if the expenditure exceeds \$500 pursuant to Ark. Code Ann. § 7-6-203(j)(3)(C)(i) or in an annual report if no quarterly expenditure report has been filed covering that particular year pursuant to Ark. Code Ann. § 7-6-203(j)(3)(C)(iii). The annual report is due by January 31 of each year.

This advisory opinion is issued by the Commission pursuant to Ark. Code Ann. § 7-6-217(g)(2).

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by:   
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