

ARKANSAS ETHICS COMMISSION

910 West Second Street, Suite 100
Little Rock, Arkansas 72201
(501) 324-9600 Fax (501) 324-9606
Toll Free 1-800-422-7773

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Bob R. Brooks, Jr.
Executive Director

Graham F. Sloan
Staff Attorney

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Director of Compliance

ADVISORY OPINION NO. 98-EC-015 Issued July 22, 1998

ISSUE:

What are the legal requirements for the proper filing of a 10 day preelection campaign contribution and expenditure report by state and district candidates?

BRIEF ANSWER:

A 10 day preelection report must be *physically received* in the office of the Secretary of State and in the County Clerk's office of the county where the state or district candidate resides at least seven days prior to the election in question, whether a primary, runoff, general or special election.

FACTS PRESENTED:

Based upon a recently conducted review of campaign contribution and expenditure reports, it is apparent that there was widespread failure on the part of state and district candidates to properly file a 10 day preelection report for the preferential primary held on May 19, 1998. This report was due to be filed on or before May 12, 1998.

Due to the high rate of noncompliance, the Commission has determined that the public interest would be served by issuing an advisory opinion concerning the proper filing of a 10 day preelection report. The Commission will distribute this opinion to all candidates for state or district office with the goal of increasing compliance with the law in the future.

DISCUSSION:

The filing of a 10 day preelection report by state and district candidates is governed by Ark. Code Ann. § 7-6-207(a)(1)(C), which provides as follows:

(a) REPORTS REQUIRED. (1) Except as provided in subsection (c) of this section, *each candidate* for office, other than a school district, township, municipal or county office, or a person acting in the candidate's behalf, *shall file* with the Secretary of State and the county clerk in the county where the candidate resides:

(C) **No later than seven (7) days prior** to a preferential primary election, a runoff election, a general election or a special election, file a preelection report of all contributions received and expenditures made between the period covered by the previous report and the period ten (10) days before the election (emphasis added).

For this year's preferential primary which was held on May 19, 1998, **all** state and district candidates who had met the \$500 trigger contained in Ark. Code Ann. § 7-6-207(c)(1) should have filed a preelection report by no later than May 12, 1998, covering the time period of May 1-9, 1998. As a practical matter, most candidates for state or district office triggered the reporting requirements by the payment of their filing fee in March.¹

There is a popular misconception among state and district candidates that they are not required to file a preelection report if they are unopposed in a particular election. The law is clear that the requirement of the filing of the 10 day preelection report is **not** relaxed if a candidate is unopposed, whether in the primary or the general election.²

The policy reason for requiring candidates to file a 10 day preelection report is to provide voters with as much information as possible regarding a particular candidate's campaign finances immediately prior to the voters going to the polls. While the Commission is cognizant that the timing of the disclosure of this information is less critical with respect to unopposed candidates, the law does not relieve unopposed state or district candidates from the responsibility of filing the 10 day preelection report.³ Nor does the law relieve candidates of the responsibility of filing a 10 day preelection report if their campaign had "no activity" during the applicable period.⁴

Ark. Code Ann. § 7-6-207(a)(3) provides that a 10 day preelection report will be filed when it is *received*, **not** the date of the postmark. This is an exception to the norm because all other reports are deemed timely filed if they are postmarked by the due date. The difference is accounted for by the fact that time is particularly of the essence with respect to a 10 day preelection report.

Preelection reports may be faxed to the Secretary of State at (501) 682-3408 or (501) 682-3548. Be aware, however, that the notary seal must be clear and legible, i.e., capable of photographic

¹ According to an article on party filing fees which appeared in the March 18, 1998, edition of the *Arkansas-Democrat Gazette*, the only state and district candidates who did not trigger the reporting requirements by simply paying the filing fee would be Republican candidates for the following offices: State Representative, Court of Appeals Judge, Circuit Judge, Chancery Judge and Circuit/Chancery Judge.

² Ark. Code Ann. § 7-6-207(a)(1)(B) requires candidates to begin filing reports "in the calendar year in which a candidate may be listed on *any* ballot for election ... (emphasis added)."

³ The Legislature may wish to revisit this requirement in the 82nd General Assembly. The Commission intends to hold public hearings in November on possible improvements to the current campaign finance disclosure laws.

⁴ Candidates reporting no activity for the applicable period--i.e., no contributions and no expenditures--are only required to file the first page of the campaign contribution and expenditure report.

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reproduction. Moreover, the Commission strongly urges candidates to retain a file-stamped copy of each campaign report filed.

The late filing or non-filing of a required report carries potential sanctions from the Commission. In this regard, the fine for failing to file a 10 day preelection report on time is higher than for other reports. Applicable fines are set forth in § 247 of the Commission's Rules on Campaign Finance & Disclosure. For good cause shown, candidates may receive a waiver from applicable fines upon timely written request. Requests for waivers are reviewed by the Commission on a case-by-case basis.

It is the expectation and strong hope of the Commission that this advisory opinion will assist all state and district candidates in filing their 10 day preelection report for the upcoming general election in a timely fashion. This report is due to be filed by October 27, 1998, covering the period October 1-24, 1998. Candidates should note that there is no "October monthly" report due for candidates on the ballot in 1998.⁵ The remaining days for the month of October (the 25th through the 31st) should be included with the final report due to be filed by December 30, 1998.

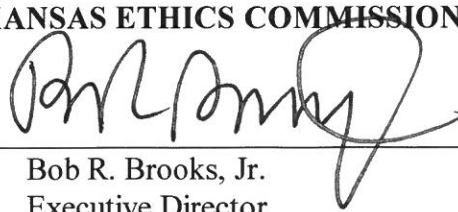
To summarize, state and district candidates need to keep in mind the following when filing a 10 day preelection report:

- The 10 day preelection report must be actually **FILED** by the deadline--the postmark date **will not** suffice for this report;
- Disclose activity in the applicable time period required by law on the 10 day preelection report--i.e., everything from the previous report until ten days before the election--*even if there was no activity during this period*;
- All state and district candidates **MUST** file a 10 day preelection report for each election--*even if unopposed*;
- Reports may be faxed, but the notary seal must be clear and legible; and
- It is advisable to retain a file-stamped copy of each report filed.

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

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by: _____


Bob R. Brooks, Jr.
Executive Director

⁵ The Commission's review revealed that several candidates filed "May monthly" reports on or about June 15, 1998, rather than filing a 10 day preelection report as required by law. While disclosure was not defeated by this practice, the timeliness of the disclosure did not comply with Ark. Code Ann. § 7-6-207(a)(1)(C) which required the days of May 1-9 to be disclosed on the 10 day preelection report due on May 12, 1998--not 34 days later.