

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 99-EC-003 **Issued April 16, 1999**

The Arkansas Ethics Commission is issuing this advisory opinion on its own initiative to clarify the law pertaining to independent expenditures. Such clarification is needed as a result of the decision which the United States District Court for the Western District of Arkansas rendered on December 8, 1998, in the case of Arkansas Right to Life State Political Action Committee, et al. v. Brad Butler, et al., Civil No. 97-5064.

Said case struck down the annual contribution limit of \$500.00 per person which was imposed upon independent expenditure committees by Ark. Code Ann. § 7-6-203(k). It also struck down the disclosure requirements which Ark. Code Ann. § 7-6-221(a) imposed upon persons making independent expenditures.

The term "independent expenditure" is defined in Ark. Code Ann. § 7-6-203(13) to mean:

- [A]ny expenditure which is not a contribution and
 - (A) expressly advocates the election or defeat of a clearly identified candidate for office; and
 - (B) is made without arrangement, cooperation, or consultation between any candidate, or any authorized committee or agent of such candidate, and the person making the expenditure or any authorized agent of that person; and
 - (C) is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of the candidate.

Independent expenditures can be made by either a "person" or an "independent expenditure committee." Both are statutorily defined terms.

The definition of "person" is set forth in Ark. Code Ann. § 7-6-201(1) and means the following:

any individual, proprietorship, firm, partnership, joint venture,

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syndicate, labor union, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert ...[and] includes organized political parties as defined in § 7-1-101(1).

The term "independent expenditure committee" is defined in Ark. Code Ann. § 7-6-203(14) as follows:

any person who receives contributions from one or more persons in order to make an independent expenditure and is registered pursuant to Arkansas Code 7-6-215 prior to making expenditures.

The reporting requirements applicable to independent expenditures are set forth in Ark. Code Ann. § 7-6-220. Said statute addresses who must file reports, when and where reports must be filed, and what those reports must contain.

With respect to who must file reports and when and where those reports must be filed, subsection (a) of the statute provides the following:

A person or an independent expenditure committee who makes independent expenditures in an aggregate amount or value in excess of \$500 shall file reports with the Secretary of State:

- (1) no later than thirty (30) days prior to preferential primary elections, general elections and special elections covering the period ending thirty-five (35) days prior to such elections;
- (2) no later than seven (7) days prior to preferential primary elections, runoff elections, general elections, and special elections covering the period ending ten (10) days prior to such elections; and
- (3) as for a final report, no later than thirty (30) days after the end of the month in which the last election is held at which the candidate seeks nominating or election.

The required contents of the reports vary depending upon whether the expenditures are being made by an individual, an independent expenditure committee, or a person who is not an individual. In that regard, subsection (b) of Ark. Code Ann. § 7-6-220 provides as follows:

Such reports shall include:

- (1) In the case of a an individual making such an expenditure, the name, address, telephone number, principal place of business, employer and occupation of the individual;

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(2) In the case of a committee, the name, address, employer, and occupation of its officers.

(3) In the case of a person who is not an individual, the principal name of the entity, the address, and the name, address, employer, and occupation of its officers; and

(4) The same information required of candidates for office other than school district, township, municipal, or county office as set forth in § 7-6-207(b)(1)(A) through (E).

Generally speaking, the reports must contain information about the individual, committee, or person making the independent expenditures, and also the information set forth in Ark. Code Ann. § 7-6-207(b)(1)(A) through (E). That information is as follows:

(A) The total amount of contributions received and the total amount of expenditures made during the filing periods, and the cumulative amount of those totals;

(B) The name and address of each person, including the candidate, who made a contribution or contributions which, in the aggregate exceed fifty dollars (\$50), the contributor's place of business, employer, occupation, and date of the contribution and the amount contributed;


(C) The contributor's principal place of business, employer, occupation, the amount contributed, and the date the contribution was accepted by the candidate;

(D) A description of nonmoney items contributed, not including volunteer service by individuals; [and]

(E) An itemization of all single expenditures made which exceed one hundred dollars (\$100), including the amount of the expenditure, the name and address of any person, including the candidate, to whom the expenditure was made, and the date the expenditure was made.

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

Arkansas Ethics Commission

By: 
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