

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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Staff Attorney

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ADVISORY OPINION NO. 99-EC-004 **Issued April 16, 1999**

The Arkansas Ethics Commission has been asked to issue an advisory opinion on behalf of an individual who, as the "Ouachita County Committee for Fair Elections", ran a political ad in a local newspaper. The ad was run in connection with a runoff election held on March 30, 1999, which arose from a special election for Ouachita County Municipal Judge.

As explained to the Commission, it cost approximately seven hundred dollars (\$700.00) to run the ad and the individual paid the entire amount out of his or her own funds. The question asked is whether or not the individual triggered any registration or reporting requirements under the Commission's jurisdiction by running the ad.

A review of the ad shows that it does not mention any candidate by name. The ad states that "paid campaign workers for one of the candidates" have been going door-to-door soliciting applications for absentee ballots and that "it is assumed that candidate would receive those votes." The ad goes on to encourage people to get out and vote to prevent the outcome of the election from being determined by absentee votes.

Analysis of the instant matter will begin with the question of whether or not the individual who ran the ad triggered the reporting requirements applicable to independent expenditures. The term "independent expenditure" is defined in Ark. Code Ann. § 7-6-201(13) as follows:

Any 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.

Pursuant to Ark. Code Ann. § 7-6-220(a), a person or an independent expenditure committee who makes independent expenditures in excess of five hundred dollars (\$500.00) is

Arkansas Ethics Commission
Opinion No. 99-EC-004
Page Two

required to file reports with the Secretary of State. The contents of those reports are detailed in Ark. Code Ann. § 7-6-220(b).

Although the individual spent more than \$500.00 to run the ad, it cannot be said that the ad expressly advocated the election or defeat of a clearly identified candidate. Accordingly, the individual was not required to file any reports under Ark. Code Ann. § 7-6-220 in connection with the running the ad.

It is possible, however, that the running of the ad constituted a contribution. The term “contribution” is defined in Ark. Code Ann. § 7-6-201(1) as follows:

whether direct or indirect, advances, deposits, or transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payment for services, dues, advancements, forbearance, loans, pledge or promise of money or anything of value, whether or not legally enforceable, to a candidate, committee, or holder of elective office, made for the purpose of influencing the nomination or election of any candidate.

As recognized in Section 205 of the Commission’s Rules on Campaign Finance & Disclosure, a contribution can be either monetary or in-kind. The term “in-kind contribution” is defined in Section 200(j) of those rules to mean “a contribution of goods, services, or any other thing of value, or its use, other than money.”

While the ad in question did not clearly identify either of the candidates, its apparent purpose was to undermine the efforts of the candidate who was paying workers to go door-to-door to solicit applications for absentee ballots. In running the ad, it seems clear that the individual was seeking to influence the outcome of the election in favor of said candidate’s opponent.

The question of whether or not the running of the ad constituted an in-kind contribution to the opposing candidate depends upon whether said candidate, or his or her authorized committee or agent, was involved in the running of the ad.¹ In the absence of any such involvement, the running of the ad would not have constituted an in-kind contribution.

¹In determining whether or not the candidate, or his or her authorized committee or agent, was involved in the running of the ad, the Commission would apply the second and third prong of the test which is applicable to independent expenditures, i.e., whether or not the person ran the ad in arrangement, cooperation, or consultation with the candidate, or his or her authorized committee or agent, and whether or not the person ran the ad in concert with, or at the request or suggestion of, the candidate, or his or her authorized committee or agent.

Arkansas Ethics Commission
Opinion No. 99-EC-004
Page Three

If, on the other hand, the opposing candidate, or his or her authorized committee or agent, were involved in the running of the ad, then it would constitute an in-kind contribution and be subject to the applicable contribution limit of one thousand dollars (\$1000.00). A contributor, however, is not required to report the making of a contribution unless such contributor is either a political party or a political action committee.

The term "political party" is defined in Ark. Code Ann. § 7-1-101(1)(A) as follows:

any group of voters which, at the last-preceding general election, polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office.


It is clear that the individual who ran the ad does not meet the foregoing definition. The only remaining question is whether or not the individual triggered any registration or reporting requirements as a political action committee.

Under Arkansas law, contributions can be made by either an "approved political action committee" or a "small donor political action committee." Those terms are defined in Ark. Code Ann. § 7-6-201(9) and (12), respectively.

To meet either definition, a person must receive contributions in order to make contributions to candidates. Unless the individual who ran the ad received contributions in connection with the running of the ad, he or she would not have triggered any registration or reporting requirements as a political action committee.

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

Arkansas Ethics Commission

By: 
Graham F. Sloan
Staff Attorney