

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 99-EC-022 **Issued December 17, 1999**

The Arkansas Ethics Commission has received an advisory opinion request from a political action committee ("PAC"), registered as an approved PAC pursuant to Ark. Code Ann. § 7-6-215(a), which makes contributions to candidates for state office. The PAC in question conducts joint fund-raising activities with another PAC, registered with the Federal Election Commission ("FEC"), which makes contributions to candidates for federal office.

Jointly, the two PACs solicit contributions from individuals in the State of Arkansas. All contributions received are deposited into a holding account under control of the federal PAC and then divided according to a predetermined formula. The portion belonging to the state PAC is transferred into a separate bank account called the "state share" account, and the portion belonging to the federal PAC is transferred to a "federal PAC" account. Each month, the funds in the "state share" account are forwarded to the state PAC. The federal PAC reports to the FEC only that portion of the funds raised which are deposited into the "federal PAC" account.

The two PACs have a similar arrangement for funds raised to defray administrative expenses. Contributions received for such expenses are deposited into the holding account and divided in the same manner as all other contributions.

Each month, the federal PAC accounts for funds contributed by persons in Arkansas and provides the state PAC with the name of each person who has made a contribution, the amount of the contribution, the total contributed for the year by the person, and the portion being transferred to the state PAC. The advisory opinion request asks whether it is permissible for the state PAC to treat the funds it receives from the "state share" account as contributions from the persons who originally made them.

The reason for the question is that, pursuant to Ark. Code Ann. § 7-6-201(9)(B), an approved PAC is prohibited from accepting "any contribution or cumulative

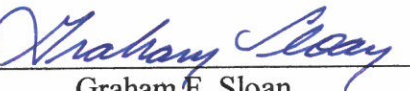
contributions in excess of five thousand dollars (\$5,000.00) from any person¹ in any calendar year.” In the event the funds received from the “state share” account were treated as contributions from the federal PAC, then the state PAC could not accept more than five thousand dollars (\$5,000.00) worth of such contributions in any calendar year.

It is the Commission’s opinion that the question of whether the funds in the “state share” account should be treated as contributions from the persons who originally made them or as contributions from the federal PAC depends upon whether the persons who originally made the contributions knew and intended that the money be divided between the state PAC and the federal PAC. In the event that the state PAC can demonstrate that the persons who originally made the contributions did know and intend that the money be split between the two PACs, then it would be permissible for the state PAC to treat the funds it receives from the “state share” account as contributions from the persons who originally made them.

If, on the other hand, the state PAC cannot demonstrate such knowledge and intent on the part of the persons who originally made the contributions, then the funds received from the “state share” account would have to be treated as contributions from the federal PAC. In such event, the state PAC would be limited to accepting no more than five thousand dollars (\$5,000.00) from the federal PAC in any calendar year.

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

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By: 
Graham F. Sloan
Chief Counsel

¹ The term “person” is defined in Ark. Code Ann. § 7-6-201(1) as “any individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, corporation, association, committee, or any organization or group of persons acting in concert.”