

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2022-EC-001 Issued May 20, 2022

The Arkansas Ethics Commission (“AEC”) has received a written advisory opinion request from Mr. Doyle Webb of Benton, Arkansas. As background, he states that his belief is that political contributions received and reported by a candidate to be spent during the general election cannot be expended or reallocated for campaign expenses in the primary election or subsequent runoff election. In seeking this advisory opinion, he inquired whether or not the AEC’s position on the matter is in accordance with his understanding.

Applicable Law

Ark. Code Ann. § 7-6-203 provides, in pertinent part, as follows:

(a)(1)(A) It shall be unlawful for any candidate for any public office or for any person acting on the candidate's behalf to accept campaign contributions in excess of the maximum campaign contribution level established by rule of the Arkansas Ethics Commission under subsection (i) of this section *per election* from [emphasis added]:

- (i) An individual;
- (ii) A political party that meets the definition of a political party under § 7-1-101;
- (iii) A political party that meets the requirements of § 7-7-205;
- (iv) A county political party committee;
- (v) A legislative caucus committee; or
- (vi) An approved political action committee.

(B) It shall be unlawful for a candidate for a public office or for any person acting on the candidate's behalf to accept a campaign contribution from a prospective contributor other than those under subdivisions (a)(1)(A)(i)-(vi) of this section.

(2) A candidate may accept a campaign contribution or contributions *up to the maximum amount* from any prospective contributor under subdivisions (a)(1)(A)(i)-(vi) of this section *for each election*, whether opposed or unopposed [emphasis added].

(b) (1) It shall be unlawful for any person to make a contribution to a candidate for any public office or to any person acting on the candidate's behalf, which in the aggregate exceeds the maximum campaign contribution level established by rule of the Arkansas Ethics Commission *per election* [emphasis added].

(2) A person permitted to make a contribution or contributions under subdivisions (a)(1)(A)(i)-(vi) of this section may make a contribution or contributions up to the maximum amount to a candidate for *each election*, whether opposed or unopposed [emphasis added].

Ark. Code Ann. § 7-6-203 provides, in pertinent part, as follows:

(7) “Election” means each election held to nominate or elect a candidate to any public office, including school elections. For the purposes of this subchapter, a preferential primary, a general primary, a special election, and a general election *shall each constitute a separate election* [emphasis added].

Pursuant to Ark. Code Ann. §§ 7-6-207 (a)(1)(A)-(D), each candidate for state or district office shall file with the Secretary of State quarterly and monthly reports, along with a report due seven (7) days before an election, and a final report due no later than thirty (30) days after the end of the month in which the election was held.

As seen in Ark. Code Ann. § 7-6-203(a)(2), a candidate may accept campaign contributions *up to the maximum amount* from any prospective contributor under subdivisions (a)(1)(A)(i)-(vi) of this section *for each election*, whether opposed or unopposed. Likewise, once a candidate has raised or spent more than five hundred dollars (\$500) towards their election, they have triggered reporting pursuant to Ark. Code Ann. § 7-6-207 for each election for which they have raised in excess of five hundred dollars (\$500).

Question Presented

*Can political contributions received and reported by a candidate to be spent during the general election be expended or reallocated for campaign expenses in the primary election or subsequent runoff election? **

Prior to the Primary Election

Prior to the primary election, a candidate who has accepted the maximum contribution from a particular contributor for the primary election and also has accepted a contribution for the general election cannot spend the money raised for the general election prior to the primary having taken place. To do so would be to exceed the contribution limit for the primary election for every contributor who has given the maximum contribution for the primary election and also has given a contribution for the general election prior to the primary election. In other words, general election

* Ark. Code Ann. § 7-7-203(a)-(b) refers to these elections as the “preferential primary” and the “general primary”, but for purposes of this Advisory Opinion, the commonly used terms of “primary election” and “primary runoff election” will be used.

money, to the extent that it represents contributions from people who have given the maximum contribution to that candidate for the primary election and have gone ahead and given a contribution for the general election, shall not be spent for primary election expenses.

In Between the Primary Election and a Primary Runoff Election

A candidate advancing from the primary election to a primary runoff election would have both a Pre-election contribution and expenditure (“C&E”) report due, and a Final C&E report due, for the primary election and the primary runoff election. The candidate’s ending balance of funds from the primary election would carry forward to become the beginning balance on the C&E report for the primary runoff election. If a candidate has accepted the maximum contribution from contributors for the primary and the general elections, prior to the primary taking place, that candidate would have triggered the requirement under Ark. Code Ann. § 7-6-207 that they file separate C&E reports for both elections. Filing for state and district office was in February of 2022. The candidate would have already reported the contributions for the general election.

Historically, when a candidate switches races after they have begun soliciting contributions, it has been the advice of the AEC that the candidate should refund the contribution to the contributor and resolicit them for use in the new race they chose to enter. If they do not do that, the guidance has been that the candidate should seek permission from a contributor to use the contribution made for the first race in his or her ultimate race.

In keeping with that, should this candidate wish to spend money that the candidate has already accepted and designated for the general election in the primary runoff election, it would be the advice of the Commission that the candidate obtain permission or consent from the contributor to redesignate it for the primary runoff election. Upon obtaining such consent, the formerly general election funds could be spent on the primary runoff election, and the campaign would need to file amended C&E reports for the general election, moving such contributions from the candidate’s general account and on the general election C&E reports, and placing them on the C&E reports for the primary runoff election. Likewise, this redesignation would allow the primary candidate, who had advanced to the primary runoff, to solicit a third contribution from such a contributor for the general election (should the candidate win the primary runoff).

If a candidate wished to prepare for the possibility of a runoff, but only received contributions for two (2) elections from a given contributor, the candidate could choose to get preemptive permission from a general election contributor to redesignate such a general election contribution for the primary runoff election, fully effectuating the redesignation only if and when the candidate advances to a runoff.

Conclusion

In conclusion, it should be noted that the advisory opinion process is not a vehicle designed to make factual findings regarding events that have already occurred. An advisory opinion, by its very nature, is intended to provide guidance related to future conduct—not past events—and is prospective in its application. Accordingly, the Commission cannot opine regarding the permissibility of a specific past event.

This response constitutes an advisory opinion concerning the laws under the Commission's jurisdiction and the specific transaction or activity set forth in your request. If there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestors may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law.

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

ARKANSAS ETHICS COMMISSION

By: 
Jill Rogers Barham