

BEFORE THE ARKANSAS ETHICS COMMISSION

FILED

**In Re: John Martineau
Respondent**

JUL 01 2011
Case No. 2011-CO-002

ARKANSAS ETHICS
COMMISSION

BY *WJ*

FINAL ORDER

Came for a public hearing on June 24, 2011, the complaint filed in this matter against the Respondent, John Martineau, and based upon due consideration of both the evidence presented at that hearing and the applicable law, the Arkansas Ethics Commission (hereinafter the "Commission") hereby makes the following findings of fact and conclusions of law:

1. The Commission has jurisdiction over this matter pursuant to Ark. Code Ann. § 7-6-218.

2. The Respondent is a citizen of the State of Arkansas who was a candidate for Garland County Justice of the Peace – District 5 during the 2010 election cycle.

3. The Commission is charged with the enforcement of Ark. Code Ann. § 7-6-209, which provides as follows:

(a) Reports Required. Except as provided in subsection (d) of this section, each candidate for county office, or a person acting in the candidate's behalf, shall:

(1) No later than seven (7) days prior to any preferential primary election, runoff election, general election, or special election in which the candidate's name appears on the ballot, file a preelection report of all contributions received and expenditures made between the period covered by the previous report, if any, and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during that period of time that begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;

(2) No later than thirty (30) days after any preferential primary election, runoff election, general election, or special election in which the candidate's name has appeared on the ballot, file a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500);

(3) File supplemental reports of all contributions received and expenditures made after the date of preparation of the final report, and the supplemental reports shall be filed within thirty (30) days after the receipt of a contribution or the making of an expenditure; and

(4)(A) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed.

(B) If a candidate withdraws from the campaign, the candidate shall notify the county clerk in writing of the withdrawal.

(b) Contents of Reports.

(1) The contribution and expenditure reports required by subsection (a) of this section shall indicate:

(A) The total amount of contributions received with loans stated separately, 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 that, in the aggregate, exceeded fifty dollars (\$50.00), 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, the date the contribution was accepted by the candidate, and the aggregate contributed for each election;

(D) The name and address of each person, including the candidate, who contributed a nonmonetary item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(E) An itemization of all single expenditures made that exceeded 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;

(F) A list of all paid campaign workers and the amount the workers were paid;

(G) A list of all expenditures by categories, including, but not limited to: (i)(a) Television; (b) Radio; (c) Print; and (d) Other advertising; (ii) Direct mail; (iii) Office supplies; (iv) Rent; (v) Travel; (vi) Expenses; (vii) Entertainment; and (viii) Telephone;

(H) The total amount of all nonitemized expenditures made during the filing period; and

(I) The current balance of campaign funds.

(2)(A) When the candidate's campaign has ended, the final report shall also indicate which option under § 7-6-203(h) was used to dispose of any surplus of campaign funds, the amount of funds disposed of by the candidate, and the amount of funds retained by the candidate in accordance with § 7-6-203(h)

(B) If the candidate's campaign has not ended, disposal of campaign funds is not required and the candidate may carry forward any remaining funds in the campaign to the general primary election, general election, or general runoff election for that same office.

(3)(A) Not later than fourteen (14) days after the deadline for filing for office, the county clerk shall notify each candidate in person or by mail of the deadlines for filing the ten-day preelection and final reports required by subsection (a) of this section and, at that time, furnish each candidate with the appropriate forms and instructions for complying with the deadlines.

(B) If notice is sent by mail, then the notice shall be postmarked within fourteen (14) days after the deadline for filing for office.

(c) Filing of Reports. The reports required by this section shall be filed with the county clerk in the county in which the election is held. Reports shall be filed on the appropriate forms furnished by the Secretary of State.

(d) Reports Not Required.

(1) A candidate who has not received contributions or made expenditures in excess of five hundred dollars (\$500) shall not be required to file any preelection reports required under subdivision (a)(1) of this section. In calculating the amount of contributions received or expenditures made for purposes of this exception, the payment of the filing fee from the candidate's personal funds shall not be considered as either a contribution or an expenditure.

(2) The preelection reports referenced in subdivision (a)(1) of this section are required only for candidates with opponents in those elections.

4. The Commission is charged with the enforcement of Ark. Code Ann. § 7-6-203(h), which provides, in pertinent part, as follows:

(h)(1) Within thirty (30) days following the end of the month in which the general election is held, a candidate shall turn over surplus campaign funds to either:

(A) The Treasurer of State for the benefit of the General Revenue Fund Account of the State Apportionment Fund;

(B) A political party as defined in § 7-1-101 or a political party caucus of the General Assembly, the Senate, or the House of Representatives;

(C) A nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(D) Cities of the first class, cities of the second class, or incorporated towns; or

(E) The contributors to the candidate's campaign.

* * *

(3)(A) Carryover funds may be expended at any time for any purpose not prohibited by this chapter and may be used as campaign funds for seeking any public office. Nothing shall prohibit a person at any time from disposing of all or any portion of his or her carryover funds in the same manner as for surplus campaign funds. However, the candidate shall not take the funds as personal income or as income for his or her spouse or dependent children.

(B)(i) When a person having carryover funds files as a candidate for public office, his or her carryover funds shall be transferred to the person's active campaign fund. Once transferred, the funds will no longer be treated as carryover funds. (ii) This subdivision (h)(3)(B) shall not apply to carryover funds from an election held prior to July 1, 1997. (iii) This subdivision (h)(3)(B) shall not apply to a campaign debt.

(C)(i) If carryover funds are expended prior to transferring the funds to an active campaign fund, the expenditures shall be reported pursuant to this subdivision (h)(3)(C). A person shall file an expenditure report concerning carryover funds if since the last report concerning the carryover funds, the person has expended in excess of five hundred dollars (\$500). The report shall be filed at the office in which the candidate was required to file his or her campaign contribution and expenditure reports for the previous campaign not later than fifteen (15) days after a calendar quarter in which a report becomes required. No report is required in any calendar quarter in which the cumulative expenditure limit has not been exceeded since the person's last report. (ii) If carryover funds are expended prior to transferring the funds to an active campaign fund, the expenditures shall be reported pursuant to this subdivision (h)(3)(C). A person shall file an expenditure report concerning carryover funds if since the last report concerning the carryover funds, the person has expended in excess of five hundred dollars (\$500). The report shall be filed at the office in which the candidate was required to file his or her campaign contribution and expenditure reports for the previous campaign not later than fifteen (15) days after a calendar quarter in which a report becomes required. No report is required in any calendar quarter in which the cumulative expenditure limit has not been exceeded since the person's last report. (ii) The person shall also file an expenditure report for the calendar quarter in which he or she transfers the carryover funds to an active campaign fund. (iii) A person who retains carryover funds shall file an annual report outlining the status of the carryover fund account as of December 31 unless the person has filed a quarterly report during the calendar year pursuant to subdivisions (h)(3)(C)(i) and (ii) of this section. The annual report shall be due by January 31 of each year. (iv) The carryover fund reports of a candidate for school district, township, municipal, or county office shall be filed with the county clerk of the county in which the election was held. (v) The carryover fund reports of a candidate for state or district office shall be filed with the Secretary of State.

(D)(i) Carryover funds may be retained by a person for not more than ten (10) years after the last election at which he or she was a candidate, or if applicable, not more than ten (10) years after the last day that the person held office, and any remaining carryover funds shall be disposed of in the same manner as for surplus campaign funds. (ii)(a) The officer with whom the person last filed a final campaign report shall provide the person timely notice of the requirements of this subdivision (h)(3)(D) prior to the expiration of the ten-year period. (b) However, failure to provide the notice does not relieve the person of his or her obligation under this subsection.

(4) After the date of an election at which the person is a candidate for nomination or election, the person shall not accept campaign contributions for that election except for the sole purpose of raising funds to retire campaign debt.

(5) Surplus campaign funds or carryover funds given to a political party caucus shall be segregated in an account separated from other caucus funds and shall not be used:

(A) By the political party caucus to make a campaign contribution;
or

(B) To provide any personal income to any candidate who donated surplus campaign funds or carryover funds.

5. On March 2, 2011, the Commission received a complaint against the Respondent in conjunction with his candidacy for the office of Garland County Justice of the Peace – District 5 during the 2010 election cycle. The essential allegations of the complaint were that the Respondent failed to file a preelection campaign contribution and expenditure (“C&E”) report and a final C&E report for the 2010 general election and failed to properly dispose of campaign funds which remained after the close of the 2010 general election.

6. On March 4, 2011, the Commission sent the Respondent a letter, via certified mail with a return receipt requested, to notify him that an investigation was being commenced concerning the allegations of the complaint. The letter went on to state that the focus of the investigation would be whether or not his conduct, as alleged in the complaint, violated (i) Ark. Code Ann. § 7-6-209, which sets forth the reporting requirements applicable to candidates for county office, and/or (ii) Ark. Code Ann. § 7-6-203(h), which governs a candidate's disposition of surplus funds and retention of carryover funds.

7. On March 18, 2011, staff presented the preliminary results of its investigation to the Commission and was instructed to complete the investigation. The Respondent was notified of the Commission's decision by letter dated March 18, 2011.

8. On May 9, 2011, staff sent a letter to the Respondent to notify him that the results of the investigation would be presented to the Commission at its regular monthly meeting on May 20, 2011, for purposes of determining whether or not probable cause existed for the finding of a violation.

9. On May 20, 2011, the Commission considered the results of staff's investigation and determined, by a vote of 5-0, that probable cause existed for finding that the Respondent violated (i) Ark. Code Ann. § 7-6-209 by failing to file preelection and final C&E reports for the 2010 general election, and (ii) Ark. Code Ann. § 7-6-203(h) by failing to properly dispose of campaign funds which remained after the conclusion of the 2010 general election.

10. On May 20, 2011, the Commission sent the Respondent a letter notifying him of the Commission's finding of probable cause. In accordance with the

Commission's Rules of Practice and Procedure, said letter contained a written Offer of Settlement proposing the issuance of a Public Letter of Caution, the imposition of a one hundred fifty dollar (\$150) fine, and the requirement that the Respondent file the appropriate preelection and final C&E reports. The Respondent was given ten (10) days to either accept the written Offer of Settlement or request a public hearing before the Commission.

11. On June 13, 2011, staff sent a letter to the Respondent notifying him that a final adjudication hearing would be held on July 24, 2011. Said letter contained a separate written notice providing the information required in Ark. Code Ann. § 25-15-208(a)(2).

12. The Respondent did not appear at the final adjudication hearing which was held on July 24, 2011. Said hearing was conducted in accordance with Ark. Code Ann. § 25-15-213.


13. Based upon the evidence presented at the hearing, the Commission found, by a vote of 3-0, with Commissioners Dumas and Minix not present, that the Respondent violated (i) Ark. Code Ann. § 7-6-209 by failing to file a preelection C&E report and a final C&E report for the 2010 general election, and (ii) Ark. Code Ann. § 7-6-203(h) by failing to properly dispose of campaign funds which remained after the conclusion of the 2010 general election.

14. With respect to the Respondent's violations of Ark. Code Ann. §§ 7-6-209 and 7-6-203(h), the Commission determined that the Respondent should be issued a Public Letter of Caution and fined \$150. Said fine is due and payable within thirty (30) days from the entry of this Order. The Respondent should further be ordered to file with

the Garland County Clerk a preelection C&E report and a final C&E report for the 2010 general election within ten (10) days from the date of this Order.

IT IS, THEREFORE, CONSIDERED, DECIDED and ORDERED by the Commission that the Respondent, John Martineau, shall be issued a Public Letter of Caution and is hereby fined \$150 for violating (i) Ark. Code Ann. § 7-6-209 by failing to file a preelection C&E report and a final C&E report for the 2010 general election, and (ii) Ark. Code Ann. § 7-6-203(h) by failing to properly dispose of campaign funds which remained after the conclusion of the 2010 general election. Said fine shall be paid within thirty (30) days from the date of this Order. FURTHER, the Respondent is hereby ordered to file with the Garland County Clerk a preelection C&E report and a final C&E report for the 2010 general election within ten (10) days from the entry of this Order.

IT IS SO ORDERED this 15th day of July, 2010.



CATHERINE JOHNSON, Chairman
Arkansas Ethics Commission