

BEFORE THE ARKANSAS ETHICS COMMISSION

FILED

AUG 19 2013

Case No. 2013-CO-014

ARKANSAS ETHICS
COMMISSION

**In Re: Paul Bookout
Respondent**

BY _____

FINAL ORDER

Came for a final adjudication hearing on August 16, 2013, the complaint filed in this matter against the Respondent, Paul Bookout, 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 and was an unopposed candidate for State Senator – District 21 during the 2012 election cycle.

3. The Commission is charged with enforcing Ark. Code Ann. § 7-6-201 et seq., including the following statutory provisions:

(a) Ark. Code Ann. § 7-6-203(g), which contains a prohibition against a candidate taking campaign funds as personal income and provides, in pertinent part in subsection (g)(1), that "[a] candidate shall not take any campaign funds as personal income." Subsection (g)(4)(A) of that statute goes on to provide that "a candidate who uses campaign funds to fulfill any commitment, obligation, or expense that would exist regardless of the candidate's campaign shall be deemed to have taken campaign funds as personal income."

(b) Ark. Code Ann. § 7-6-203(i), which provides that “[a] candidate may maintain his or her campaign funds in one (1) or more campaign accounts. Campaign funds shall not be placed in an account containing personal or business funds.”

(c) Ark. Code Ann. § 7-6-206, which requires candidates to keep all records of contributions and expenditures in a manner sufficient to evidence compliance with applicable campaign contribution and expenditure reporting requirements and provides, in pertinent part, that “[t]he records shall be made available to the [Commission]...and shall be maintained for a period of four (4) years.”

(d) Ark. Code Ann. § 7-6-207(b)(1)(A), (E), (F), (G), (H), and (I), which requires that a candidate disclose the following information on campaign contribution and expenditure (“C&E”) reports:

(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;

* * *

(E) An itemization of all single expenditures made that exceed one hundred dollars (\$100), including the: (i) Amount of the expenditures; (ii) Name and address of any person, including the candidate, to whom the expenditure was made; and (iii) 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.

4. On April 1, 2013, the Commission received a complaint against the Respondent in conjunction with his candidacy for the office of State Senator – District 21 during the 2012 election cycle. The complaint concerned C&E reports filed by the Respondent and the essential allegation was that the Respondent “spent \$50,115.76 without itemizing any [single expenditure]” made from that amount that exceeded one hundred dollars (\$100).

5. On April 5, 2013, 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 essential allegation of the complaint. The letter went on to state that the focus of the investigation would be whether or not the Respondent violated Ark. Code Ann. § 7-6-207(b)(1)(A), (E), (F), (G), (H) and/or (I) in connection with the disclosure of campaign expenditures totaling \$50,115.76 in his capacity as a candidate for State Senator – District 21 during the 2012 election cycle, specifically with regard to the itemization of all single expenditures made from that amount that exceeded one hundred dollars (\$100).

6. On April 19, 2013, 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 April 23, 2013.

7. On July 9, 2013, the Commission sent the Respondent a letter to inform him that, during the course of the investigation, evidence of other potential violations had been discovered. The letter served as written notification that the scope of the investigation had been expanded to also include the issues of whether or not the Respondent violated Ark. Code Ann. § 7-6-203(g) by taking campaign funds as personal

income, Ark. Code Ann. § 7-6-203(i) by failing to keep campaign funds separate from personal or business funds, and/or Ark. Code Ann. § 7-6-206 by failing to keep sufficient records of all campaign expenditures and by failing to make such records available to the Commission. That letter also notified the Respondent that the results of the investigation would be presented to the Commission at its regular monthly meeting on July 19, 2013, for purposes of determining whether or not probable cause existed for the finding of a violation.

8. On July 19, 2013, the Commission considered the results of staff's investigation and determined, by a vote of 4-0, with Commissioner Bird not present, that probable cause existed for finding that the Respondent violated (i) Ark. Code Ann. § 7-6-203(g) by making personal use of \$53,305.07 of his campaign funds; (ii) Ark. Code Ann. § 7-6-203(i) by failing to keep campaign funds separate from personal funds; (iii) Ark. Code Ann. § 7-6-206 by failing to maintain sufficient records of expenditures made during the 2012 election cycle and make those records available to the Commission; and (iv) Ark.. Code Ann. § 7-6-207(b)(1)(E) and (H) by failing to itemize ninety-three (93) expenditures (totaling \$39,646.94) which exceeded \$100 and to disclose \$10,658.13 as the correct total of all nonitemized expenditures on his C&E reports.

9. On July 19, 2013, 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 Reprimand and the imposition of fines totaling \$4,000.00 (consisting of \$1,000.00 for each of the four (4) statutes in

question). The Respondent was given ten (10) days to either accept the written Offer of Settlement or request a public hearing before the Commission.

10. On August 6, 2013, the Respondent was sent a letter notifying him that a final adjudication hearing would be held on August 16, 2013. Said letter contained a separate written notice providing the information required in Ark. Code Ann. § 25-15-208(a)(2). This final adjudication hearing was scheduled as the result of the Respondent neither accepting the written Offer of Settlement nor requesting a public hearing within the time required. At that point, the Commission was no longer bound by the terms of the Offer of Settlement.

11. The Respondent did not appear at the final adjudication hearing which was held on August 16, 2013. Said hearing was conducted in accordance with Ark. Code Ann. § 25-15-213.

12. During the 2012 election cycle, the Respondent received campaign contributions totaling \$80,950.00 and made expenditures totaling \$63,269.07.

13. The Respondent deposited the first \$18,200.00 in contributions he received into a bank account containing his personal funds. The Respondent deposited the next \$62,750.00 in contributions received into a separate campaign account.

14. Of the \$63,269.07 in expenditures made by the Respondent, \$52,610.94 should have been reported as itemized expenditures and only \$10,658.13 should have been reported as nonitemized expenditures. Instead, the Respondent reported itemized expenditures of \$12,989.00 and nonitemized expenditures of \$50,115.76.

15. The \$52,610.94 which the Respondent was required to report as itemized expenditures consisted of ninety-seven (97) expenditures over \$100. However, only four

(4) of those ninety-seven (97) expenditures were itemized by the Respondent on his C&E reports, namely the expenditures made to The Democratic Party of Arkansas in amounts of \$4,500.00 and \$4,000.00, Ridgepointe Country Club in the amount of \$3,889.00, and St. Bernard's Advocates in the amount of \$575.00.

16. The Respondent failed to itemize ninety-three (93) expenditures over \$100 totaling \$39,646.94. Instead, the Respondent reported those expenditures as nonitemized expenditures.

17. The \$10,658.13 which the Respondent should have reported as nonitemized expenditures consisted of two hundred eighty-two (282) expenditures of \$100 or less. The Respondent failed to disclose \$10,658.13 as the correct total of all nonitemized expenditures of \$100 or less on his C&E reports.

18. During the course of these proceedings, the Respondent identified and explained five (5) of the three hundred seventy-nine (379) expenditures made during the 2012 election cycle as being campaign expenses. However, only four (4) of those five (5) expenditures were permissible campaign expenses, namely the expenditures made to The Democratic Party of Arkansas in the amount of \$4,500.00 for the Respondent's candidate filing fee, the Ridgepointe Country Club in the amount of \$3,889.00 for a campaign fundraising event, St. Bernard's Advocates in the amount of \$575.00 to attend a charitable fundraising event, and another \$1,000.00 payment made to The Democratic Party of Arkansas to attend the annual Jefferson/Jackson dinner. The total amount of those particular expenditures was \$9,964.00, which left \$53,305.07 in expenditures which were not shown by the Respondent to be proper campaign expenses.

19. The \$4,000.00 check written by the Respondent to The Democratic Party of Arkansas amounted to an ordinary contribution to the political party. While campaign funds may be used during a campaign to purchase tickets or a table to attend a political event, campaign funds generally may not be transferred to a political party until after the date of the election. Accordingly, this expenditure constituted a personal use of campaign funds.

20. The Respondent did not maintain invoices or receipts of all expenditures as required nor did he make any such records available to the Commission.

21. Of the \$63,269.07 in total expenditures, only \$9,964.00 was shown by the Respondent to be proper campaign expenses. With respect to the balance of \$53,305.07, the Respondent made personal use of campaign funds. Specific instances of such personal use include the following:

(a) With respect to the \$18,200.00 in contributions which the Respondent deposited into a bank account containing his personal funds, the Respondent made the following six (6) cash withdrawals:

- \$400.00 by debit memo dated 03/06/2012;
- \$800.00 by debit memo dated 03/14/2012;
- \$600.00 by debit memo dated 03/16/2012;
- \$450.00 by debit memo dated 04/03/2012;
- \$200.00 by debit memo dated 04/06/2012;
- \$2,500.00 by debit memo dated 06/08/2012.

(b) With respect to the \$62,750.00 deposited into the separate campaign account, the Respondent transferred \$2,000.00 into a bank account containing his personal funds.

(c) With respect to the \$62,750.00 deposited into the separate campaign account, nine (9) payments totaling \$5,043.74 were made to Steamroller Blues, for women's clothing and accessories purchased during March, April, May, and June of 2012.

(d) With respect to the \$62,750.00 deposited into the separate campaign account, \$8,402.47 was paid to Sound Concepts, Inc., for home theater equipment and installation purchased during October of 2012.

(e) With respect to the \$62,750.00 deposited into the separate campaign account, \$1,305.93 was paid to RidgePointe Country Club, for merchandise purchased at the proshop during April and July of 2012.

22. After the election on November 6, 2012, the Respondent continued making expenditures with campaign funds. Such expenditures totaled \$2,074.98.

23. Upon consideration of the evidence presented at the hearing, the Commission found, by a vote of 5-0, that the Respondent, in his capacity as a candidate for State Senator – District 21 during the 2012 election cycle, violated (i) Ark. Code Ann. § 7-6-203(g) by using campaign funds to fulfill commitments, obligations, and expenses that would have existed regardless of the Respondent's campaign, including cash withdrawals and transfers of campaign funds by the Respondent totaling \$6,761.47, payments to Steamroller Blues for women's clothing and accessories totaling \$5,043.74, payment to Sound Concepts, Inc. for home theater equipment and installation totaling

\$8,402.47, and payments to RidgePointe County Club for merchandise purchased at the proshop totaling \$1,305.93; (ii) Ark. Code Ann. § 7-6-203(i) by depositing \$18,200.00 in campaign contributions into a bank account containing his personal funds; (iii) Ark. Code Ann. § 7-6-206 by failing to maintain sufficient records of campaign expenditures and make such records available to the Commission; and (iv) Ark. Code Ann. § 7-6-207(b)(1)(E) and (H) by failing to itemize ninety-three (93) expenditures (totaling \$39,646.94) which exceeded \$100 and to disclose \$10,658.13 as the correct total of all nonitemized expenditures on his C&E reports.

24. With respect to the Respondent's violations of Ark. Code Ann. §§ 7-6-203(g), 7-6-203(i), 7-6-206, and 7-6-207(b)(1)(E) and (H), the Commission determined that the Respondent should be ordered to file amendments to his C&E reports to provide itemization with respect to all ninety-seven (97) expenditures over \$100 made using campaign funds and to disclose \$10,658.13 as the correct total of all nonitemized expenditures. In addition, the Respondent should be issued a Public Letter of Reprimand and fined \$2,000.00 for each of the four (4) aforementioned statutory violations, which is the maximum fine available to the Commission for a single violation, for a total fine of \$8,000.00. Said \$8,000.00 fine is due and payable within thirty (30) days from the entry of this Order.

IT IS, THEREFORE, CONSIDERED, DECIDED and ORDERED by the Commission that the Respondent, Paul Bookout, shall be ordered to file amendments to his C&E reports to provide itemization with respect to all ninety-seven (97) expenditures over \$100 made using campaign funds and to disclose \$10,658.13 as the correct total of all nonitemized expenditures, issued a Public Letter of Reprimand, and fined \$8,000.00

for violating Ark. Code Ann. §§ 7-6-203(g), 7-6-203(i), 7-6-206, and 7-6-207(b)(1)(E) and (H), in his capacity as a candidate for State Senator – District 21 during the 2012 election cycle, by (i) using campaign funds to fulfill commitments, obligations, and expenses that would have existed regardless of the Respondent’s campaign, including cash withdrawals and transfers of campaign funds by the Respondent totaling \$6,761.47, payments to Steamroller Blues for women’s clothing and accessories totaling \$5,043.74, payment to Sound Concepts, Inc. for home theater equipment and installation totaling \$8,402.47, and payments to RidgePointe County Club for merchandise purchased at the proshop totaling \$1,305.93; (ii) depositing \$18,200.00 in campaign contributions into a bank account containing his personal funds; (iii) failing to maintain sufficient records of campaign expenditures and make such records available to the Commission; and (iv) failing to itemize ninety-three (93) expenditures (totaling \$39,646.94) which exceeded \$100 and to disclose \$10,658.13 as the correct total of all nonitemized expenditures on his C&E reports.

IT IS SO ORDERED this 19th day of August, 2013.



J. BARRINGTON MINIX, SR., Chairman
Arkansas Ethics Commission