

disqualification, passage or defeat of a ballot question...shall file with the Arkansas Ethics Commission financial reports as required by §§ 7-9-407 – 7-9-409.”

4. With regard to expenditures made by a ballot question committee, Ark. Code Ann. § 7-9-407(2)(A)(ii) provides for the disclosure of the “total amount of expenditures made by the committee or on behalf of the committee by an advertising agency, public relations firm, or political consultant during the period covered by the financial report”. In addition, Ark. Code Ann. 7-9-407(3) provides for the disclosure of the “name and street address of each person to whom expenditures totaling one hundred dollars (\$100) or more were made by the committee...or on behalf of the committee...by an advertising agency, public relations firm, or political consultant, together with the date and amount of each separate expenditure to each person during the period covered by the financial report and the purpose of the expenditure.”

5. On September 9, 2014, the Commission received a complaint against the Respondent. The essential allegations of the complaint were as follows:

- (a) The Respondent’s “August 15, 2014 financial report reflects expenditures of \$224,107.08, contributions of \$110,000, and a deficit of \$114,107.08.” However, the Respondent failed to disclose contributions concerning whether or not it “secured a forbearance, loan, pledge of money or some other thing of value, or similar arrangement” in connection with the deficit in question.
- (b) The Respondent’s “August [15, 2014] financial report is also deficient in no reporting particulars regarding its expenditures...[such as] the date the expenditure was made, to whom the expenditure was made and the recipient’s street address, the amount of the expenditure, and the purpose for the expenditure.”

6. On September 18, 2014, the Commission sent the Respondent a letter, via certified mail with a return receipt requested, to notify it that an investigation was being

commenced concerning the allegations of the complaint. The letter was sent to the Respondent through its Attorney/Treasurer, David A. Couch, and went on to state that the focus of the investigation would be whether or not the Respondent violated the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters (Ark. Code Ann. § 7-9-401 *et seq.*) by failing to disclose (i) contributions received concerning whether or not it “secured a forbearance, loan, pledge of money or some other thing of value, or similar arrangement” in connection with “expenditures of \$224,107.08, contributions of \$110,000, and a deficit of \$114,107.08” and/or (ii) statutorily-required information concerning expenditures made, including “the date the expenditure was made, to whom the expenditure was made and the recipient’s street address, the amount of the expenditure, and the purpose for the expenditure”, all in connection with its campaign to expressly advocate the qualification and passage of the Arkansas Alcoholic Beverage Amendment presented to voters in the form of a ballot question at an election on November 4, 2014.

7. On October 17, 2014, staff presented the preliminary results of its investigation to the Commission and was instructed to complete the investigation. In addition, the Commission directed that staff expand the scope of the investigation to include the issue of whether or not the Respondent violated the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters (Ark. Code Ann. § 7-9-401 *et seq.*) by failing to disclose on its financial reports for the months of August, September, and/or preelection report of 2014 contributions received and/or statutorily-required information concerning expenditures made. On October 28, 2014, the Commission sent the Respondent a letter, via first class mail, notifying it of these matters.

8. On November 10, 2014, staff sent a letter to the Respondent to notify it that the results of the investigation would be presented to the Commission at its regular monthly meeting on November 21, 2014, for purposes of determining whether or not probable cause existed for the finding of a violation.

9. On November 21, 2014, 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 Ark. Code Ann. § 7-9-407 of the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters by failing to disclose all contributions received and expenditures made on its financial reports for the months of July, August, September, and preelection report of 2014 and also by failing to provide statutorily-required information for the itemization of all non-canvasser payments made of \$100 or more on the monthly reports for July and August of 2014. The finding of probable cause was supported by evidence gathered during the course of the investigation which reflected the following:

- (a) More than than half ($\frac{1}{2}$) of the expenditures the Respondent incurred for its campaign were paid from funds belonging to a ballot access petition company named National Ballot Access ("NBA"). Those funds totaled \$261,317.37 out of the cumulative amount of \$466,317.37 in total contributions received and \$485,053.97 as the cumulative total amount in expenditures made as of the filing of the preelection report on October 28, 2014.
- (b) The information the Respondent provided on the Respondent's behalf and the information NBA's owner provided on its behalf reflected that NBA intended to be repaid all of the funds it put into the campaign as other funds became available to the Respondent. Despite the fact that the first \$20,000.00 NBA put into the campaign was actually deposited into the Respondent's account and reported as a loan, the Commission concluded that the subsequent \$241,317.37 that NBA spent directly on the Respondent's behalf over the course of the campaign and went unreported should have also been reported as loans on the financial

reports according to their proper reporting periods because those funds come within the meaning of the term “contribution” as defined in Ark. Code Ann. § 7-9-402(3)(A).

- (c) In addition to NBA’s contributions being omitted from the Respondent’s reports, the evidence showed that the August report omitted another contribution. It was a \$15,000.00 contribution that the Respondent had received from Delek US Holdings in the month of August of 2014 bringing the cumulative total to \$40,000.00 from that contributor as of the closing date for the preelection report.
- (d) The expenditures omitted from the Respondent’s reports for the months of July and August and the preelection report included seven (7) reimbursement, or loan payments that the Respondent made to NBA totaling \$185,446.60. Three (3) of those payments were made in July in amounts of \$66,000.00, \$33,000.00, and \$10,750.00, and another three (3) payments were made in August in amounts of \$23,100.00, \$25,575.00, and \$15,021.60. The seventh (7th) payment was made in the preelection reporting period in the amount of \$12,000.00. Based on foregoing, the Commission determined that those payments should have been disclosed in the sections for itemized expenditures and expenditures by category (*i.e.*, Sections 16 and 20) on the corresponding reports.
- (e) The Commission also determined that the statutorily-required information omitted from the Respondent’s July and August reports included certain information fields being incomplete for itemized expenditures in Section 16 of the reports. Excluding the payments made to canvassers since that information was disclosed in a different section (*i.e.*, Section 22) on both reports, the July report did not contain the date, name, or address of each payee to whom a single expenditure of \$100.00 or more was made, but it did contain descriptions of those expenditures along with their lump sum amounts as reflected in the section for expenditures by category. Similarly, the August report did not contain the date and address for an itemized expenditure made to Frontier Airlines in the amount of \$384.60, for travel.

10. On November 21, 2014, the Commission sent the Respondent a letter, via first class mail, notifying the Respondent 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 that the Respondent be issued a Public Letter of Warning and fined \$250 based upon an agreed finding that the Respondent violated Ark. Code Ann. § 7-9-407 by failing to disclose all contributions received and expenditures made on its reports for the months of July, August, September, and preelection report for 2014 and also by failing to disclose statutorily-required information for certain itemized expenditures on the reports for July and August. The Respondent was also required to file amendments to the disclosure reports in question to correct all of the aforementioned reporting issues. The Respondent was given ten (10) days to either accept the written Offer of Settlement or request a public hearing before the Commission.

11. By letter dated December 1, 2014, the Respondent's Attorney/Treasurer, David A. Couch, notified the Commission that the Respondent was requesting that the matter be set for a public hearing. At that point, the Commission was no longer bound by the terms of the Offer of Settlement.

12. On December 9, 2014, the Commission sent the Respondent's Attorney/Treasurer a letter, via first class mail, confirming receipt of the Respondent's request for a public hearing. In addition, the December 9th letter gave notice that a public hearing would be held on December 19, 2014. Said letter contained a separate written notice providing the information required in Ark. Code Ann. § 25-15-208(a)(2).

13. David A. Couch, Attorney/Treasurer for the Respondent, appeared at the public hearing which was held on December 19, 2014. Said hearing was conducted in accordance with Ark. Code Ann. § 25-15-213.

14. At the public hearing, the case was presented to the Commission upon the following set of stipulated facts:

- (a) On June 11, 2014, the Respondent registered as a ballot question committee (“BQC”) with the Commission by filing a statement of organization for the purpose of expressly advocating the qualification and passage of the Arkansas Alcoholic Beverage Amendment (*i.e.*, Issue No. 4), which was presented to voters in the general election held on November 4, 2014.
- (b) The Respondent subsequently filed several financial reports with the Commission as they became due, beginning with the month of June of 2014 and continuing through the date of the November 4th election. The monthly reports the Respondent filed for July, August, and September of 2014 and its preelection report are the only ones involved in this proceeding and any subsequent appeal.
- (c) At the beginning of the Respondent’s campaign, a ballot access petition company named National Ballot Access (“NBA”) directly paid canvassers and related expenditures on behalf of the Respondent, expecting the Respondent to raise funds to pay NBA. The Respondent did not raise sufficient funds each month to pay NBA for the expenditures NBA had made.
- (d) As of the filing of the Respondent’s preelection report on October 28, 2014, the total amount of funds NBA had spent in conjunction with the Respondent’s campaign was \$261,317.37. That amount represents \$20,000.00 as the first contributions the Respondent received as startup money for the campaign and \$241,317.37 in payments NBA made on behalf of the Respondent for expenditures it incurred but could not pay for through its own fundraising efforts.
- (e) The Respondent disclosed the \$20,000.00 it received from NBA as a loan from NBA on its original report for June of 2014. Those funds were deposited into the Respondent’s bank account. The Respondent did not disclose the remaining \$241,317.37 directly paid by NBA as either loans or contributions received from NBA on the original reports.
- (f) The original financial reports the Respondent filed disclosed all of the contributions which were received by it and deposited into its account except for a \$15,000.00 contribution it had received from Delek US Holdings in August of 2014. That particular contribution has since been disclosed by the Respondent in the amended August report it filed with the Commission on December 2, 2014.

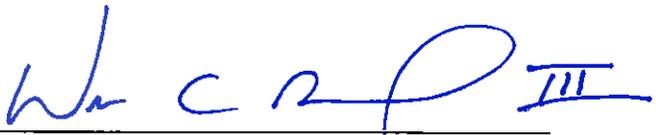
- (g) The seven (7) payments totaling \$185,446.60 that the Respondent made to NBA during the course of the campaign came from funds deposited into the Respondent's bank account but those funds were not disclosed as expenditures on its original financial reports. Those payments were made in amounts of \$66,000.00, \$33,000.00, \$10,750.00, \$23,100.00, \$25,575.00, \$15,021.60, and \$12,000.00. Those particular payments have since been disclosed by the Respondent in the amendments it also filed with the Commission to the monthly reports for July and August of 2014 and the preelection report.
- (h) The Respondent's original report for July of 2014 did not disclose certain information for the itemization of twenty-nine (29) expenditures made of \$100.00 or more totaling \$20,637.77. Instead, the expenditures were only identified as lump sum amounts in the expenditures by category section of the report. The information in question includes the date, name, and address of each non-canvasser payee to whom an expenditure of \$100.00 or more was made. That information has now been disclosed in the Respondent's amended July report but the dates those expenditures were made or incurred have not been disclosed yet.
- (i) The Respondent's original report for August of 2014 also did not disclose certain information for the itemization of one (1) expenditure made to Frontier Airlines in the amount of \$384.60, for travel. The information in question includes the date the \$384.60 expenditure was made or incurred and the payee's address. That information has now been disclosed in the Respondent's amended August report.

15. Based upon the facts and the law, the Commission found, by a vote of 4-0, with Commissioner Sharon Trusty not present, that the Respondent violated Ark. Code Ann. § 7-9-407 of the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters by (i) failing to disclose all contributions received and expenditures made on its financial reports for the months of July, August, September, and preelection report of 2014, and (ii) failing to provide statutorily-required information for the itemization of all non-canvasser payments made of \$100 or more on the monthly reports for July and August of 2014.

16. With respect to the Respondent's violation of Ark. Code Ann. § 7-9-407, the Commission determined that the Respondent should be issued a Public Letter of Caution and fined \$250. Said 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, Let Arkansas Decide!, shall be issued a Public Letter of Caution and is hereby fined \$250 for violating Ark. Code Ann. § 7-9-407 of the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters by (i) failing to disclose all contributions received and expenditures made on its financial reports for the months of July, August, September, and preelection report of 2014, and (ii) failing to provide statutorily-required information for the itemization of all non-canvasser payments made of \$100 or more on the monthly reports for July and August of 2014.

IT IS SO ORDERED this 23rd day of December, 2014.


WILLIAM C. BIRD III, Chairman
Arkansas Ethics Commission