

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2008-EC-011 Issued December 19, 2008

The Arkansas Ethics Commission has received a written advisory opinion request from William A. Waddell, Jr., an attorney in private practice who represents The Greater Hot Springs Chamber of Commerce ("GHSCC"). Therein, he seeks an opinion on behalf of his client concerning the formation of a political action committee ("PAC").

The opinion request was accompanied by a draft copy of the bylaws of the proposed PAC which will be known as "The Greater Hot Springs Chamber of Commerce Political Action Committee" (GHSCCPAC). According to those bylaws, the GHSCCPAC will be authorized to engage in the following activities:

Ballot Measures. The Corporation¹ may consider support of, or opposition to, any ballot measure provided that the Corporation's position on such issue shall not be inconsistent with the position taken by The Greater Hot Springs Chamber of Commerce as determined by its Board of Directors.

Candidates for Elected Office. The Corporation may consider support of state and local candidates for elected office, provided that the Corporation shall not intervene in any election if to do so would be inconsistent with the policies or positions of The Greater Hot Springs Chamber of Commerce.

Research. The Corporation shall have the right to conduct such research as it deems in the interest of the Corporation. No single research expenditure in excess of \$20,000 shall be authorized without the approval of the Member². The Corporation shall not contribute or furnish any polls or other research to any candidate for elected office, or to any campaign organization thereof, if to do so would violate Ark. Code Ann. § 7-6-203.

¹ Pursuant to the proposed bylaws, the term "Corporation" refers to "The Greater Hot Springs Chamber of Commerce Political Action Committee".

² Pursuant to the proposed bylaws, the term "Member" refers to "The Greater Hot Springs Chamber of Commerce, Inc."

The question posed in the instant opinion request is whether or not the enumerated activities of the GHSCCPAC would violate any ethics laws or regulations of the State of Arkansas. It is expressly noted that the scope of this opinion is limited to the laws under the Commission's jurisdiction.

Analysis of this matter will begin with the definition of the term "approved political action committee." That term is defined in Ark. Code Ann. § 7-6-201(1)(A) to mean any person that:

- (i) Receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees;
- (ii) Does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and
- (iii) Registers pursuant to Ark. Code Ann. § 7-6-215 prior to making contributions.

Turning to the first authorized activity (*i.e.*, supporting or opposing ballot measures), it is unclear from the opinion request whether the GHSCCPAC intends to use its funds to make contributions to ballot and legislative question committees or to directly engage in express advocacy regarding ballot and legislative questions. This is an important distinction because the former is permissible PAC activity and the latter is not.

Briefly stated, a person³ receiving contributions in order to make contributions to a ballot or legislative question committee is subject to PAC registration and reporting under Ark. Code Ann. § 7-6-215, whereas a person⁴ receiving contributions for purposes of directly engaging in express advocacy regarding a ballot or legislative question is subject to registration and reporting under the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters (Ark. Code Ann. § 7-9-401 *et seq.*). In the event the

³ With regard to campaign finance, the term "person" is defined in Ark. Code Ann. § 7-6-201(14) to mean "any individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert. It shall also include organized political parties as defined in § 7-1-101, county political party committees, and legislative caucus committees."

⁴ With regard to the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, the term "person" is defined in Ark. Code Ann. § 7-9-402(9) to mean:

- (A) [A]ny individual, business, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization or group of persons acting in concert.
- (B) 'Person' includes a public servant or governmental body using public funds to expressly advocate the qualification, disqualification, passage, or defeat of any ballot question or the passage or defeat of any legislative question[.]

GHSCCPAC chose to make a contribution to a ballot or legislative question committee, it would be required to disclose that contribution on its PAC Quarterly Reporting Form for the period of time during which the contribution was made.

With respect to the second authorized activity (*i.e.*, supporting candidates for elective office), it would be permissible PAC activity for the GHSCCPAC to use its funds to make contributions to candidates for public office. In the event the GHSCCPAC chose to make a contribution to a particular candidate, it would be required to simply disclose that contribution on its PAC Quarterly Reporting Form for the appropriate period of time.

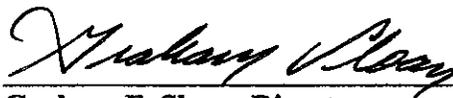
In regard to the third authorized activity (*i.e.*, conducting research), it is noted that this particular activity is not specifically included in the list of activities set forth in Ark. Code Ann. § 7-6-201(1)(A). The Commission has previously recognized, however, that it is permissible for a PAC to pay reasonable administrative expenses out of the contributions it has received.⁵

It is the Commission's opinion that conducting research on topics of political interest would constitute a legitimate administrative expense of a PAC. In the event the GHSCCPAC chose to conduct research on such issues, it would need to disclose the cost of that research as an administrative expense on its PAC Quarterly Reporting Form for the appropriate period of time.

While on this topic, the Commission wishes to point out that a PAC which shares the results of its research either with a candidate or with a ballot or legislative question committee shall be deemed to have made an in-kind contribution to such candidate or committee. As recognized in § 205(b) of the Commission's Rules on Campaign Finance & Disclosure, the value of an in-kind contribution shall be its fair market value. Moreover, an in-kind contribution made to a candidate would be subject to the campaign contribution limit of two thousand dollars (\$2,000) per election.

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

ARKANSAS ETHICS COMMISSION

By: 
Graham F. Sloan, Director

⁵ See Advisory Opinion No. 2003-EC-002.