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ADVISORY OPINION NO. 2010-EC-001 Issued March 19, 2010

The Arkansas Ethics Commission has received a written advisory opinion request from Vincent O. Chadick, an attorney with the Basset Law Firm in Fayetteville, Arkansas. In his request, Mr. Bassett asks the following question:

If a candidate has raised money for a particular election and subsequently withdraws from that election, how should the raised funds be dispersed?

When a candidate raises or spends more than \$500 toward the nomination or election to office, the candidate has triggered campaign finance reporting pursuant to Arkansas law. If a candidate withdraws from the campaign, Arkansas law requires the filing of a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed. This final report is due to be filed not later than 30 days after the end of the month in which the candidate has withdrawn. Ark. Code Ann. §§ 7-6-207(a)(1)(E), 7-6-208(a)(4)(A) and 7-6-209(a)(4)(A).

In filing a final report, the candidate is required to determine if surplus campaign funds exist and, if so, disclose the method used to dispose of them. "Surplus campaign funds" are defined in Ark. Code Ann. § 7-6-201(17) as any balance of campaign funds over expenses incurred as of the day of the election except for:

- (A) Carryover funds¹; and
- (B) Any funds required to repay loans made by the candidate from his or her personal funds to the campaign or to repay loans made by financial institutions to the candidate and applied to the campaign.

Pursuant to Section 230(a) of the Arkansas Ethics Commission's Rules on Campaign Finance and Disclosure, surplus funds from a current campaign account may also be used to retire prior campaign debts provided the candidate "has ended the current campaign" and the debt relates to personal loans to a prior campaign.

¹ "Carryover funds" are defined as the amount of campaign funds retained from the last election by the candidate for future use but not to exceed the annual salary, excluding expenses allowances, set by Arkansas law for the office sought. Ark. Code Ann. § 7-6-201(3).

Although the definition of "surplus funds" refers to the day of the election in calculating their amount and existence, the Commission concludes that a withdrawn candidate "has ended the current campaign." It follows that a withdrawn candidate should prepare his or her final report in the same manner as a candidate who was not successful on election day.

In that regard, it is the opinion of the Commission that a candidate who withdraws from a campaign may dispose of the remaining funds in the same manner as any other candidate who has "ended the current campaign." More specifically, the candidate should first pay debts from the current campaign and, if the candidate so desires, he or she may then retain carryover funds.

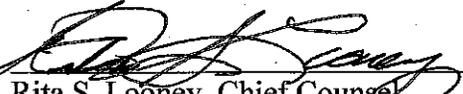
After the payment of debts from the current campaign and the retention of carryover funds, any funds remaining would constitute "surplus funds." Personal loans to prior campaigns may be repaid from those surplus funds and the remaining balance of surplus funds, if any, must be disposed of within 30 days after the end of the month in which the candidate withdrew. Pursuant to Ark. Code Ann. § 7-6-203(h)(1), the surplus funds may be disposed of by the following methods:

- (1) The Treasurer of Arkansas for the benefit of the General Revenue Fund Account of the State Apportionment Fund;
- (2) A political party as defined in Ark. Code Ann. § 7-1-101 or a political party caucus of the Arkansas General Assembly, the Senate or House of Representatives;
- (3) A nonprofit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;
- (4) Cities of the first class, cities of the second class, or incorporated towns; or
- (5) The contributors to the candidate's campaign.

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

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By:


Rita S. Looney, Chief Counsel