

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 2010-EC-003 Issued September 17, 2010

The Arkansas Ethics Commission has received a written advisory opinion request from Doyle Webb, Chairman of the Republican Party of Arkansas. In his request, Mr. Webb asks the following question:

Under Arkansas campaign finance laws, is it legal for an opposed candidate in the general election to declare excess campaign funds and make a transfer to the candidate's political party prior to the general election date?

The use of campaign funds is regulated by subchapter 2 of chapter 6, Title 7 of the Arkansas Code. (Ark. Code Ann. § 7-6-201 et seq.) As an initial matter, it is noted that the term "excess campaign funds" is not a defined term under that subchapter

The term "surplus campaign funds" is defined in Ark. Code Ann. § 7-6-201(17) to mean:

any balance of campaign funds over expenses incurred as of the day of the election except for: (A) Carryover funds<sup>1</sup>; 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.

A review of subchapter 2 of chapter 6, Title 7 reflects that there are two (2) provisions which specifically allow a candidate to transfer surplus campaign funds to a political party. The first provision, codified as Ark. Code Ann. § 7-6-203(h)(1), provides as follows:

<sup>1</sup>The term "carryover funds" is defined in Ark. Code Ann. § 7-6-201(3) to mean "the amount of campaign funds retained from the last election by the candidate for future use but not to exceed the annual salary, excluding expense allowances, set by Arkansas law for the office sought."

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 Ark. Code Ann. § 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.

The second such provision, codified as Ark. Code Ann. § 7-6-203(h)(2), provides as follows:

(A) If an unopposed candidate agrees not to solicit further campaign contributions by filing an affidavit declaring such an agreement, the candidate may dispose of any surplus campaign funds<sup>2</sup> prior to a general election as soon as the time has passed to declare an intent to be a write-in candidate pursuant to Ark. Code Ann. § 7-5-205.

(B) For unopposed candidates for nonpartisan judicial office, the affidavit may be filed after the deadlines have passed to declare as a filing fee candidate, petition candidate, or write-in candidate under Ark. Code Ann. § 7-10-103.

(C) The affidavit shall be filed in the office in which the candidate is required to file reports of contributions received and expenditures made.

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<sup>2</sup>Although the statutory definition of "surplus campaign funds" refers to the day of the election in calculating their amount and existence, it is noted that this particular provision expressly allows for the disposition of such funds prior to the general election. In similar fashion, the Commission concluded in Advisory Opinion No. 2010-EC-001 that a withdrawn candidate "has ended the current campaign," and therefore, may dispose of the remaining funds in the same manner as any other candidate who has "ended the current campaign."

(D) Unopposed candidates and defeated candidates who file the affidavit are exempt from further reporting requirements provided that the affidavit contains: (i) All campaign activity not previously reported; and (ii) A statement that the candidate's fund has a zero (\$0.00) balance.

The foregoing provisions constitute the only express statutory authority for a candidate to transfer funds to a political party.<sup>3</sup> Beyond those situations, the Commission would advise a candidate against making such a transfer.

In that regard, it is noted that a transfer of funds to a political party would be subject to analysis under Ark. Code Ann. § 7-6-203(g), which provides that "[a] candidate shall not take campaign funds as personal income." That subsection 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.

The question of whether or not a particular use of campaign funds contravenes Ark. Code Ann. § 7-6-203(g) turns upon the facts of the situation. In the absence of specific facts, the Commission can only provide general guidance.

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

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By:

  
Graham F. Sloan, Director

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<sup>3</sup>It bears mentioning that Section 221(a) of the Commission's Rules on Campaign Finance & Disclosure allows for the purchase of banquet tickets for political events by candidates. It provides as follows:

Candidates may purchase tickets from charities, civic organizations and political parties for banquets or other similar special social events. This includes the purchase of a table if the customary and normal practice of the banquet is the purchasing of a table as opposed to individual tickets. Purchase of tickets for a candidate's spouse and campaign workers is likewise permissible with campaign funds. The presence at a banquet increases public visibility of candidates. If the candidate purchases a table of seats or tickets, the candidate shall make all reasonable efforts to attend the banquet.