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ADVISORY OPINION NO. 2013-EC-001

Issued April 19, 2013

The Arkansas Ethics Commission (the "Commission") has received a written advisory opinion request from Mr. Cody Kees, who is an attorney with the law firm of Munson, Rowlett, Moore & Boone in Little Rock, Arkansas. In his request, Mr. Kees asks the following questions under the Arkansas campaign finance laws:

- (i) Whether a cashier's check is a "written instrument" under Ark. Code Ann. § 7-6-201(18)(A)? and
- (ii) Whether a cashier's check would be an acceptable form of contribution under another provision of Title 7, Chapter 6, Subchapter 2 of the Arkansas Code?

Briefly stated, the answer to both questions is no.

As an initial matter, subchapter 2 of chapter 6, Title 7 of the Arkansas Code (Ark. Code Ann. § 7-6-201 *et seq.*) is the statutory authority which governs the making of campaign contributions to certain entities, including candidates for elective office, under the campaign finance laws. It is noted, however, that the term "cashier's check" is not a defined term under that subchapter, but the term "written instrument" is a defined term under the same subchapter.

The term "written instrument" is defined in Ark. Code Ann. § 7-6-201(18)(A) to mean:

a check¹ on which the contributor is directly liable or which is written on a personal account, trust account, partnership account, business account, or other account that contains the contributor's funds.

The term "cashier's check" is defined in *Black's Law Dictionary, Ninth Edition* (2009) to mean:

[a] check drawn by a bank on itself, payable to another person, and evidencing the payee's authorization to receive from the bank the amount of money represented by the check; a draft for which the drawer and drawee are the same bank, or different branches of the same bank.

¹ It is noted that the term "check" is not a defined term in Ark. Code Ann. § 7-6-201, but it is defined in *Black's Law Dictionary, Ninth Edition* (2009) to mean: [a] draft signed by the maker or drawer, drawn on a bank, payable on demand, and unlimited in negotiability.

The term “cashier’s check” is also defined on the website for Bank of America to mean:

[a] check issued by a bank and paid from its funds. A cashier’s check will not usually bounce because the amount it is written for is paid to the bank when it is issued, and the bank then assumes the obligation.

Based upon the foregoing definitions, the Commission concludes that a cashier’s check is not a “written instrument” as that term is currently defined in Ark. Code Ann. § 7-6-201(18)(A) for two (2) reasons. The first reason is that a cashier’s check is not written on a personal account or any other account that contains the funds of the “contributor” which is the term used in the statutory definition of “written instrument” to identify the person who actually paid for the issuance of a cashier’s check. Instead, a cashier’s check is written on the account belonging to the bank or financial institution which issued the check.

The second reason the Commission concluded that a cashier’s check is not a “written instrument” within the statutory meaning of that term is because the liability on a cashier’s check belongs to the bank or financial institution which issued it. It is the bank that is obligated to make good on a cashier’s check. To meet the definition of a written instrument, however, the contributor must be directly liable for the check used to make a campaign contribution.

While the Commission recognizes that a cashier’s check is an acceptable form of commercial paper, it is the Commission’s opinion that Ark. Code Ann. § 7-6-201 *et seq.* does not permit a cashier’s check to be used to make a campaign contribution of more than \$100 because it does not fit within the statutory meaning of the term “written instrument” as it is currently defined in Ark. Code Ann. § 7-6-201(18)(A).² Unless or until that definition is changed to include a cashier’s check, a cashier’s check should not be used to make a contribution under the campaign finance laws.

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

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By: 
Todd Elder, Senior Staff Attorney

² Ark. Code Ann. § 7-6-204 sets forth certain restrictions on the making of campaign contributions. Pursuant thereto, a campaign contribution in excess of one hundred dollars (\$100) must be made by written instrument, credit or debit card, or an internet transaction that results in an electronic record containing certain information.