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## ADVISORY OPINION NO. 2013-EC-002 Issued September 20, 2013

The Arkansas Ethics Commission (the "Commission") has received a written advisory opinion request from Mr. Bryan Griffith on behalf John Burkhalter's campaign for Lieutenant Governor in the 2014 election cycle. The question presented is whether it is permissible under the Arkansas campaign finance laws for a candidate to make unlimited nonmoney (or "in-kind") contributions to his or her campaign by providing the campaign the space for the headquarters through [the candidate's] business. Such contributions would be valued at fair market value for the space used. In his request, Mr. Griffith states that the candidate is the sole owner of a C corporation that owns the building in which the campaign headquarters is located.

While the campaign finance laws do not place any limit on the amount of either money or nonmoney contributions that a candidate may contribute to his or her own campaign, there is a \$2,000 contribution limit placed on persons and a \$2,500 limit placed on political parties. These limits apply to both money and nonmoney contributions.

Pursuant to Ark. Code Ann. § 7-6-203(b), it is unlawful for any *person* to make a contribution to a candidate for any public office or to any person acting on the candidate's behalf, which in the aggregate exceeds \$2,000 per election. Section 203(b) of the Commission's Rules on Campaign Finance & Disclosure (the "RCF&D") likewise provides:

A person shall not make contributions or cumulative contributions to a candidate or to a person acting on the candidate's behalf which exceed \$2,000 per person per election.

The term "person" is defined in Ark. Code Ann. § 7-6-201(14)(A) and Section 200(p) of the RCF&D 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.

Unlike a sole proprietorship in which the business and its owner are the same "person," a corporation is recognized as a legal entity separate from its incorporators. According to the IRS' website, "a C corporation is recognized as a separate taxpaying entity" for federal income tax

purposes. Additionally, a corporation is governed by bylaws through officers and directors and also has the right to sue and be sued in a court of law.

Pursuant to Ark. Code Ann. § 7-6-205(b), campaign contributions are required to be made in the name of the person providing the funds for the contributions. For this inquiry, the real contributor of the value of the office space in question is the C corporation instead of the candidate because it is the owner of the building in which the candidate's campaign headquarters is located. In the event the building was owned directly by the candidate, then he would be the contributor of the office space. Under that particular scenario, it would be permissible for the candidate to make unlimited "in-kind" contributions in office space to his campaign.

Based upon the above-cited provisions of the Arkansas campaign finance laws and the Commission's RCF&D, it is the Commission's opinion that a C corporation meets the definition of the term "person" and is therefore subject to the \$2,000 campaign contribution limit. Accordingly, the Commission concludes that it is not permissible for a C corporation owned by a candidate to make "in-kind" contributions of more than \$2,000 to the candidate's campaign for office space for each election in which the candidate's name appears on the ballot.

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

**ARKANSAS ETHICS COMMISSION**

By:   
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