

# ARKANSAS ETHICS COMMISSION

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## Advisory Opinion 2017-EC-002 Issued September 22, 2017

The Arkansas Ethics Commission (“the Commission”) received a written advisory opinion request from Attorney Bob Leslie of Conway, Arkansas. For purposes of this opinion request, he asked that the Commission assume the following facts:

- (a) A nonprofit corporation solicits donors for the purpose of acquiring a building. Spaces in the building will be rented out to non-political organizations and professionals at market rates or their equivalent in in-kind services. In addition, the nonprofit will allow a county political party committee (“CPPC”)<sup>i</sup> to use space in the building for various activities that are common to such parties. The party will be charged for the time and space used at market rates or their equivalent in in-kind services such as maintenance, up-keep, insurance, and property taxes. The nonprofit will allow others entities to use the space in the building under the same arrangement.
- (b) Same set of facts except the CPPC will pay or contribute less than the market rate rent or its equivalent but the difference between what they do pay or contribute and what the market rate actually is constitutes less than \$5,000 per calendar year.

Based upon the above assumed facts, Mr. Leslie asks the following two questions:

1. *Is the nonprofit required to file as a political action committee (“PAC”)<sup>ii</sup> in either or both of the above circumstances?*
2. *If the answer is no in either or both of the above circumstances, can the nonprofit accept donations for more than \$5,000 per entity per year?*

In response to Question Number 1 and under the facts outlined in paragraph (a), the nonprofit would not trigger registration as a PAC by renting space to a CPPC at market rates. In response to Question Number 1 and under the facts outlined in paragraph (b), the answer would depend on the nature of the nonprofit corporation. If the nonprofit corporation exists essentially for the

purpose of raising money in order to make contributions to the CPPC in the form of rent at below the fair market value, then the Commission concludes it would meet the definition of a PAC and be subject to registration and reporting. If the nonprofit exists for purposes other than receiving contributions in order to make contributions to a CPPC, then it would not need to register as a PAC merely because it made an in-kind contribution to a CPPC. In other words, if the nonprofit is not behaving as a PAC (i.e., not raising money in order to make contributions to a CPPC), then the Commission concludes it could give the CPPC a discount on rent, provided the cumulative total of discounts for the calendar year could not exceed \$5,000.

In response to Question Number 2, PACs in Arkansas cannot accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year. If the nonprofit exists for the purpose of receiving contributions in order to make contributions to a CPPC, then it would not be able to accept contributions for more than \$5,000 per entity per year. If the nonprofit is not accepting contributions in order to make contributions to a CPPC (or other entity listed in 7-6-201(1)(A)), then it would not be a PAC, and absent other facts, would not be an entity with a contribution limit under the jurisdiction of the Commission. It could, therefore, accept contributions in excess of \$5,000 from a single entity per calendar year.

It is noted that the advisory opinion process is not a vehicle to make factual findings regarding events that have already occurred. This advisory opinion is issued by the Commission pursuant to Ark. Code. Ann. § 7-6-217(g)(2).

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By:   
 Jill Barham  
 Staff Attorney

<sup>i</sup> Ark. Code Ann. § 7-6-201 defines a "County political party committee" means any person that:

- (A) Is organized at the county level for the purpose of supporting its affiliate party and making contributions;
- (B) Is recognized by an organized political party, as defined in § 7-1-101, as being affiliated with that political party;
- (C) Receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, political action committees, or other county political party committees;
- (D) Does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and
- (E) Registers pursuant to § 7-6-226 prior to making contributions.

<sup>ii</sup> Ark. Code Ann. § 7-6-201 (1) (A) defines an "Approved political action committee" as 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 § 7-6-215 prior to making contributions.
- (B) "Approved political action committee" does not include an organized political party as defined in § 7-1-101, a county political party committee, the candidate's own campaign committee, an exploratory committee, or a ballot question committee or legislative question committee as defined in § 7-9-402.