

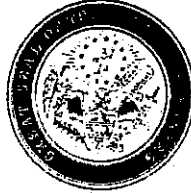
ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 98-EC-021 Issued December 18, 1998

ISSUE:

Does the Commission intend to enforce the campaign finance laws which were declared unconstitutional by Judge Franklin H. Waters in the case of *Arkansas Right to Life State Political Action Committee, et al. v. Brad Butler, et al.*¹ between now and the time the constitutionality of those laws is reviewed by the appellate court(s)?

BRIEF ANSWER:

No. The Order that Judge Waters entered on December 8, 1998, enjoined the Commission from enforcing Ark. Code Ann. §§ 7-6-203(k), 7-6-203(g) and 7-6-221(a). Unless and until a stay of that Order has been entered or an appellate court has reversed the Order, the Commission will not seek to enforce these particular sections of the law.

FACTUAL BACKGROUND:

On April 30, 1997, the Arkansas Right to Life State Political Action Committee ("Right to Life") filed an action in federal court in Fayetteville challenging the constitutionality of certain portions of Initiated Act One of 1996, as well as Initiated Act One of 1990. This lawsuit was similar to the lawsuit filed by the Associated Industries of Arkansas Political Action Committee ("AIA") in federal court in Little Rock on February 3, 1997.

The AIA case was tried before Judge Wm. R. Wilson, Jr. in September of 1997. On October 3, 1997, Judge Wilson entered a Judgment in the AIA case upholding major portions of both Initiated Acts but striking down the \$300 contribution limit for the constitutional officers and the \$100 limit for Supreme Court Justices and Court of Appeals Judges established by Initiated Act One of 1996. This case is reported at *Russell v. Burris*, 978 F. Supp. 1211 (E.D. Ark. 1997).

On November 18, 1997, Judge Waters granted that portion of the Right to Life's motion for summary judgment dealing with the \$300 limit for the office of governor. This opinion is reported at *Arkansas Right to Life State PAC v. Butler*, 983 F. Supp. 1209 (W.D. Ark. 1997).

¹ Filed in the United States District Court, Western District of Arkansas, Fayetteville Division, Civil No. 97-5064.

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Appeals were taken in both cases, by both parties. On June 4, 1998, the United States Court of Appeals for the Eighth Circuit rendered decisions in both of the appeals. The Eighth Circuit reversed Judge Wilson's decision in part and affirmed it in part in an opinion reported at *Russell v. Burris*, 146 F.3d 563 (8th Cir. 1998). Judge Waters' decision was affirmed by the Eighth Circuit in an opinion reported at *Arkansas Right to Life State PAC v. Butler*, 146 F.3d 558 (8th Cir. 1998).

On October 28, 1998, Right to Life renewed their motion for summary judgment on the remaining issues before Judge Waters. On December 8, 1998, Judge Waters granted the renewed motion in all respects and entered an Order dismissing the Western District case.

DISCUSSION:

The first statute which merits discussion is Ark. Code Ann. § 7-6-203(g). It provides as follows:

(1) It shall be unlawful for the Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, Commissioner of State Lands, and members of the General Assembly to accept a contribution:

(A) During the period beginning thirty (30) days before and ending thirty (30) after any regular session of the General Assembly. However, if there is an extended recess of the General Assembly, the period shall end thirty (30) days after after the beginning of the recess;

(B) During any extended session of the General Assembly; or

(C) During any special session of the General Assembly.

(2) During such periods of time, it shall be unlawful for any person to promise a contribution to the aforementioned elected officials.

This statute was enacted by the people of Arkansas as a part of Initiated Act One of 1990. It is commonly known in the regulated community as the "30 day blackout period." Because this statute has been declared unconstitutional by Judge Waters, there is no longer a prohibition against making a campaign contribution to a member of the General Assembly 30 days prior to the beginning of the 82nd General Assembly², during the 82nd General Assembly or less than 30 days after the 82nd General Assembly.

Another statute which need to be discussed is Ark. Code Ann. § 7-6-203(f). This statute prohibits candidates from soliciting or accepting "campaign contributions more than two (2) years before an election at which the candidate seeks nomination or election." Pursuant thereto, Senators who are serving a four (4) year term and who are not up for re-election in the year 2000 cannot accept

² According to Ark. Code Ann. § 10-2-101, the 82nd General Assembly will convene on January 11, 1999.

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contributions during the regular session of the 82nd General Assembly. Senators who are running for re-election in the year 2000, would be eligible to solicit and receive contributions for their re-election.³ Additionally, the Constitutional Officers who were elected on November 3, 1998, cannot solicit or accept campaign contributions until two years preceding their re-election efforts in 2002 (to the extent they are not term limited under Amendment 73). Finally, this provision would have no bearing upon the members of the House who are eligible to seek reelection in the year 2000, because they are within two years of their next election. It must be noted, however, that if any of these elected officials were seeking solely to retire a campaign debt, then fundraising would be permitted for that purpose, pursuant to Ark. Code Ann. § 7-6-203(f).

The final statute which merits discussion is Ark. Code Ann. § 7-6-203(j)(4). This statute makes clear that fundraising for the 1998 election cycle *ended* at midnight on November 3, 1998, except for debt retirement efforts. The specific language of this statute is as follows:

(4) After the date of an election at which the person is a candidate for nomination or election, the person shall not accept campaign contributions for the past election, except for the sole purpose of raising funds to retire a previous campaign debt.

When soliciting or accepting campaign contributions around the time of the 82nd General Assembly, elected officials should ensure that the contributions, while permitted by the fact that the 30 day blackout period has been declared unconstitutional, meet the requirements of Ark. Code Ann. § 7-6-203(f) (within 2 years of re-election) and Ark. Code Ann. § 7-6-203(j)(4) (not for the 1998 election cycle).

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

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by: _____


Bob R. Brooks, Jr.
Executive Director

³ It is the Commission's understanding that thirteen (13) out of the seventeen (17) Senators presently serving in the Senate whose term ends on December 31, 2000, are not eligible to seek re-election to the Senate because of Amendment 73 (the term limits amendment). *See also* Commission Advisory Opinion 97-EC-009, holding that elected officials who are ineligible to hold an office due to term limits may not raise money for that office.