

ARKANSAS ETHICS COMMISSION

RULES ON LOCAL-OPTION BALLOT QUESTION COMMITTEES

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§ 800 DEFINITIONS

(a) Approved Political Action Committee – As used in these rules, the term “approved political action committee” means any person who:

- (i) Receives contributions from one (1) or more persons in order to make contributions to candidates, campaign committees, 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 Ark. Code Ann. § 7-6-215 prior to making contributions.

An approved political action committee shall not include an organized political party as defined in Ark. Code Ann. § 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.

(b)(1) Contribution – As used in these rules, the term “contribution” means, whether direct or indirect, advances, deposits, transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payments for services, dues, advancements, forbearance, loans, pledges or promises of money or anything of value, whether or not legally enforceable, to a person receiving same for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question.

(2) “Contribution” includes the purchase of tickets for events, such as dinners, luncheons, rallies, and similar fundraising events, and the granting of discounts or rebates by television and radio stations and newspapers, not extended on an equal basis to all persons for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question.

(3) “Contribution” shall not include: (i) noncompensated, nonreimbursed volunteer personal services or travel; (ii) activities designed solely to encourage individuals to vote or to register to vote; or (iii) any communication by a bona fide church or religious denomination to its own members or adherents for the sole purpose of protecting the right to practice the religious tenets of the church or religious denomination.

(c) Disqualification of a Local-Option Ballot Question – As used in these rules, “disqualification of a local-option ballot question” means any action or process, legal or otherwise, which seeks to prevent a local-option ballot question from being on the ballot at an election.

(d) Elected Official – As used in these rules, the term “elected official” means any person holding an elective office of any governmental body, whether elected or appointed to the office.

(e) Expenditure – As used in these rules, the term “expenditure” means a purchase, payment, distribution, gift, loan, or advance of money or anything of value, and a contract, promise, or agreement to make an expenditure, for goods, services, materials, or facilities for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question. “Expenditure” does not include an expenditure made for communication by a person strictly with the person’s paid members or shareholders.

(f) Governmental Body – As used in these rules, the term “governmental body” means any office, department, commission, council, board, committee, legislative body, agency, or other establishment of the executive, judicial, or legislative branch of the state, municipality, county, school district, improvement district, or any political district or subdivision thereof.

(g) In-kind Contribution – As used in these rules, the term “in-kind contribution” means a contribution of goods, services, or any other thing of value, or its use, other than money and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution in the future. A person makes an “in-kind contribution” whenever, in conjunction with the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question, such person purchases, sells or leases an item, or provides a service to or on behalf of a ballot or legislative question committee without charge or for a charge which is less than the fair market value of the item or service provided. The difference between the fair market value and the charge shall be the value of the in-kind contribution.

(h) Local-Option Ballot Question – As used in these rules, the term “local-option ballot question” means a question in the form of a local-option initiative which is submitted or intended to be submitted to a popular vote at an election, whether or not it qualifies for the ballot.

(i)(1) Local-Option Ballot Question Committee – As used in these rules, the term “local-option ballot question committee” means any person, located within or outside Arkansas, who receives contributions for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of any local-option ballot question, or any person, other than an elected official expending public funds,¹ or an individual, located within or outside Arkansas, who makes expenditures for the

¹ Ark. Code Ann. § 7-1-111 was established by Act 312 of 2013 and falls outside of the Arkansas Ethics Commission’s jurisdiction. Pursuant thereto, an “elected official” or “a person appointed to an elective office” is permitted to expend or permit the expenditure of public funds to support or oppose a ballot measure. However, Ark. Code Ann. § 7-1-111(b) provides that “[i]t is unlawful for a public servant or a governmental body to expend or permit the expenditure of public funds to support or oppose a ballot measure.” With regard to this prohibition, it is noted that the term “public funds” is defined to mean “funds, moneys, receivables, grants, investments, instruments, real or personal property, or other assets, liabilities, equities, revenues, receipts, or disbursements belonging to, held by, or passed through a governmental body[.]” In addition, the term “public servant” is defined to mean “an individual who is (i) Employed by a governmental body; (ii) Appointed to serve a governmental body; or (iii) Appointed to a governmental body.” That definition goes on to state that “‘Public servant’ does not include: (i) An elected official; or (ii) A person appointed to an elective office.” It is noted that Ark. Code Ann. § 7-1-111 does not: limit the freedom of speech of a public servant or governmental body, including without limitation verbal expressions of views supporting or opposing a ballot measure; prohibit a governmental body from expressing an

purpose of expressly advocating the qualification, disqualification, passage, or defeat of any local-option ballot question.

(2) A person other than an individual or an approved political action committee as defined in § 800(a) of these rules, located within or outside Arkansas, also qualifies as a local-option ballot question committee if two percent (2%) or more of its annual revenues, operating expenses, or funds are used to make a contribution or contributions to another ballot question committee² and if the contribution or contributions exceed ten thousand dollars (\$10,000) in value.

(j) Person – As used in these rules, the term “person” means any individual, business, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting in concert. “Person” includes a public servant or governmental body³ using public funds to expressly advocate the qualification, disqualification, passage, or defeat of any local-option ballot question.

(k) Political Party – As used in these rules, the term “political party” means any group of voters which, at the last preceding general election, polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office, or which has filed a petition with the Secretary of State containing at the time of filing the signatures of at least ten thousand (10,000) registered voters in the State of Arkansas, declaring the intention of organizing a political party, the name of which shall be stated in the declaration, and of participating in the next general election, and which has been declared a new political party by the Secretary of State. When any political party fails to obtain three percent (3%) of the total votes cast at an election for the office of Governor or nominees for presidential electors, it shall cease to be a political party.

opinion on a ballot measure through the passage of a resolution or proclamation; prohibit the incidental use of state resources by a public servant, including without limitation travel costs, when speaking at an event in which a ballot measure is discussed if the subject matter of the speaking engagement is within the scope of the official duties and responsibilities of the public servant; or prohibit the dissemination of public information at a speaking engagement and the incidental use of state resources in the analysis and preparation of that public information if the subject matter of the public information is within the scope of the official duties and responsibilities of the public servant. Ark. Code Ann. § 7-1-111 provides that a violation of the prohibition contained therein is a Class A misdemeanor, with the exception that a public servant who is found guilty or pleads guilty or nolo contendere to such a violation is ineligible to hold any office, employment, or appointment in a governmental body and that if a public servant is found guilty or pleads guilty or nolo contendere to such a violation while employed by a governmental body, he or she shall be removed from employment immediately.

² The term “ballot question committee” is defined in Ark. Code Ann. § 7-9-402(2)(A) to mean “any person, located within or outside Arkansas, that receives contributions for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of any ballot question, or any person, other than an elected official expending public funds, or an individual, located within or outside Arkansas, who makes expenditures for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of any ballot question.” Subdivision - 402(2)(B) of that statute goes on to provide that “[a] person other than an individual or an approved political action committee as defined in § 7-6-201, located within or outside Arkansas, also qualifies as a ballot question committee if two percent (2%) or more of its annual revenues, operating expenses, or funds are used to make a contribution or contributions to another ballot question committee and if the contribution or contributions exceed ten thousand dollars (\$10,000) in value[.]”

³ See Footnote 1.

(l) Prohibited Political Action Committee – As used in these rules, the term “prohibited political action committee” means any person who 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 but who does not meet the requirements of an approved political action committee. A prohibited political action committee shall not include a political party as defined in Ark. Code Ann. § 7-1-101 or a political party that meets the requirements of Ark. Code Ann. § 7-7-205, the candidate's own campaign committee, a county political party committee, an exploratory committee, or a ballot or legislative question committee.

(m) Public Appointee – As used in these rules, the term “public appointee” means an individual who is appointed to a governmental body. It does not include an individual appointed to an elective office.

(n) Public Employee – As used in these rules, the term “public employee” means an individual who is employed by a governmental body or who is appointed to serve a governmental body. It does not include public officials or public appointees.

(o) Public Official – As used in these rules, the term “public official” means a legislator or any other person holding an elective office of any governmental body, whether elected or appointed to the office, and shall include such persons during the time period between the date they were elected and the date they took office.

(p) Public Servant – As used in these rules, the term “public servant” means all public officials, public employees, and public appointees.

(q) Qualification of a Local-Option Ballot Question – As used in these rules, “qualification of a local-option ballot question” means any action or process, legal or otherwise, through which a local-option ballot question obtains certification to be on the ballot at an election.

§ 801 CONTRIBUTIONS AND EXPENDITURES – LIMITS

(a) No local-option ballot question committee shall accept any contribution in cash, meaning currency or coin, which exceeds one hundred dollars (\$100).

(b) No local-option ballot question committee shall accept any contribution from a prohibited political action committee as defined in § 800(l).

(c) No local-option ballot question committee or individual shall make an expenditure in cash which exceeds fifty dollars (\$50.00) in conjunction with expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question.

(d) No contributions shall be made, directly or indirectly, by any person in a name other than the name by which the person is identified for legal purposes.

(e)(1) No person shall make an anonymous contribution totaling fifty dollars (\$50.00) or more to a local-option ballot question committee.

(2) Any such anonymous contribution actually received by any local-option ballot question committee shall be promptly paid by the recipient to the Arkansas Secretary of State for deposit in the State Treasury as general revenues.

§ 802 CONTRIBUTIONS – DATE RECEIVED

A contribution to a local-option ballot question committee shall be deemed to have been “received” or “accepted” when it has been delivered to a committee and not returned to the contributor within five (5) business days.

§ 803 IN-KIND CONTRIBUTIONS – REPORTING AND VALUE

(a) In addition to monetary contributions, committees are required to report the receipt of any “in-kind contributions,” as defined in § 800(g) of these rules.

(b) For reporting purposes, the value of an in-kind contribution shall be its fair market value if it had been purchased, sold or leased in the ordinary course of business. An in-kind contribution constitutes a contribution. Those transactions which are specifically excluded from the definition of “contribution” are likewise excluded from the definition of “in-kind contribution.”

(c) A person making an in-kind contribution shall place the value on such contribution when given. The committee may question the value set by the donor if it appears unreasonable and shall revalue the in-kind contribution to a reasonable value. The value of an in-kind contribution is a factual determination which shall be made by the Arkansas Ethics Commission.

(d) The costs associated with any news story, commentary or editorial distributed in the ordinary course of business by a broadcasting station, newspaper or other periodical publication do not constitute an in-kind contribution.

§ 804 VOLUNTEER SERVICES – EXCEPTION TO IN-KIND CONTRIBUTION

(a) In addition to the other exceptions noted in these rules, the value of volunteer services provided without compensation do not constitute an in-kind contribution. Accordingly, an individual may volunteer any personal service provided he or she is not compensated for the service by any other individual or person. This applies both to manual tasks (*i.e.*, stuffing envelopes, answering telephones, etc.) and to specialized services (*i.e.*, services provided by musicians, accountants, etc.).

Whether a contribution has occurred depends upon whether the work performed is considered “volunteer services.” Whether time is spent on a volunteer basis depends upon whether the services are rendered during time that is the individual’s own time to spend as he or she sees fit. If services are rendered after working hours, they will typically be viewed as exempted volunteer services.

(b) In accordance with subsection (a) above, certain professional services, such as legal and accounting services, which typically have fees associated with them, may be provided to a committee on a volunteer basis, provided the need for the services arises from the committee. For example, accounting or bookkeeping services involved with handling the committee’s contributions and expenditures may be provided to a committee on a volunteer basis and will not count as an “in-kind” contribution even if no fees are charged.

§ 805 EXPENDITURES – DATE MADE

(a) The date of an expenditure is the date the amount is readily ascertainable by the person making the expenditure, except as provided in subsection (b) of this section.

(b) If, under normal business practices, the amount of an expenditure is not known or readily ascertainable until receipt of a periodic bill, the date of the expenditure is the date the bill is received. Examples of expenditures to which this subsection is applicable are expenditures for utilities and telephone bills.

(c) An expenditure by credit card or in other ways charged to an account must be included in the report for the period during which the charge was made, not in the report for the period during which the statement from the credit card company or charge account was received.

§ 806 STATEMENT OF ORGANIZATION

(a)(1)(A) A local-option ballot question committee shall file a statement of organization with the Arkansas Ethics Commission within five (5) days of receiving contributions or making expenditures in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, passage, or defeat of a local-option ballot question.

(B) The Arkansas Ethics Commission shall maintain the statement of organization until notified of the committee’s dissolution.

(2) A local-option ballot question committee failing to file a statement of organization required by this section shall be subject to a late filing fee not exceeding fifty dollars (\$50.00) for each day the statement remains not filed.

(b) The statement of organization shall include the following information:

(1) The name, street address, and where available, the telephone number of the committee. A committee address and telephone number may be that of the residence of an officer or director of the committee;

(2) The name, street address, and where available, the telephone number of the treasurer and other principal officers and directors of the committee;

(3) The name and address of each financial institution in which the committee deposits money or anything else of monetary value;

(4) The name of each person who is a member of the committee. A person that is not an individual may be listed by its name without also listing its own members, if any; and

(5) A brief statement identifying the substance of each local-option ballot question, the qualification, disqualification, passage, or defeat of which the committee seeks to influence and, if known, the date each local-option ballot question shall be presented to a popular vote at an election.

§ 807 FILING OF FINANCIAL REPORTS

(a) A local-option ballot question committee which either receives contributions or makes expenditures in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question shall file with the Arkansas Ethics Commission financial reports as required by §§ 808 through 810.

(b) An individual person who on his or her own behalf expends in excess of five hundred dollars (\$500), excluding contributions, for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question shall file with the Arkansas Ethics Commission financial reports as required by §§ 808 through 810.

(c) An elected official expending public funds⁴ in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question shall file with the Arkansas Ethics Commission financial reports as required by §§ 808 through 810.

(d) Except as provided in subsection (f) of this section, any report required by these rules shall be deemed timely filed if it is:

(1) Hand delivered to the Arkansas Ethics Commission on or before the date due;

(2) Mailed to the Arkansas Ethics Commission, properly addressed, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on or before the date due;

⁴ See Footnote 1.

(3) Received via facsimile by the Arkansas Ethics Commission on or before the date due, provided that the original is received by the Commission within ten (10) days of the transmission; or

(4) Received by the Arkansas Ethics Commission in a readable electronic format which is approved by the Commission.

(e) Whenever a report under these rules becomes due on a day which is a Saturday, Sunday, or legal holiday, the report shall be due the next day which is not a Saturday, Sunday, or legal holiday.

(f) A preelection report is timely filed if it is received by the Arkansas Ethics Commission no later than seven (7) days prior to the election for which it is filed.

§ 808 CONTENTS OF FINANCIAL REPORTS

A financial report of a local-option ballot question committee, individual person, or elected official as required by § 807, shall contain the following information:

(1) The name, address, and telephone number of the committee, individual person, or elected official filing the report;

(2) For a local-option ballot question committee:

(a) The total amount of contributions received during the period covered by the financial report;

(b) The total amount of expenditures made by the committee or on behalf of the committee by an advertising agency, public relations firm, or political consultant during the period covered by the financial report;

(c) The cumulative amount of contributions and expenditures reported under § 808(2)(a) and (b) for each local-option ballot question;

(d) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the financial report;

(e) The total amount of contributions received during the period covered by the financial report from persons who contributed less than fifty dollars (\$50.00), and the cumulative amount of that total for each local-option ballot question;

(f) The total amount of contributions received during the period covered by the financial report from persons who contributed fifty dollars (\$50.00) or more, and the cumulative amount of that total for each local-option ballot question;

(g) The name and street address of each person who contributed fifty dollars (\$50.00) or more during the period covered by the financial report, together with the amount contributed, the date of receipt, and the cumulative amount contributed by that person for each local-option ballot question;

(h) For each person listed under § 808(2)(g) of this section, the contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the committee, and the cumulative amount contributed for each local-option ballot question;

(i) The name and address of each person who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(j) A list of all paid canvassers, officers, and directors and the amount each person was paid;

(k) A list of all expenditures by category, including without limitation the following: (i) advertising; (ii) direct mail; (iii) office supplies; (iv) travel; (v) expenses; and (vi) telephone;

(l) The total amount of nonitemized expenditures made during the period covered by the financial report; and

(m) The name and street address of each person to whom expenditures totaling one hundred dollars (\$100) or more were made by the committee or on behalf of the committee by an advertising agency, public relations firm, or political consultant, together with the date and amount of each separate expenditure to each person during the period covered by the financial report and the purpose for each expenditure.

(3) For an individual person:

(a) The total amount of expenditures made by the individual person or on behalf of the individual person by an advertising agency, public relations firm, or political consultant during the period covered by the financial report;

(b) The cumulative amount of expenditures for each local-option ballot question; and

(c) The name and street address of each person to whom expenditures totaling one hundred dollars (\$100) or more were made by the individual person or on behalf of the individual person by an advertising agency, public relations firm, or political consultant, together with the date and amount of each separate expenditure to each person during the period covered by the financial report and the purpose for each expenditure.

(4) For an elected official using public funds:

(a) The total amount of expenditures made by the elected official using public funds or on behalf of the elected official using public funds by an advertising agency, public relations firm, or political consultant during the period covered by the financial report;

(b) The cumulative amount of expenditures for each local-option ballot question;
and

(c) The name and street address of each person to whom expenditures totaling one hundred dollars (\$100) or more were made by the elected official using public funds or on behalf of the elected official using public funds by an advertising agency, public relations firm, or political consultant, together with the date and amount of each separate expenditure to each person during the period covered by the financial report and the purpose for each expenditure.

§ 809 VERIFICATION OF FINANCIAL REPORTS

All financial reports filed by local-option ballot question committees or by public servants or governmental bodies⁵ spending public funds shall be verified by affidavit. This affidavit shall state that, to the best of the filer's knowledge and belief, the information so disclosed is a complete, true and accurate financial statement of contributions and expenditures.

§ 810 TIME TO FILE FINANCIAL REPORTS – LATE FEE

(a)(1) The first financial reports shall be filed no later than fifteen (15) days following the month in which the five hundred dollar (\$500) threshold of § 807 is met and thereafter no later than fifteen (15) days after the end of each month until the election is held. Provided, however, for any month in which certain days of that month are included in a preelection financial report required under subdivision (a)(2) of this section, no monthly report for that month shall be due, but those days of that month shall be carried forward and included in the final financial report.

(2) Additionally, a preelection financial report shall be filed no fewer than seven (7) days prior to any election on the local-option ballot question, such statement to have a closing date of ten (10) days prior to the election.

(3) Furthermore, a final financial report shall be filed no later than thirty (30) days after the election.

(b) A local-option ballot question committee, individual person, or elected official who files a late financial report shall be subject to a late filing fee not exceeding fifty dollars (\$50.00) for each day the report remains unfiled.

⁵ See Footnote 1.

§ 811 DISSOLUTION AND DISPOSITION OF FUNDS

Upon dissolution, a local-option ballot question committee shall so notify the Arkansas Ethics Commission in writing. Any remaining funds on hand at the time of dissolution shall be turned over to either: (i) the Treasurer of State for the benefit of the General Revenue Fund Account of the State Apportionment Fund; (ii) an organized political party as defined in Ark. Code Ann. § 7-1-101 or a political party caucus of the General Assembly, the Senate, or House of Representatives; (iii) a nonprofit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; (iv) cities of the first class, cities of the second class, or incorporated towns; or (v) the contributors to the local-option ballot question committee.

§ 812 INSPECTION OF REPORTS AND RETENTION OF RECORDS

(a) All statements of organization and financial reports required by these rules shall be open to public inspection at the office of the Arkansas Ethics Commission during regular office hours.

(b) All records supporting the reports filed under these rules shall be: (1) made available to the Arkansas Ethics Commission; and (2) retained by the filer for a period of four (4) years after the date of filing the report.

§ 813 REPORTING THE USE OF STATE FUNDS TO OPPOSE OR SUPPORT A LOCAL OPTION BALLOT MEASURE

Any funds appropriated to any state agency, board, or commission that are expended,⁶ as prescribed in § 814, for the purpose of opposing or supporting any local-option ballot question which is submitted or intended to be submitted to a popular vote at an election, whether or not it qualifies for the ballot, shall be reported to the Legislative Council if the amount exceeds one hundred dollars (\$100). This reporting requirement is in addition to those set forth in § 807(c).

§ 814 USE OF STATE FUNDS TO OPPOSE OR SUPPORT A LOCAL-OPTION BALLOT MEASURE

The use of state funds under § 813 includes:⁷

- (1) newspaper, television, radio, and other forms of communication;
- (2) publication materials;
- (3) travel expenses relative to reimbursement;
- (4) surveys;
- (5) private contracts; and
- (6) postage.

⁶ See Footnote 1.

⁷ See Footnote 1.

§ 815 APPLICABILITY OF §§ 813 AND 814

Sections 813 and 814 do not apply to state funds appropriated to any elected officials.⁸

**§ 816 PROHIBITION AGAINST PUBLIC SERVANTS
CIRCULATING AN INITIATIVE OR REFERENDUM PETITION**

It shall be unlawful for any public servant, as defined in § 800(p), to circulate an initiative or referendum petition or to solicit signatures on an initiative or referendum petition in any public office of the state, county, or municipal governments of Arkansas or during the usual office hours or while on duty for any state agency or any county or municipal government in Arkansas.

§ 817 SCOPE

Nothing in these rules is intended to limit, waive, or abrogate the scope of any statutory or common law privilege, including, but not limited to, the work product doctrine and attorney-client privilege.

§ 818 CRIMINAL PENALTIES

Upon conviction, any person who knowingly fails to comply with any provision of Ark. Code Ann. §§ 3-8-701 through 3-8-714, shall be fined an amount not to exceed one thousand dollars (\$1,000) or be imprisoned for not more than one (1) year, or both.⁹

⁸ See Footnote 1.

⁹ The penalties referenced in § 818 are set forth in Ark. Code Ann. § 3-8-715. Such penalties are applicable in criminal prosecutions and not in Arkansas Ethics Commission proceedings.