

## **Summary of Proposed Amendment to the Arkansas Ethics Commission's Rules on Campaign Finance & Disclosure**

The Ethics Commission is revising the Rules on Campaign Finance & Disclosure to bring them in conformity with Acts 240, 341, 545, 845, 879, and 894 of 2019. Those changes are summarized below.

- Act 240 clarified that 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 two thousand seven hundred dollars (\$2,700) per election, *regardless* of whether or not they are a permissible contributor. (emphasis added)
- Act 240 clarified that, for candidates for state and district office, monthly reporting will begin in January of the year of the election.
- Act 240 clarified that all candidates for state or district office, including unopposed candidates whose names will not appear on the ballot (i.e., "when only one (1) candidate qualifies for a particular office or position and no position or name of an unopposed candidate shall appear on a ballot,"), must file a Final Campaign Contribution and Expenditure ("C&E") report. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500).
- Act 240 clarified that all candidates for school district, township, or municipal office, including unopposed candidates whose names will not appear on the ballot (i.e., "when only one (1) candidate qualifies for a particular office or position and no position or name of an unopposed candidate shall appear on a ballot,"), must file a Final C&E report. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500).
- Act 240 clarified that all candidates for county office, including unopposed candidates whose names will not appear on the ballot ("when only one (1) candidate qualifies for a particular office or position and no position or name of an unopposed candidate shall appear on a ballot,"), must file a Final C&E report. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500)". (Approved: 2/28/19)
- Act 240 amended the law regarding the authority of local jurisdictions, municipalities, counties, and townships providing they *may* (removing "shall have the authority to") establish reasonable limitations on certain aspects of campaign finance law in their community. Likewise, it adds a new provision clearly stating, "Enforcement of any limitation established under subsection (a) of this section is the responsibility of the municipality, county, or township establishing the limitation." This removes any misunderstanding that the Ethics Commission would be responsible for enforcement or education regarding various local limitations.
- Act 240, concerning quarterly reports filed by county political party committees, replaced the word "filing" period with "reporting" period, to provide clarity.
- Act 341 increased the fine range from \$50-\$2,000 per violation to \$50-\$3,500 per violation.

- Act 545 provided that, for years in which the office of President of the United States will appear on the ballot at the general election, the filing period for running for public office shall be in the November preceding the election year (“beginning at 12:00 noon on the first Monday in November preceding the general primary election and ending at 12:00 noon on the seventh day thereafter”) and moves the primary election to March (“the first Tuesday after the first Monday in March”). This affects when the SFI for candidates would be due and also affects the reporting schedule for C&E reports.
- Act 845 added the following provisions regarding carryover funds. (Somewhat similar provisions have been in the RCF&D for many years): (E) The use of carryover funds to pay an elected candidate’s own personal expenses for food, lodging, conference fees, or travel to attend a conference related to the performance of his or her responsibilities as an elected official: (i) Shall not be considered a taking of campaign funds as personal income; (ii) The reimbursement of expenses shall be a result of travel and the source of the reimbursement shall be authorized under the rules of the Arkansas House of Representatives or the Arkansas Senate and used to reimburse the carryover account; and (iii) The reimbursement amount shall be reported in the elected candidate’s carryover fund report. (Approved: 4/10/19)
- Act 879 clarified that carryover funds (as is the case with campaign funds) should not be taken as personal income. Likewise, it specifically states that candidates or officeholders may use campaign funds or carryover funds to fulfill any commitment, obligation, or expense authorized by law, or permitted by an Arkansas Ethics Commission rule or opinion at the time of the expenditure, or reasonably and legitimately related to a campaign or officeholder activity.
- Act 879 specified that taking campaign/carryover funds as personal income is still prohibited even after the former candidate lost the election or has left office.
- Act 879 made knowingly taking campaign funds as personal income a felony if the value taken exceeds \$2,500, as follows:
  - Class B felony if the value of the benefit is twenty-five thousand dollars (\$25,000) or more;
  - Class C felony if (\$5,000) or more but less than (\$25,000);
  - Class D felony if (\$2,500) or more but less than (\$5,000); or
  - Class A misdemeanor if less than (\$2,500).
- Act 879 created an affirmative defense to a prosecution for taking campaign funds as personal income if the candidate or officeholder shows by a preponderance of the evidence that: (A) If the personal property was retained as carryover funds, that the candidate or officeholder: (i) Reported the personal property as carryover funds; and (ii) Retained or disposed of the personal property in the manner that is required by law for carryover funds; or (B) If the personal property was retained as surplus funds, that the candidate or officeholder: (i) Reported the personal property as surplus funds; and (ii) Retained or disposed of the personal property in the manner that is required by law for surplus funds.
- Act 894 created two new defined terms as follows: “Constitutional office” means the offices of Governor, Lieutenant Governor, Auditor of State, Treasurer of State, Secretary of State, Commissioner of State Lands, the Attorney General, the General

Assembly, Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, and district judge; and “Public trust crime” means a crime prohibited under Arkansas Constitution, Article 5, § 9.

- Act 894 added a new area of jurisdiction for the AEC, providing that a person who has been found guilty of a crime of public trust shall not file, run or hold a constitutional office.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT/AGENCY** Arkansas Ethics Commission

**DIVISION** \_\_\_\_\_

**PERSON COMPLETING THIS STATEMENT** Graham Sloan

**PHONE NO.** 324-9600 **FAX NO.** 324-9606 **E-MAIL** Graham.Sloan@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** Rules on Campaign Finance & Disclosure

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes \_\_\_\_\_ No X
  
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes X No \_\_\_\_\_
  
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes X No \_\_\_\_\_

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;

\_\_\_\_\_

(b) The reason for adoption of the more costly rule;

\_\_\_\_\_

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

\_\_\_\_\_

(d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

\_\_\_\_\_

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

General Revenue	<u>-0-</u>
Federal Funds	<u>-0-</u>
Cash Funds	<u>-0-</u>
Special Revenue	<u>-0-</u>
Other (Identify)	<u>-0-</u>
 Total	 <u>-0-</u>

**Next Fiscal Year**

General Revenue	<u>-0-</u>
Federal Funds	<u>-0-</u>
Cash Funds	<u>-0-</u>
Special Revenue	<u>-0-</u>
Other (Identify)	<u>-0-</u>
 Total	 <u>-0-</u>

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

General Revenue	<u>-0-</u>
Federal Funds	<u>-0-</u>
Cash Funds	<u>-0-</u>
Special Revenue	<u>-0-</u>
Other (Identify)	<u>-0-</u>
 Total	 <u>-0-</u>

**Next Fiscal Year**

General Revenue	<u>-0-</u>
Federal Funds	<u>-0-</u>
Cash Funds	<u>-0-</u>
Special Revenue	<u>-0-</u>
Other (Identify)	<u>-0-</u>
 Total	 <u>-0-</u>

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

\$ -0-

**Next Fiscal Year**

\$ -0-

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6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ -0-

**Next Fiscal Year**

\$ -0-

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7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes \_\_\_\_\_ No X

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

**MARK-UP**

**RULES**  
**on**  
**CAMPAIGN FINANCE**  
**& DISCLOSURE**

**ARKANSAS ETHICS COMMISSION**  
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**(501) 324-9600 or (800) 422-7773**  
**Facsimile (501) 324-9606**

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**§ 200 Definitions**

- (a) “Approved political action committee” means any person who receives contributions from one 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; does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and has registered pursuant to Ark. Code Ann. § 7-6-215 prior to making contributions. “Approved political action committee” does not include political parties, county political party committees, the candidate’s own campaign committee, exploratory committees, or ballot question committees or legislative question committees.<sup>1</sup>
- (b) “Candidate” means any individual who has knowingly and willingly taken affirmative action, including solicitation of funds, for the purpose of seeking nomination for or election to any public office.<sup>2</sup>
- (c) “Contribution” means, whether direct or indirect, advances, deposits, or transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payment for services, dues, advancements, forbearance, loans, pledge or promise of money or anything of value, whether or not legally enforceable, to a candidate, committee, or holder of elective office, made for the purpose of influencing the nomination or election of any candidate;

“Contribution” includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fund-raising events; the granting of discounts or rebates by television stations, radio stations, and newspapers not extended on an equal basis to all candidates for the same office; and any payments for the services of any person serving as an agent of a candidate or committee by a person other than the candidate or committee or persons whose expenditures the candidates or committee must report under these rules. The term “contribution” further includes any transfer of anything of value received by a committee from another committee; “Contribution” shall not include noncompensated, nonreimbursed, volunteer personal services or travel.<sup>3</sup>

“Contribution and expenditure” shall not include activity sponsored and funded by a political party that meets the definition of “political party” under Ark. Code Ann. § 7-1-101 or the requirements of Ark. Code Ann. § 7-7-205 to promote its candidates or nominees through events such as dinners, luncheons, rallies, or similar gatherings and shall not include nonpartisan activity designed to encourage individuals to register to vote or to vote or any communication by any membership organization to its members or stockholders if the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election or election of any candidate.<sup>4</sup>

- (d) “Carryover funds” means the amount of campaign funds retained from the last election by the candidate for future use but not to exceed the annual salary, excluding expense allowances, set by Arkansas law for the office sought. “Carryover funds” does not include campaign signs, campaign literature, and other printed materials that were: (i) purchased by the campaign; (ii) reported on the

<sup>1</sup> Ark. Code Ann. § 7-6-201(1).

<sup>2</sup> Ark. Code Ann. § 7-6-201(2).

<sup>3</sup> Ark. Code Ann. § 7-6-201(4).

<sup>4</sup> Ark. Code Ann. § 7-6-201(5).

appropriate contribution and expenditure report for the campaign at the time of the purchase; and (iii) retained for use in a future campaign by the same candidate.<sup>5</sup>

- (e) “Constitutional office” means the offices of Governor, Lieutenant Governor, Auditor of State, Treasurer of State, Secretary of State, Commissioner of State Lands, the Attorney General, the General Assembly, Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, and district judge.
- (ef) “County political party committee” means a person that is organized at the county level for the purpose of supporting its affiliate party and making contributions; is recognized by an organized political party, as defined in Ark. Code Ann. § 7-1-101, as being affiliated with that political party; 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; does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and registers pursuant to Ark. Code Ann. § 7-6-226 prior to making contributions.<sup>6</sup>
- (fg) “Election” means each election to be held to nominate or elect a candidate to any public office, including school elections. For the purposes of these rules, a preferential primary election, a runoff election, a special election, and a general election shall each constitute a separate election.<sup>7</sup>
- (gh) “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, made for the purpose of influencing the nomination or election of any candidate.<sup>8</sup> “Contribution and expenditure” shall not include activity sponsored and funded by a political party that meets the definition of “political party” under Ark. Code Ann. § 7-1-101 or the requirements of Ark. Code Ann. § 7-7-205 to promote its candidates or nominees through events such as dinners, luncheons, rallies, or similar gatherings and shall not include nonpartisan activity designed to encourage individuals to register to vote or to vote or any communication by any membership organization to its members or stockholders if the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election or election of any candidate.<sup>9</sup>
- (hi) “Exploratory committee” means a person who receives contributions which are held to be transferred to the campaign of a single candidate in an election.

“Exploratory committee” shall not include: (1) a political party that meets the definition of a political party under Ark. Code Ann. § 7-1-101 or the requirements of Ark. Code Ann. § 7-7-205; or (2) the candidate’s own campaign committee.<sup>10</sup> For a more detailed description of an “exploratory committee” and its duties, see §§ 251-252 herein.

<sup>5</sup> Ark. Code Ann. § 7-6-201(3).

<sup>6</sup> Ark. Code Ann. § 7-6-201(6).

<sup>7</sup> Ark. Code Ann. § 7-6-201(7).

<sup>8</sup> Ark. Code Ann. § 7-6-201(8).

<sup>9</sup> Ark. Code Ann. § 7-6-201(5).

<sup>10</sup> Ark. Code Ann. § 7-6-201(9).

- (~~h~~j) “Fair market value” means the price the good or service would bring between a willing seller and a willing buyer in the open market after negotiations. See *Minerva Enterprises, Inc. v. Howlett*, 308 Ark. 291, 824 S.W.2d 377 (1992).
- (~~j~~k) “Family” means an individual’s spouse, children of that individual or his or her spouse, or brothers, sisters, or parents of the individual or his or her spouse.
- (~~k~~l) “Financial institution” means any commercial bank, savings and loan, mutual savings bank or savings bank, credit union, insurance company, brokerage house, or any corporation that is in the business of lending money and that is subject to state or federal regulation.<sup>11</sup>
- (~~l~~m) “Guarantor” means a person who makes a guaranty for a debt, the liability for which does not begin until the principal debtor is in default.
- (~~m~~n) “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. The term does not include direct campaign contributions. For a more detailed discussion of in-kind contributions, see § 205 of these rules.
- (~~n~~o) “Independent expenditure” means any expenditure which is not a contribution and expressly advocates the election or defeat of a clearly identified candidate for office; is made without arrangement, cooperation, or consultation between any candidate or any authorized committee or agent of the candidate and the person making the expenditure or any authorized agent of that person; and is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of the candidate.<sup>12</sup>
- (~~o~~p) “Independent expenditure committee” means any person who receives contributions from one (1) or more persons in order to make an independent expenditure and is registered pursuant to Ark. Code Ann. § 7-6-227 prior to making expenditures.<sup>13</sup>
- (~~p~~q) “Individual” means a human being.
- (~~q~~r) “Legislative caucus committee” means a person that is composed exclusively of members of the General Assembly, that elects or appoints officers and recognizes identified legislators as members of the organization, and that exists for research and other support of policy development and interests that the membership hold in common. A “legislative caucus committee” includes, but is not limited to, a political party caucus of the General Assembly, the Senate, or the House of Representatives. An organization whose only nonlegislator members are the Lieutenant Governor or the Governor is a “legislative caucus committee” under these rules.<sup>14</sup>

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<sup>11</sup> Ark. Code Ann. § 7-6-201(10).

<sup>12</sup> Ark. Code Ann. § 7-6-201(11).

<sup>13</sup> Ark. Code Ann. § 7-6-201(12).

<sup>14</sup> Ark. Code Ann. § 7-6-201(13).

(fs) “Nonpartisan candidate” means a candidate for the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney. “Nonpartisan candidate” does not include a candidate for nonpartisan municipal office.<sup>15</sup>

(st) “Person” means 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. It shall also include a political party that meets the definition of “political party” under Ark. Code Ann. § 7-1-101 or the requirements of Ark. Code Ann. § 7-7-205, county political party committees, and legislative caucus committees.<sup>16</sup>

(tu) “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.<sup>17</sup>

(uv) (1) “Printed campaign materials” means:

(a) Literature mailed to an elector that is intended to or calculated to influence the vote of an elector in an election in this state, including without limitation signs, banners, flyers, and pamphlets; and

(b) Yard signs and push cards intended to or calculated to influence the vote of an elector in an election in this state.

(2) “Printed campaign materials” does not mean political paraphernalia, including without limitation stickers, buttons, pens, T- shirts, nail files, or other similar trinkets.

(vw) “Prohibited political action committee” means any person who receives contributions from one 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. “Prohibited political action committee” shall not include a political party that meets the definition of “political party” under Ark. Code Ann. § 7-1-101 or 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.<sup>18</sup>

<sup>15</sup> Ark. Code Ann. § 7-1-101.

<sup>16</sup> Ark. Code Ann. § 7-6-201(14).

<sup>17</sup> Ark. Code Ann. § 7-1-101, Ark. Code Ann. § 7-7-205.

<sup>18</sup> Ark. Code Ann. § 7-6-201(15).

- (wx) “Public office” means any office created by or under authority of the laws of the State of Arkansas, or of a subdivision thereof, that is filled by the voters, except a federal office.<sup>19</sup>
- (y) “Public trust crime” means a crime prohibited under Article 5, § 9 of the Arkansas Constitution.
- (xz) “Surplus campaign funds” means any balance of campaign funds over expenses incurred as of the day of the election except for:
- (A) Carryover funds; and
  - (B) Any funds required to repay loans made by the candidate from his or her personal funds to the campaign or to repay loans made by financial institutions to the candidate and applied to the campaign.

“Surplus campaign funds” does not include campaign signs, campaign literature, and other printed materials that were: (i) purchased by the campaign; (ii) reported on the appropriate contribution and expenditure report for the campaign at the time of the purchase; and (iii) retained for use in a future campaign by the same candidate.<sup>20</sup>

- (yaa) “Written instrument” means a check 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. In the case of a contribution by credit card or debit card, “written instrument” includes without limitation: (i) A paper record signed by the cardholder, provided that the paper record contains the following information for the cardholder at the time of making the contribution: (a) Valid name; (b) Complete address; (c) Place of business; (d) Employer; and (e) Occupation; or (ii) In the case of a contribution made through the internet, an electronic record created and transmitted by the cardholder, provided that the electronic record contains the following information for the cardholder at the time of making the contribution: (a) Valid name; (b) Complete address; (c) Place of business; (d) Employer; and (e) Occupation.<sup>21</sup>

## § 201 Loans

A candidate shall treat a loan of money or goods as a contribution for purposes of campaign finance laws and of the rules that follow. A candidate receiving a personal loan from a financial institution must disclose the loan as a loan from the candidate to his or her campaign on the proper Contribution and Expenditure Report. On the issue of loans, see also § 225 and § 234 *infra*.

<sup>19</sup> Ark. Code Ann. § 7-6-201(16).

<sup>20</sup> Ark. Code Ann. § 7-6-201(17).

<sup>21</sup> Ark. Code Ann. § 7-6-201(18).

**§ 202 Prohibited Contributions**

- (a) (1) A candidate or a person acting on a candidate's behalf shall not accept any contribution from a prohibited political action committee.
- (2) A prohibited political action committee shall not make any contribution to a candidate in an election.<sup>22</sup>
- (b) No contribution shall be made to a candidate, an approved political action committee, a county political party committee, an independent expenditure committee, an exploratory committee, or a political party unless such contribution is made directly to the intended recipient, provided that it shall be permissible to make a contribution to a candidate's campaign committee instead of directly to the candidate.<sup>23</sup>
- (c) No contribution shall be made to or knowingly accepted by a candidate or his or her campaign committee, an approved political action committee, a county political party committee, an independent expenditure committee, an exploratory committee, or a political party unless the contribution is made in the name by which the person providing the funds for the contribution is identified for legal purposes.<sup>24</sup>
- (d) (1) No person shall make an anonymous contribution in support of or opposition to a candidate or campaign committee totaling \$50 or more in a calendar year.
- (2) The intended recipient shall not keep an anonymous contribution of \$50 or more; the recipient shall promptly pay that contribution to the Secretary of State of Arkansas for deposit in the State Treasury as general revenues.<sup>25</sup>
- (e) Whenever any person provides his or her dependent child with funds and the child uses those funds to make a contribution to a candidate, the contribution shall be attributed to such person for purposes of applying the individual contribution limit.<sup>26</sup>
- (f) Campaign contributions may not be made by individuals who are not citizens of the United States of America or by any other entity which is not organized, existing, or created under the laws of the United States or of any state or other place subject to the jurisdiction of the United States and which does not have its principal place of business in the United States.<sup>27</sup>
- (g) It shall be unlawful for a candidate for public office or for any person acting on the candidate's behalf to accept campaign contributions in excess of the campaign contribution maximum amount per election from an individual, political party, county political party committee, legislative caucus committee, or approved political action committee. It shall be unlawful for a candidate for public office or for any person acting on the candidate's behalf to accept a campaign contribution from a

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<sup>22</sup> Ark. Code Ann. § 7-6-203(e).

<sup>23</sup> Ark. Code Ann. § 7-6-205(a).

<sup>24</sup> Ark. Code Ann. § 7-6-205(b).

<sup>25</sup> Ark. Code Ann. § 7-6-205(c).

<sup>26</sup> Ark. Code Ann. § 7-6-205(d).

<sup>27</sup> Ark. Code Ann. § 7-6-205(e).



prospective contributor other than an individual, political party, county political party committee, legislative caucus committee, or approved political action committee.<sup>28</sup>

- (h) It shall be unlawful for an individual, political party, county political party committee, legislative caucus committee, or approved political action committee to make a contribution to a candidate for public office or to any person acting on the candidate's behalf, which in the aggregate exceeds the campaign contribution maximum amount per election.<sup>29</sup>

### § 203 Contribution Amounts

- (a) A candidate or a person acting on the candidate's behalf shall not accept contributions or cumulative contributions which exceed the campaign contribution maximum amount per contributor per election. A candidate may accept a campaign contribution or contributions up to the maximum amount from the following prospective contributors for each election in which he or she is a candidate, whether opposed or unopposed: (i) an individual; (ii) a political party; (iii) a county political party committee; (iv) a legislative caucus committee; or (v) an approved political action committee.
- (b) ~~An individual, a political party, a county political party committee, a legislative caucus committee, or an approved political action committee~~ A person shall not make contributions or cumulative contributions to a candidate or to a person acting on the candidate's behalf which exceed the campaign contribution maximum amount per contributor per election. An individual, a political party, a county political party committee, a legislative caucus committee, or an approved political action committee may make a contribution or contributions up to the maximum amount to a candidate for each election, whether opposed or unopposed.
- (c) The above limitations shall not apply to:
- (1) loans made by a candidate from his or her own personal funds to the campaign;
  - (2) contributions made by a candidate from his or her own personal funds to the campaign;
  - (3) personal loans that financial institutions make to a candidate and that are applied to his or her campaign; or
  - (4) independent expenditures, as defined in Ark Code Ann. § 7-6-201(11).
- (d) The campaign contribution limit shall be adjusted by the Arkansas Ethics Commission at the beginning of each odd-numbered year in an amount equal to the percentage certified to the Federal Election Commission by the Bureau of Labor Statistics of the Department of Labor under 52 U.S.C. § 30116(c) as existing on January 1, 2015. If the amount after the adjustment is not a multiple of

<sup>28</sup> Ark. Code Ann. § 7-6-203(a).

<sup>29</sup> Ark. Code Ann. § 7-6-203(b).

one hundred dollars (\$100), the Arkansas Ethics Commission shall round the amount to the nearest multiple of one hundred dollars (\$100).<sup>30</sup>

- (e) No campaign contribution exceeding \$100<sup>31</sup> shall be received in cash nor shall any campaign expenditure exceeding \$50 be made in cash.<sup>32</sup>
- (f) All contributions and expenditures<sup>33</sup> in behalf of a campaign activity, other than in-kind contributions and expenditures,<sup>34</sup> in excess of the amounts mentioned in subsection (e) of this section shall be made by: (1) a written instrument containing the name of the donor and the name of the payee; (2) a credit card or a debit card where the transaction results in a paper record signed by the cardholder, provided that the paper record contains the following information for the cardholder at the time of making the contribution: (a) valid name; (b) complete address; (c) place of business; (d) employer; and (e) occupation; or (3) a transaction that results in an electronic record created or transmitted by the cardholder where a contribution or expenditure is made through the internet, provided that the electronic record contains the following information for the cardholder at the time of making the contribution: (a) valid name; (b) complete address; (c) place of business; (d) employer; and (e) occupation.
- (g) The contribution limits herein are “per election,” not “per election cycle.” A candidate may receive a contribution up to the maximum amount from any prospective contributor for each preferential primary election, runoff election, special election, or general election in which he or she is a candidate, whether opposed or unopposed. If a political party elects to use a caucus, rather than a primary election, in which to select its candidate, the caucus shall be treated as an election for campaign finance purposes and the maximum contribution limits shall be in effect.

#### **§ 204 Limitations on Soliciting and Accepting Contributions**

- (a) A candidate, a person acting on the candidate’s behalf, or an exploratory committee shall not solicit or accept campaign contributions more than two (2) years before an election in which the candidate seeks nomination or election. This section shall not prohibit the solicitation or acceptance of a contribution for the sole purpose of raising funds to retire a previous campaign debt.<sup>35</sup>
- (b) 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 that election except for the sole purpose of raising funds to retire campaign debt.<sup>36</sup>
- (c) (1) Municipalities, counties, and townships may establish reasonable limitations on:
  - (A) Time periods that candidates for local office shall be allowed to solicit contributions;

<sup>30</sup> Ark. Code Ann. § 7-6-203(~~ji~~).

<sup>31</sup> Ark. Code Ann. § 7-6-204(a).

<sup>32</sup> Ark. Code Ann. § 7-6-204(~~a~~).

<sup>33</sup> Ark. Code Ann. § 7-6-204(b).

<sup>34</sup> See definition of “in-kind contribution” in § 200(m).

<sup>35</sup> Ark. Code Ann. § 7-6-203(~~fe~~).

<sup>36</sup> Ark. Code Ann. § 7-6-203(~~hg~~)(5).

- (B) Limits on contributions to local candidates at amounts lower than those set by state law; and
  - (C) Voluntary campaign expenditure limits for candidates seeking election to their respective governing bodies.
- (2) Enforcement of any limitation established by a local jurisdiction is the responsibility of the municipality, county, or township establishing the limitation.

### **§ 205 In-Kind Contributions-Reporting and Value**

- (a) In addition to monetary contributions, candidates are required to report the receipt of any "in-kind contributions," as defined in § 200(m) 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 contributor makes an "in-kind contribution" whenever, in conjunction with the nomination or election of a specific candidate, such contributor purchases, sells or leases an item, or provides a service to or on behalf of the candidate 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. The donor of the item or service shall place the value on the in-kind contribution when given. The candidate or someone designated to act on his or her behalf, such as the treasurer of the campaign, 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 Ethics Commission.
- (d) The transfer of anything of value by a political party to a candidate, other than a direct contribution or those items specifically listed as exemptions in Ark. Code Ann. § 7-6-201(5), shall constitute an in-kind contribution. A political advertisement by a political party on behalf of a specifically named candidate expressly advocating the election of the candidate or the defeat of the candidate's opponent constitutes an in-kind contribution. However, public efforts, including political advertisements, by political parties to promote the party's platform or to inform the public of the party's views on certain issues, as opposed to promoting the election or defeat of specific candidates, shall not constitute an in-kind contribution to any candidate.
- (e) 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 does not constitute an in-kind contribution. Costs associated with nonpartisan activities designed to encourage individuals to register to vote or to vote do not constitute in-kind contributions. Finally, the costs associated with internal organizational communications of business, labor, professional or other associations which merely endorse a candidate do not constitute in-kind contributions.

- (f) Political advertising, as detailed in subsection (d) above, supporting more than one candidate and other forms of political marketing may be an in-kind contribution. If political advertising or other mass political marketing technique supports more than one candidate and is determined to be an in-kind contribution, the amount of the contribution shall be determined and reported by dividing the full value of the political advertising or marketing by the number of persons benefited. Each candidate specifically listed by the advertisement shall assume the *pro rata* share of the costs of the contribution.

## § 206 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 candidate on a volunteer basis, provided the need for the services arises from the campaign. For example, accounting or bookkeeping services involved with handling the candidate's campaign financing may be provided to a candidate on a volunteer basis and will not count as an "in-kind" contribution even if no fees are charged.<sup>37</sup>
- (c) An individual may use his or her home or the recreational room of his or her residential complex for a candidate and/or party-related activities and such use will not be deemed a contribution. Any nominal fee charged for the use of the room is not considered a contribution. An individual may buy food, beverage and invitations<sup>38</sup> used in connection with a candidate or party-related activity conducted in his home or the recreational room of his or her residential complex and such expenses will not be considered an "in-kind" contribution, provided the expenditures do not exceed \$1,000 per candidate per election. Any amounts over \$1,000 would need to be duly reported as an in-kind contribution.
- (d) An individual may volunteer and obtain the use of a church or community center room for a candidate or party-related activities without incurring an "in-kind" contribution, provided the room is used on a regular basis *without charge* by members of the community without regard to political affiliation and for noncommercial purposes.

<sup>37</sup> Arkansas Ethics Commission Opinion No. 96-EC-005.

<sup>38</sup> This exemption does not cover the cost of mailing invitations, only the cost of printing invitations.

- (e) An individual may spend a reasonable amount for his or her normal living expenses incurred while engaging in volunteer activity.

### **§ 207 Personal Use of Campaign Funds**

- (a) A candidate shall not take campaign funds as personal income. A candidate shall not take any campaign funds as income for his or her spouse or dependent children, except that:
- (1) An opposed candidate may employ his or her spouse or dependent children as campaign workers;<sup>39</sup> and
  - (2) An opposed candidate who, during and before the election, takes a leave of absence without pay from his primary place of employment shall be authorized to take campaign funds before the election as personal income up to the amount of employment income lost as a result of such leave of absence.
- (b) Campaign funds which are retained as “carryover funds,” as defined by § 200(d) of these rules and Ark. Code Ann. § 7-6-201(3), are treated as campaign funds and may not be taken as personal income or as income for the candidate’s spouse or dependent children.

### **§ 208 Use of Campaign/Carryover Funds-Personal Use Defined**

- (a) (1) For purposes of this section and throughout these rules, a candidate or officeholder who uses campaign funds or carryover funds to fulfill any commitment, obligation or expense that would exist regardless of the candidate’s campaign or officeholder activity and an officeholder who uses campaign funds (retained as carryover funds) to fulfill any commitment, obligation or expense that would exist regardless of the duties and responsibilities of his or her office shall be deemed to have taken campaign funds as personal income.
- (2) Candidates or officeholders may use campaign funds or carryover funds to fulfill any commitment, obligation, or expense authorized by law, or permitted by an Arkansas Ethics Commission rule or opinion at the time of the expenditure, or reasonably and legitimately related to a campaign or officeholder activity.
- (b) The use of campaign funds to purchase a cake or other perishable item of food at a fund-raising event held by a volunteer agency, as defined in Ark. Code Ann. § 16-6-103, shall not be considered a taking of campaign funds as personal income.
- (c) The use of campaign funds to purchase advertising prior to the date the final report is due to be filed thanking voters for their support shall not be considered a taking of campaign funds as personal income.

<sup>39</sup> Ark. Code Ann. § 7-6-203(g).

- (d) The use of campaign funds to pay a candidate's own personal expenses for food, lodging, or travel to attend a national presidential nominating convention shall not be considered a taking of campaign funds as personal income.
- (e) If an expense is the result of campaign or officeholder activity, then it is not considered personal use and not prohibited by those sections and subsections herein limiting the personal use of campaign funds or carryover funds.
- (f) For those candidates who lose an election and, after disposing of surplus funds, have carryover funds remaining, or for those officeholders who are no longer in office, personal use of such funds remains prohibited for expenses unless the expenses relate to a future candidacy.
- (g) Pursuant to Ark. Code Ann. § 7-6-203, knowingly taking campaign funds as personal income is a:
  - (1) Class B felony if the value of the benefit is twenty-five thousand dollars (\$25,000) or more;
  - (2) Class C felony if the value of the benefit is five thousand dollars (\$5,000) or more but less than twenty-five thousand dollars (\$25,000);
  - (3) Class D felony if the value of the benefit is two thousand five hundred dollars (\$2,500) or more but less than five thousand dollars (\$5,000); or
  - (4) Class A misdemeanor if the value of the benefit is less than two thousand five hundred dollars (\$2,500).

## § 209 Personal Expenses-Prohibited Uses

Campaign funds may not be used to pay personal expenses. The following expenses are considered "personal expenses" per se:

- (a) **Household Food Items and Supplies**-This includes food purchased for day-to-day consumption in the personal residence and supplies purchased to maintain the personal residence. It does not include food and supplies for fund-raising activities (even if they take place in the candidate's home) and food or refreshments for meetings and gatherings related to the candidate's campaign.
- (b) **Clothing**-This includes all attire for political or personal functions. It does not include clothing of nominal value such as T-shirts or caps imprinted with a campaign logo or slogan or a candidate's name. Such items may be purchased with campaign funds and are a legitimate campaign expense.
- (c) **Mortgage, Rent and Utility Payments**-This includes any payments with respect to a personal residence of the candidate or his or her family, even if a portion of the residence is used by the campaign. It does not include (i) payments made by a candidate with respect to other buildings or offices or office space used solely for campaign purposes, such as the campaign's headquarters, even if the candidate owns the space used, so long as the space is not the personal residence of

the candidate or his or her family and the campaign pays a fair market value for use of the space; or (ii) payments made by a member of the General Assembly with respect to an apartment leased solely for use while in the capitol on official business so long as the apartment is not maintained as the officeholder's primary personal residence and per diem is used to pay a proportional share of the rent and utilities incurred in connection with maintaining the apartment. That share shall be determined using a fraction, the numerator of which shall be the number of days per diem was received in a particular month and the denominator of which shall be the total number of days in that month. Furthermore, this prohibition does not apply to charges for long distance telephone calls made for campaign or officeholder purposes which may originate from the candidate's residence.

- (d) **Membership Dues, Fees or Other Gratuitous Payments to Nonpolitical Organizations, Other Than Charities**-Campaign funds may not be used to make payments to a country club, health club, recreational facility or other nonpolitical organization unless the payments are made in connection with a fund-raising event or other political event which takes place on the organization's premises. The prohibition does not include membership dues in an organization which may offer political contacts, such as community-based religious organizations, ethnic organizations and other civic organizations.
- (e) **Donations and Contributions to Churches**-Donations and contributions to churches are not allowed from campaign funds while a candidate is seeking office unless the candidate had, prior to deciding to run for office, regularly given money to the church or had been a previous member of the particular church to which the expenditure is intended. Following the conclusion of the campaign, a candidate may donate or contribute surplus or carryover funds to nonprofit, tax-exempt organizations as provided in Ark. Code Ann. § 7-6-203(h)(1)(C).

## **§ 210 Personal Use-Determination by Arkansas Ethics Commission**

Whether an expense or use of campaign funds is to be considered a "personal use" or "personal expense" and therefore prohibited by the law and these rules is a factual determination to be made by the Arkansas Ethics Commission. A person may seek an advisory opinion from the Commission concerning whether a particular use of funds is to be considered "personal use."

## **§ 211 Automobile Expenses**

- (a) The payment of travel expenses associated with automobile usage during a campaign is allowable. If a candidate wishes to use campaign funds for reimbursement of travel expenses, the following must be observed:
- (1) The campaign may reimburse the candidate and/or campaign workers for actual miles driven relating to campaign activity at a reasonable mileage rate not to exceed the rate at which the State of Arkansas, pursuant to the General Accounting and Budgetary Procedures Law of 1973, as amended, reimburses its employees for private automobile mileage for official business travel.<sup>40</sup>

<sup>40</sup> Arkansas Ethics Commission Opinion No. 97-EC-005(B).

- (2) The campaign must maintain records showing the date of travel, destination(s) involved, purpose of travel and odometer readings of each trip for which reimbursement is allowed.
  - (3) The candidate will be held responsible to ensure that accurate odometer readings are maintained.
  - (4) Maintenance costs should be paid from personal funds, not campaign funds, as the rate per mile necessarily includes depreciation and anticipated maintenance costs.
  - (5) Nothing in this rule shall prevent a campaign from leasing a vehicle from a third party for campaign use. The campaign may lease or rent a car for the exclusive use of the campaign, provided it pays the fair market value of all costs associated with the car pursuant to the lease or rent agreement.
- (b) Following the election, the candidate may not use campaign or surplus funds to reimburse the candidate or campaign workers for automobile expenses or travel unless the expense is related solely to pre-election travel and the request for the reimbursement had been submitted to the campaign prior to the time of election or the expense relates solely to retiring a campaign debt.

**§ 212 Use or Lease of Airplane During Campaign**

- (a) A campaign or candidate may use campaign funds to lease an airplane for campaign purposes. As with automobile usage, described in § 211 above, the campaign or the candidate should ensure that accurate records are maintained and that the travel relates to campaign activity before using campaign funds to pay for the lease.
- (b) A candidate may lease an airplane to his or her campaign from a company in which he or she has a financial interest and pay for the lease from campaign funds. The lease payment must not exceed the amount necessary to reimburse the leasing business for actual expenditures made by the business related to the lease. If the candidate has a significant financial interest in the leasing company, neither the candidate nor the leasing company may make a profit from the lease agreement. When such a lease occurs, the candidate should report the expenditure by itemizing the amount paid, the date of payment, and the name and address of any person, including the candidate, to whom the expenditure was made.<sup>41</sup>

**§ 213 Payment of Fines Associated with Campaign**

A campaign or candidate may use campaign funds to pay fines associated with the campaign, as in the case of a fine issued by the Ethics Commission for the late filing of a report. The payment of a fine for violations relating to a candidate's campaign duties is a political expenditure connected with the campaign

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<sup>41</sup> Arkansas Ethics Commission Opinion No. 97-EC-005(A).



and not a personal expense. If a fine is paid with campaign funds, it must be reported as a campaign expenditure and itemized on the next Contribution and Expenditure Report due, if exceeding \$100.<sup>42</sup>

**§ 214 Campaign Expenditures-Use of Funds to Employ Campaign Workers, Including the Candidate and Family Members**

- (a) A candidate may use campaign funds to employ people to work for the campaign and may pay those employees reasonable wages or expenses provided payment relates to campaign activity. A candidate or the campaign is allowed to hire employees or contract labor on a temporary basis to assist in such campaign matters as conducting polls, providing transportation for electors to the polls, posting signs and other forms of political advertising, handling mail and telephone solicitation, and other tasks related to campaign activity.
- (b) A candidate who is unopposed may not use campaign funds to employ family members. If the candidate has an opponent, he or she may employ members of his or her family as campaign workers, provided the wage paid is reasonable. What constitutes a reasonable wage is a factual determination subject to review by the Arkansas Ethics Commission. Excessive wages may be viewed as personal income in violation of Ark. Code Ann. § 7-6-203.
- (c) In addition to the personal income exceptions noted above, a candidate who has an opponent and who during and before the election takes a leave of absence without pay from his primary place of employment shall be authorized to use campaign funds as personal income up to the amount of employment lost as a result of the leave. See § 207(a)(2) herein.

**§ 215 Campaign Expenditures-Political Conferences or Seminars**

- (a) Candidates may use campaign funds to reimburse themselves for attendance to in-state or out-of-state conferences or seminars on general political issues. During the campaign, funds may be used to reimburse campaign staff and spouses provided their attendance to these conferences relates to the campaign. After an election, neither surplus funds nor carryover funds may be used to reimburse campaign workers, staff or spouses of either the candidate or the workers for attendance at conferences or seminars. Officeholders are permitted to use carryover funds to reimburse only themselves for travel associated with attending conferences or seminars on general political issues.
- (b) After an election, officeholders may only use campaign funds for reimbursement of travel associated with attending conferences or seminars on general political issues if there is a carryover fund, as defined by Ark. Code Ann. § 7-6-201(3) and § 200(d) of these rules, remaining and available to the officeholder. A surplus must have been declared properly at the end of the election and reported in a timely fashion and the use of the carryover funds must be reported on the Carryover Fund Reporting Form pursuant to Ark. Code Ann. § 7-6-203(h)(4)(C).

<sup>42</sup> Arkansas Ethics Commission Opinion No. 97-EC-002.

- (c) The use of campaign funds or carryover funds after an election, as outlined in (a) and (b) above, is only available for those candidates or officeholders who ended their respective campaigns with a carryover fund. Candidates or officeholders who end their campaigns either with no carryover or in debt may not use or raise campaign funds for travel associated with attending conferences or seminars on general political issues. Candidates who end campaigns in debt may not seek reimbursement for any post-election travel unless the travel is related to an event or fund-raising effort designed for the sole purpose of retiring the campaign debt. Whether travel solely relates to efforts to retire a debt is a factual determination to be made by the Arkansas Ethics Commission.

**§ 216 Time of Making Expenditure**

- (a) The date of a campaign or post-campaign 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.

**§ 217 Campaign Cash Expenditures**

- (a) Except as noted in subsection (c) below, no campaign expenditure in excess of fifty dollars (\$50) shall be made in cash.
- (b) All expenditures on behalf of a campaign activity, in excess of fifty dollars (\$50), shall be made by a written instrument containing the name of the payee.
- (c) The payment of filing fees may be in cash even though the amount exceeds fifty dollars (\$50). The candidate shall obtain a receipt for the payment and shall report it as either a loan or contribution to the campaign and also as a campaign expenditure.

**§ 218 Description of Campaign Expenditures**

The report disclosing a campaign expenditure for goods or services must describe the category(ies) of goods or services received in exchange for the expenditure. It is not sufficient simply to list the payee.

**§ 219 Reporting Expenditures by Credit Card**

- (a) In addition to the reporting requirements outlined in § 216(c) and § 218 above, report of an expenditure by credit card must identify the vendor who receives the payment from the credit card company. The nature of the expenditures should be included in the applicable category on the Contribution and Expenditure Report.
- (b) Expenditures by credit card should not be reflected or reported as lump sum expenditures. Instead, expenditures by credit card are to be itemized showing:
- (1) Name of vendor;
  - (2) Amount of payment or expense;
  - (3) Date of expense; and
  - (4) Item purchased or reason for expenditure.

**§ 220 Allowable Expenditures-Purchase of Advertisements and Awards**

- (a) Candidates and officeholders may purchase advertisements in publications of charitable, civic and educational organizations. This is permissible for officeholders even if the expenses are related to their holding office and not reimbursable by the state. Campaign and post-campaign surplus and carryover funds may be used to buy items such as ads in school yearbooks, as these purchases serve to increase public visibility for the candidates and officeholders.
- (b) Following an election, but not before, a candidate or officeholder, who ends his or her campaign with carryover funds may use those funds to purchase items given as awards in recognition of accomplishments where they are presented by a current officeholder in person. Such items include the purchase of American and State flags flown at the State Capitol and given to schools in subsequent ceremonies.

**§ 221 Allowable Expenditures-Purchase of Banquet Tickets for Charitable, Civic, or Political Events**

- (a) Candidates may purchase tickets from charities, civic organizations and political parties for banquets or other similar special social events. This includes the purchase of a table if the customary and normal practice of the banquet is the purchasing of a table as opposed to individual tickets. Purchase of tickets for a candidate's spouse and campaign workers is likewise permissible with campaign funds. The presence at a banquet increases public visibility of candidates. If the candidate purchases a table of seats or tickets, the candidate shall make all reasonable efforts to attend the banquet.
- (b) Officeholders who ended their campaigns with carryover funds may use these funds to purchase tickets from charities, civic organizations and political parties for banquets or other similar special social events. The presence of officeholders increases the public visibility of officeholders and, for that reason, officeholders who purchase tickets should make all reasonable efforts to attend the

banquet. Officeholders may use carryover funds to purchase a ticket for a spouse, but carryover funds should not be used to purchase tickets for State Capitol staff, current staff or former campaign workers.

#### **§ 222 Allowable Expenditures-Office Equipment**

- (a) Candidates and officeholders may use campaign or carryover funds for lease, rental or use charges of any ordinary and necessary office equipment including, but not limited to, copy machines, telephones, postage meters, facsimile machines, computer hardware and software, printers, and video equipment.
- (b) Party committees, candidate committees and political committees organized for ongoing political activities may purchase space or office equipment for ongoing political concerns.

#### **§ 223 Allowable Expenditures-Miscellaneous Campaign-Related Expenditures**

- (a) In addition to those expenditures listed throughout these rules, candidates and officeholders are free to expend campaign funds on any purpose designed to further their campaign or office as long as it is not for personal income or otherwise prohibited by law. Examples of other miscellaneous expenses on which candidates or officeholders may lawfully expend money include, but are not limited to:
  - (1) Flowers, sympathy gifts or other nominal memorial items to a constituent's funeral or family;
  - (2) Hiring public halls and music for political meetings, furnishing music, uniforms, banners or fireworks for political clubs, parades or like events and for related advertising of same;
  - (3) Printing and circulating political communications, sample ballots or ballot labels; and
  - (4) Sponsorship of a sports team.
- (b) This list is not exhaustive. As noted, the determination whether a campaign expense is allowable is a factual determination to be made by the Arkansas Ethics Commission. The Commission may periodically issue advisory opinions determining allowable expenditures and such opinions should be considered as an addition to any listing of expenditures herein.

#### **§ 224 Campaign Assets**

After a campaign has ended, campaign assets must be disposed of in the manner prescribed by Ark. Code Ann. § 7-6-203(h), whether by sale of property for money or transfer of property in accordance with

Ark. Code Ann. § 7-6-203(h).<sup>43</sup> The candidate is responsible for assigning a fair market value to all assets of the campaign.<sup>44</sup>

A candidate may retain campaign signs, campaign literature, and other printed campaign materials that were purchased by the campaign, were reported on the appropriate contribution and expenditure report for the campaign at the time of the purchase, and are retained for use in a future campaign by the same candidate. A candidate may reuse the campaign signs, campaign literature, and other printed campaign materials in future campaigns and is not required to list the campaign signs, campaign literature, and other printed campaign materials in future contribution and expenditure reports.<sup>45</sup>

### **§ 225 Repayment of Loans**

- (a) During an election cycle, a candidate may use campaign contributions to repay loans by the candidate from his or her personal funds to the campaign or to repay loans made by financial institutions to the candidate and applied to the campaign.
- (b) After an election, a candidate may retain any campaign contributions required to repay loans made by the candidate from his or her personal funds to the campaign or to repay loans made by financial institutions to the candidate and applied to the campaign.<sup>46</sup> Such contributions are subject to applicable campaign contribution limits.

### **§ 226 Surplus or Carryover Funds**

- (a) In ascertaining the amount of surplus campaign funds, as defined in § 200(x), the candidate shall take the total of all cash on hand (currency), balances on deposit in any bank or other depository institution, money orders, checks, traveler's checks or cash equivalents, certificates of deposit, treasury bills, and any other investment by the candidate or his or her committee valued at fair market value with the total amounts owed to the candidate or his or her committee in the form of credits, refunds or returns, or receivables and subtract therefrom the sum of the total amount of unpaid debts and obligations incurred with respect to the election.
- (b) A candidate who has surplus campaign funds, as defined in § 200(x), not otherwise obligated for the payment of campaign expenses incurred, shall disclose on the final report filed following the general election, how such surplus funds were distributed. Within thirty (30) days following the end of the month in which an election is held or a candidate has withdrawn, a candidate shall turn over surplus campaign funds to either:
  - (1) The Treasurer of Arkansas for the benefit of the General Revenue Fund Account of the State Apportionment Fund;

<sup>43</sup> Arkansas Ethics Commission Opinion No. 92-EC-020.

<sup>44</sup> For the definition of fair market value, see § 200(i) *supra*.

<sup>45</sup> Ark. Code Ann. § 7-6-228.

<sup>46</sup> Ark. Code Ann. § 7-6-201(17)(B).

- (2) A political party as defined in Ark. Code Ann. § 7-1-101 or a political party caucus of the Arkansas General Assembly, the Senate or House of Representatives;
  - (3) A nonprofit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;
  - (4) Cities of the first class, cities of the second class, or incorporated towns; or
  - (5) The contributors to the candidate's campaign. Provided that no contributor may receive more than the amount contributed by such contributor for that election.
- (c) Notwithstanding the provisions of § 226(b)(1)-(5), the candidate may elect to retain from the surplus an amount as *carryover funds*. *Carryover funds* shall be the amount of campaign funds retained from the last election by the candidate for future use but not to exceed the annual salary, excluding expense allowances, set by Arkansas law for the office sought. If funds are retained pursuant to this section, they may be used as provided for in § 227 of these rules.
- (d) If an unopposed candidate agrees not to solicit further campaign contributions by filing an affidavit declaring such agreement, the candidate may dispose of any surplus campaign funds prior to a general election as soon as the time has passed to declare an intent to be a write-in candidate pursuant to Ark. Code Ann. § 7-5-205. For unopposed candidates for nonpartisan office, the candidate may dispose of any surplus campaign funds prior to a nonpartisan general election by filing such an affidavit as soon as the time has passed to declare an intent to be a filing fee candidate, a petition candidate, or a write-in candidate pursuant to Ark. Code Ann. § 7-10-103. The affidavit shall be filed in the office where the candidate is required to file reports of contributions received and expenditures made. Unopposed candidates and defeated candidates who file the affidavit are exempt from further reporting requirements provided that the affidavit contains all campaign activity not previously reported and a statement that the candidate's fund has a zero balance.
- (e) Surplus campaign funds or carryover funds given to a political party caucus shall be segregated in an account separate from other caucus funds and shall not be used by the political party caucus to make a campaign contribution or to provide any personal income to any candidate who donated surplus campaign funds or carryover funds.
- (f) If the candidate's campaign has not ended, disposal of surplus campaign funds is not required and the candidate may carry forward any remaining funds to the general primary election, general election, or general runoff election for that same office.
- (g) If a candidate loses an election or if an officeholder is no longer in office, and after disposing of surplus funds, has carryover funds remaining, personal use of funds remains prohibited by this section for expenses unless the expenses relate to a future candidacy and comply with § 208 of these rules.

**§ 227 Carryover Funds-Used as Officeholder Expenses**

- (a) In addition to the uses of carryover funds as described in §§ 220-223 above, an officeholder with carryover funds may use such funds for future office-related or future campaign expenses. Nothing shall prohibit a person at any time from disposing of his or her carryover funds in the same manner that surplus campaign funds could be expended.
- (b) If funds are retained pursuant to § 226(c) of these rules, the candidate shall establish a carryover account, separate from any personal or other account. Any carryover funds transferred to this account shall be used only for future campaigns involving the candidate in a non-federal office and/or legitimate expenses in connection with the candidate's public office.
- (c) Legitimate office expenses include transportation incurred by the officeholder or a member of his or her staff incurred in the operation of the office. The funds may be used to purchase office supplies and/or equipment for use in the office or in future campaigns, or to purchase advertisements for the office in such publications as a school's yearbook. The funds may be used to reimburse the officeholder or his or her staff for meals or lodging in connection with the operation of the office or future campaigns. The funds may be used to purchase invitations or notices to political events, as well as to purchase gifts or commemorative items for staff members or their families in times of sickness, death, or family emergency. The funds could be used to offset any reasonable and legitimate office expense which is otherwise not reimbursable from public funding.
- (d) The carryover account funds may be deposited in an interest-bearing account; however, all deposits, withdrawals and interest earned thereon shall be reported on the appropriate Contribution and Expenditure Report during the applicable reporting period. If the candidate seeks reelection to office or election to another office, the funds remaining must be transferred to the new campaign account. The candidate may also choose to transfer surplus campaign funds from future elections to the office account upon reelection or election to another office. At no time, however, may the total amount of the office account exceed the yearly salary, excluding expense allowances, for the office sought or held.
- (e) Upon leaving public office, any person who has funds in an carryover account pursuant to this subsection remaining on deposit shall be able to retain such funds for not more than ten (10) years after the last election at which he or she was a candidate or, if applicable, not more than ten (10) years after the last day that the person held office.<sup>47</sup> The person may give such funds to the State Treasurer to be deposited in the General Revenue Fund, to a political party as defined by Ark. Code Ann. § 7-1-101 or a political party caucus of the Arkansas General Assembly, the Senate, or the House of Representatives, to a nonprofit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; or to cities of the first class, cities of the second class, or incorporated towns.
- (f) No candidate, nor any person on behalf of a candidate, may accept contributions or funds after the candidate has withdrawn his or her nomination or after the candidate has been eliminated as a candidate.

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<sup>47</sup> Ark. Code Ann. § 7-6-203(h)(4)(D).

- (g) For all carryover funds related to elections after July 1, 1997, any person having carryover funds and who later files as a candidate for public office, shall be required to transfer his or her carryover funds into the person's new active campaign account upon filing for the position. Once transferred, the funds will no longer be treated as carryover funds.<sup>48</sup>
- (h) The use of carryover funds to pay an elected candidate's own personal expenses for food, lodging, conference fees, or travel to attend a conference related to the performance of his or her responsibilities as an elected official:
- (1) Shall not be considered a taking of campaign funds as personal income;
  - (2) The reimbursement of expenses shall be a result of travel and the source of the reimbursement shall be authorized under the rules of the Arkansas House of Representatives or the Arkansas Senate and used to reimburse the carryover account; and
  - (3) The reimbursement amount shall be reported in the elected candidate's carryover fund report.

#### § 228 Carryover Funds-Time Frame for Reporting Expenditures

- (a) Any time carryover funds in excess of \$500 are expended, including the disposal of such funds pursuant to § 227(e), the expenditures shall be reported on the Carryover Fund Reporting Form. The report shall be filed no later than fifteen (15) days after a calendar quarter in which a report becomes required. No report is required in any calendar quarter in which the cumulative expenditure limit has not been exceeded since the person's last report. If no quarterly report has been filed within a calendar year pursuant to this section, then a person who retains carryover funds shall file an annual report outlining the status of the carryover fund account as of December 31. This annual report shall be due by January 31 of each year.
- (b) A person who retains carryover funds from a general election held in November or a runoff election held in November is not required to file an annual report for the year of the general election or runoff election from which carryover funds were retained.
- (c)
- (1) The carryover fund reports of a candidate for state or district office shall be filed with the Secretary of State.
  - (2) The carryover fund reports of a candidate for state or district office filed with the Secretary of State shall be filed in electronic form through the official website of the Secretary of State.
  - (3) The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of carryover fund reports in electronic form under § 228(c)(2) to ensure that all required information is requested.

<sup>48</sup> Ark. Code Ann. § 7-6-203(hg)(4)(B).



- (4) The official website of the Secretary of State shall allow for searches of carryover fund report information required to be filed in electronic form under § 228(c)(2).
  
- (d) The carryover fund reports of a candidate for school district, township, municipal, or county office shall be filed with the county clerk of the county in which the election was held. The carryover fund reports of a candidate for state or district office shall be filed with the Secretary of State.
  
- (e) A candidate required to file carryover fund reports in electronic form under § 228(c) may file reports in paper form under this section if:
  - (1) The candidate does not have access to the technology necessary to submit reports in electronic form; and
  - (2) Submitting reports in electronic form would constitute a substantial hardship for the candidate.
  
- (f) (1) A candidate filing reports in paper form under § 228(e) shall submit with his or her first paper report in an election cycle a notarized affidavit on a form prepared by the Secretary of State declaring that:
  - (aA) The candidate does not have access to the technology necessary to submit reports in electronic form;
  - (bB) Submitting reports in electronic form would constitute a substantial hardship for the candidate; and
  - (cC) The candidate agrees to file all other reports in paper form for the duration of the election cycle.
  - (2) The Secretary of State shall not accept a report in paper form under § 228(e) if a notarized affidavit was not submitted with the first paper report in the election cycle.
  
- (g) (1) The Secretary of State shall make available to candidates wishing to file reports in paper form under this section:
  - (aA) Information on the deadlines for filing required reports; and
  - (bB)(i) Appropriate forms and instructions for complying with the deadlines.
  - (ii) The Arkansas Ethics Commission shall approve the forms and instructions used by the Secretary of State to ensure that all required information is requested.
  - (2) Reports shall be filed on the forms furnished by the Secretary of State, except that computer-generated contribution and expenditure reports shall be accepted by the Secretary

of State and the Arkansas Ethics Commission provided that all of the requisite elements are included.

- (h) (1) A report submitted in paper form under this section other than a preelection report is timely filed if it is either hand delivered or mailed to the Secretary of State, properly addressed, and postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on the date that the report is due.
- (2) The Secretary of State shall accept a report via facsimile, provided the original is received by the Secretary of State within ten (10) days of the date of facsimile transmission.
- (i) The Secretary of State shall make available carryover fund reports submitted in paper form, and affidavits accompanying reports filed in paper form, on a portion of the official website of the Secretary of State.

## § 229 Retirement of Debt

- (a) At the time when the candidate's final report is due, the candidate shall determine the current status of the campaign account and ascertain whether the campaign ended in surplus or in debt. In order to determine whether there is a net debt outstanding from a particular election, the candidate must prove net debts outstanding as of the date of the election.
- (b) For purposes of this section, "*net debts outstanding*" means the total amount of unpaid debts, loans and obligations incurred with respect to the campaign, less the sum of:
  - (1) The total cash on hand available to pay those debts, loans and obligations, including: currency; balances on deposit in banks and other financial institutions; checks; drafts; money orders; traveler's checks; certificates of deposit; treasury bills; and any other candidate or committee investments valued at fair market value; and
  - (2) The total amount owed to the candidate or political committee in the form of credits, refunds of deposits, returns or receivables, or a commercially reasonable amount based on the collectability of those credits, refunds, returns, or receivables.
- (c) For purposes of this section, any bill or matter not listed as a debt as of the filing of the final report and any obligation not included on the final report and for which there is no proof of receipt or existence of bill or other documentation of expenditure or indebtedness as of the filing of the final report, shall not be considered as part of the net debts outstanding.
- (d) Matters which will not be considered as legitimate campaign debts include, but are not limited to: campaign workers' salary bonuses; mileage on behalf of the candidate or any member of the candidate's immediate family, unless said mileage was regularly paid by the candidate throughout the campaign; postage, photocopying, meals, lodging or utility bills or other miscellaneous bills which, during the campaign, were not billed to the campaign nor paid by the campaign, but billed to and/or paid by the candidate or the candidate's family unless, at the time of filing the final report, the

candidate is able to provide an itemization of each bill which constitutes the debt and for which retirement is sought.

- (e) For purposes of this section, “reasonable and legitimate costs and administrative expenses of debt retirement,” means those post-election expenses directly related to a particular debt retirement function, performed not for matters generally incidental to political activity or holding an office, but for matters specifically and solely related to retiring a legitimate campaign debt. If the expense is for personnel services or staff salaries, such services or salaries must be directly and solely for the express purpose of retiring the campaign debt(s) noted by the candidate in his or her final report and not related to general political functions incidental to holding an office or campaigning for a future office. An expense is “reasonably and legitimately related to debt retirement” if it is generated by activity which, but for the existence of a legitimate campaign debt and efforts to retire same, would not otherwise have been undertaken and the related expense not otherwise incurred.
- (f) The prohibition against soliciting or accepting campaign contributions more than two (2) years before an election at which a candidate seeks nomination or election shall not apply to the solicitation or acceptance of a contribution for the sole purpose of raising funds to retire a previous campaign debt. Contributions received for debt retirement shall be treated as contributions to the candidate's previous election, and all campaign contribution limits shall continue to apply. If a contributor makes a contribution after the general election, to retire a debt associated with the general election, the campaign limits applicable to contributions for the general election would apply.
- (g) Contributors shall be given notice that the campaign contributions are for the purpose of retiring a campaign debt. Any invitation to or notice of a fundraiser to retire a campaign debt of a previous campaign shall state that the funds will be used to retire a campaign debt.
- (h) A candidate who is a candidate in the general election may pay primary election debts and obligations with funds obtained through contributions made towards the general election campaign.
- (i) A person shall file a Campaign Contribution and Expenditure Report concerning a campaign debt if, since the last report concerning the debt, the person has received cumulative contributions in excess of five hundred dollars (\$500). The report shall be filed not later than fifteen (15) days after a calendar quarter in which a report becomes required. No report is required in any calendar quarter in which the cumulative contribution or cumulative expenditure limit has not been exceeded since the person's last report.

### **§ 230 Retirement of Past Campaign Debts**

- (a) Candidates and officeholders are permitted to raise funds to retire campaign debts from prior campaigns. Funds can be raised after a current campaign has ended or during a current campaign provided the notice requirements of § 229(g) of these rules are fulfilled. If there is another ongoing campaign account, candidates or officeholders should ensure that a separate account is established for the purpose of retiring the prior campaign debts. Surplus funds from a current campaign account, however, may be used to retire the debt, as explained in § 230(b) and (d) below, provided the

candidate has ended the current campaign and the debt relates to personal loans to a prior campaign.

- (b) If a candidate or officeholder desires to raise funds to retire a prior debt at a time when a different campaign is ongoing, the candidate or officeholder must ensure that the notice explains that the debt to be retired relates to a specific prior campaign and not the current ongoing campaign.
- (c) A candidate, whose prior campaign debts relate to funds or personal loans and the repayment of such debts or loans would be in the form of reimbursement to the candidate, may wait until the current campaign has ended and use surplus funds to repay prior campaign loans the candidate may have made to his or her campaign.
- (d) A candidate, whose prior campaign debts relate to funds other than personal loans or personal contributions, may not use surplus funds from a current campaign to repay debts relating to a different campaign. Instead, the candidate must retire the prior debt in the manner described in § 229 of these rules.

**§ 231 Contributions by Children and Spouses**

- (a) Whenever a person provides his or her dependent children with funds and the child uses those funds to make a contribution to a candidate, the contribution shall be attributed to such person for purposes of applying the contribution limits per election.
- (b) Contributions by independent children and spouses of contributors will be attributed to the independent children and the spouse individually provided the independent children or the spouse intended to make such a contribution on his or her own behalf.

**§ 232 Political Party and Group Activities-Exceptions to the Definitions of Contribution and Expenditure**

For purposes of these rules and laws governing campaign finance, the terms “contribution” and “expenditure” shall not include activity sponsored and funded by political parties, as defined in Ark. Code Ann. § 7-1-101, to promote their candidates or nominees through events such as dinners, luncheons, rallies, or similar gatherings and shall not include nonpartisan activity designed to encourage individuals to vote or register to vote, or any communication by any membership organization to its members or stockholders if the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election or election of any candidate.

**§ 233 Records of Contributions and Expenditures**

- (a) A candidate, a political party, or a person acting on a candidate's behalf shall keep records of all contributions and expenditures in a manner sufficient to evidence compliance with these rules and the campaign finance disclosure laws, Ark. Code Ann. § 7-6-201 *et seq.*
- (b) The records shall be made available to the Arkansas Ethics Commission and the prosecuting attorney in the district in which the candidate resides and such records shall be maintained for a period of no less than four (4) years.
- (c) If a candidate ends a campaign with carryover funds as defined by Ark. Code Ann. § 7-6-201(3) and § 200(d) of these rules, he or she must maintain records of such carryover fund for no less than ten (10) years or until such time as the funds are expended completely or disposed of, whichever occurs first.
- (d) The information required by these reporting and disclosure rules, including any and all Contribution and Expenditure Reports, shall, upon proper filing, constitute a public record and shall be available within twenty-four (24) hours of the reporting deadline to all interested persons and the news media.<sup>49</sup>
- (e) The official website of the Secretary of State shall allow for searches of campaign contribution and expenditure report information required to be filed in electronic form under § 236(c)(1).

**§ 234 Reporting of Candidate's Own Personal Funds and Loans From Financial Institutions**

- (a)(1) The transfer of a candidate's own personal funds to his or her own campaign shall be reported as either a loan from the candidate to his or her campaign or a contribution from the candidate to his or her own campaign.
  - (2) In the event such funds are reported as a loan from the candidate to his or her campaign, campaign funds may be used to repay the candidate for the funds loaned by the candidate to his or her campaign.
  - (3) In the event such funds are reported as a contribution from the candidate to his or her campaign, campaign funds may not be used to repay the candidate for his or her funds contributed by the candidate to his or her campaign.
- (b) Any personal loan a financial institution makes to a candidate that is applied to a candidate's campaign shall be reported as a loan from the candidate to his or her campaign.<sup>50</sup>
- (c) The candidate or someone acting on the candidate's behalf shall report the name of the financial institution, the amount of the loan, and the name of the guarantor, if any.<sup>51</sup>

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<sup>49</sup> <sup>49</sup> Ark. Code Ann. § 7-6-214.

<sup>50</sup> <sup>50</sup> Arkansas Ethics Commission Opinion No. 92-EC-004.

<sup>51</sup> <sup>51</sup> Ark. Code Ann. § 7-6-210.

Example: On April 5, 1996, Candidate Jane receives a \$2,000 loan from Commercial Bank. She will use this loan to pay her campaign expenses. On her April report of contributions and expenditures, Candidate Jane will disclose that she received a \$2,000 loan from Commercial Bank on April 5, 1996, listing it as a contribution. She must also disclose Commercial Bank's address and the guarantor's name (if there was a guarantor).

- (d) The execution of a guaranty of repayment shall not be deemed a campaign contribution by the guarantor but actual repayment of the loan by the guarantor shall constitute a campaign contribution and be subject to the campaign contribution limit per contributor per election.

### § 235 Verification of Contribution and Expenditure Reports-All Candidates

All Contribution and Expenditure Reports filed by candidates shall be verified by affidavit of the candidate or a person acting on the candidate's behalf. This affidavit shall state that, to the best of the candidate's knowledge and belief, the information so disclosed is a complete, true and accurate financial statement of the candidate's campaign contributions or expenditures.<sup>52</sup>

### § 236 Reports of Contributions-Candidates for State or District Office, Including District Judge

#### Required Reports and Time for Filing

- (a) For all candidates for state or district office, including district judge, the candidate or any person acting on the candidate's behalf shall comply with the filings required by these sections beginning with the first reporting period, either quarterly, monthly, or preelection, in which his total contributions or expenditures exceed five hundred dollars (\$500). The payment of a filing fee from the candidate's personal funds must be reported as either a loan or a contribution to the campaign and also as a campaign expenditure but such payment shall not be counted towards the five hundred dollar (\$500) reporting trigger. See § 238(b), *infra*.
- (b) Except as provided in § 238 of these rules and Ark. Code Ann. § 7-6-207(c), each candidate for state or district office, including district judge, or a person acting on the candidate's behalf, shall file with the Secretary of State the following Contribution and Expenditure Reports:
- (1) For each quarter during a calendar year in which a candidate is not listed on any ballot for election, a quarterly report of all contributions received, with loans stated separately, and expenditures made during that quarter. The quarterly report shall be filed no later than fifteen (15) days after the end of each quarter. However, if a candidate files for office during the party filing period, for the quarter including the party filing period, the candidate shall file monthly reports under subsection (2) of this rule and Ark. Code Ann. § 7-6-207(e) for the months of the quarter that include the party filing period.

<sup>52</sup> 52 Ark. Code Ann. § 7-6-213.

- (2) Beginning with the month of ~~November preceding~~ **January** of a calendar year in which a candidate may be listed on any ballot for election, a monthly report of all contributions received, with loans stated separately, and expenditures made during that month. However, for any month in which certain days of that month are included in a preelection report required under subsection (3) of this rule and Ark. Code Ann. § 7-6-207(a)(1)(C) or a final report required under subsection (4) of this rule and Ark. Code Ann. § 7-6-207(a)(1)(D), no monthly report for that month shall be due. In the case of a primary or runoff election, those days of the month occurring after the date of such election shall be carried forward and included in the next monthly report. The monthly report shall be filed no later than fifteen (15) days after the end of each month. With respect to a special election, the candidate shall file monthly reports beginning with the month in which the special election candidate's total campaign contributions or expenditures exceed five hundred dollars (\$500);
- (3) No later than seven (7) days prior to any preferential primary election, runoff election, general election, or special election in which the candidate's name appears on the ballot, a candidate must file a preelection report of all contributions received, with loans stated separately, and expenditures made between the period covered by the previous report and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during the period of time which begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;
- (4) No later than thirty (30) days after the end of the month in which the candidate's name has appeared on the ballot in any primary election, runoff election, general election, or special election, **or when only one (1) candidate qualifies for a particular office or position and no position or name of an unopposed candidate shall appear on a ballot**, a final report of all contributions received, with loans stated separately, and expenditures made which have not been disclosed on reports previously required to be filed. The final report closes out the handling of the financing for the particular election (e.g., primary) and the balance, if any, shall be brought forward to the first monthly report for the next election (e.g., general). A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500); ~~and~~
- (5) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, a final report of all contributions received, with loans stated separately, and expenditures made that have not been disclosed on reports previously required to be filed. Moreover, if a candidate withdraws from the campaign, the candidate shall notify the Secretary of State in writing of the withdrawal; ~~and~~
- (6) **If a candidate files for office during the party filing period, for the quarter including the party filing period, the candidate shall:**
- (A) **File monthly reports under subdivision (b)(2) of this section for the months of the quarter that includes the party filing period; and**
  - (B) **Not file a quarterly report under subdivision (b)(1) of this section for the quarter that includes the party filing period.**

- (c) (1) A report is timely filed if it is filed in electronic form through the official website of the Secretary of State on or before the date that the report is due.
  - (2) The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of campaign contribution and expenditure reports in electronic form under § 236(c)(1) of this section to ensure that all required information is requested.
  - (3) The official website of the Secretary of State shall allow for searches of campaign contribution and expenditure report information filed in electronic form under § 236(c)(1) this section.
  - (d) A candidate required to file campaign contribution and expenditure reports in electronic form under § 236(c) may file reports in paper form under this section if:
    - (1) The candidate does not have access to the technology necessary to submit reports in electronic form; and
    - (2) Submitting reports in electronic form would constitute a substantial hardship for the candidate.
  - (e) (1) A candidate filing reports in paper form under § 236(d) shall submit with his or her first paper report in an election cycle a notarized affidavit on a form prepared by the Secretary of State declaring that:
    - (A) The candidate does not have access to the technology necessary to submit reports in electronic form;
    - (B) Submitting reports in electronic form would constitute a substantial hardship for the candidate; and
    - (C) The candidate agrees to file all other reports in paper form for the duration of the election cycle.  - (2) The Secretary of State shall not accept a report in paper form under subdivision (d) of this section if a notarized affidavit was not submitted with the first paper report in the election cycle.
- (f) (1) The Secretary of State shall make available to candidates wishing to file reports in paper form under this section:
  - (A) Information on the deadlines for filing required reports; and
  - (B)(i) Appropriate forms and instructions for complying with the deadlines.



(ii) The Arkansas Ethics Commission shall approve the forms and instructions used by the Secretary of State to ensure that all required information is requested.

- (2) Reports shall be filed on the forms furnished by the Secretary of State, except that computer-generated contribution and expenditure reports shall be accepted by the Secretary of State and the Arkansas Ethics Commission provided that all of the requisite elements are included.
- (g) (1)(A) A report submitted in paper form under this section other than a preelection report is timely filed if it is either hand delivered or mailed to the Secretary of State, properly addressed, and postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on the date that the report is due.  
  
(B) A preelection report submitted in paper form under this section is timely filed if it is received by the Secretary of State no later than seven (7) days before the election for which it is filed.
- (2) The Secretary of State shall accept a report via facsimile, provided the original is received by the Secretary of State within ten (10) days of the date of facsimile transmission.
- (h) The Secretary of State shall make available carryover fund reports submitted in paper form, and affidavits accompanying reports filed in paper form, on a portion of the official website of the Secretary of State.

**§ 237 Contents of Reports of Contributions and Expenditures-Candidates for State or District Office, Including District Judge**

- (a) The Contribution and Expenditure Reports referenced above in § 236 shall indicate:
  - (1) The total amount of contributions received, with loans stated separately, and the total amount of expenditures made during the filing periods, and the cumulative amount of those totals for the entire election cycle;
  - (2) The name and address of each person, including the candidate, who made a contribution or contributions which, in the aggregate, exceeds fifty dollars (\$50);
  - (3) The contributor's principal place of business, employer, occupation, amount contributed, the date the contribution was accepted by the candidate, and the aggregate contributed for each election;
  - (4) The name and address of each person, including the candidate, who contributed a nonmoney item, together with a description of the item, the date of receipt and the value, not including volunteer services by individuals;

- (5) An itemization of all single expenditures made which exceed one hundred dollars (\$100) including the amount of the expenditure, the name and address of any person, including the candidate, to whom the expenditure was made, and the date the expenditure was made;
  - (6) A list of all paid campaign workers and the amount the workers were paid;
  - (7) A list of all expenditures by category, including, but not limited to, television, radio, print, and other advertising, direct mail, office supplies, rent, travel, expenses, entertainment and telephone;
  - (8) The total amount of all nonitemized expenditures made during the filing period; and
  - (9) The current balance of campaign funds.
- (b) In addition to the requirements noted above in (a), when the candidate's campaign has ended, the final report for the general election, or for the primary if the candidate fails to win the primary, shall also indicate how the surplus funds, if any, were disposed of pursuant to Ark. Code Ann. § 7-6-203(h) and § 226 of the rules, and shall indicate the amount of funds retained by the candidate as carryover funds. If the candidate's campaign has not ended, disposal of campaign funds shall not be required and the candidate may carry forward any remaining campaign funds to the general primary election, general election, or general runoff election for that same office.
- (c) Candidates for state and district offices (including the office of district judge) shall file Campaign Contribution and Expenditure Reports with the Secretary of State.

**§ 238 Exceptions to Filing Reports of Contributions-Candidates for State or District Office Including District Judge**

- (a) For those candidates covered by §§ 236 -237, the candidate or person acting on the candidate's behalf shall comply with the filings required by this section upon receiving contributions or making expenditures totaling in excess of five hundred dollars (\$500).
- (b) A candidate who has not received contributions or made expenditures in excess of five hundred dollars (\$500) shall not be required to file any reports other than the final report(s) required under § 236(b)(4). In calculating the amount of contributions received or expenditures made for purposes of this exception, the payment of a filing fee from the candidate's personal funds shall not be counted towards the five hundred dollar (\$500) reporting trigger. Once a report becomes due, however, the payment of the filing fee from the candidate's personal funds must be reported as either a loan or contribution to the campaign and also as a campaign expenditure.
- (c) The preelection reports referenced in § 236(b)(3) are only required for candidates with opponents in those elections.
- (d) If an unopposed candidate agrees not to solicit further campaign contributions by filing an affidavit declaring such agreement, the candidate may dispose of any surplus campaign funds prior to a general election as soon as the time has passed to declare an intent to be a write-in candidate

pursuant to Ark. Code Ann. § 7-5-205. For unopposed candidates for nonpartisan office, the candidate may dispose of any surplus campaign funds prior to a nonpartisan general election by filing such an affidavit as soon as the time has passed to declare an intent to be a filing fee candidate, a petition candidate, or a write-in candidate pursuant to Ark. Code Ann. § 7-10-103. The affidavit shall be filed in the office where the candidate is required to file reports of contributions received and expenditures made. Unopposed candidates and defeated candidates who file the affidavit are exempt from further reporting requirements provided that the affidavit contains all campaign activity not previously reported and a statement that the candidate's fund has a zero balance.

## § 239 Reports of Contributions-Candidates for School District, Township, or Municipal Office

### Required Reports and Time for Filing

Except as provided in § 241 of these rules and Ark. Code Ann. § 7-6-208(d), each candidate for a school district, township, or municipal office, or a person acting on the candidate's behalf, shall file with the county clerk in the county where the election is held on the appropriate forms furnished by the Secretary of State, the following Contribution and Expenditure Reports:

- (a) No later than seven (7) days prior to any preferential primary election, runoff election, general election, school election or special election in which the candidate's name appears on the ballot, file a preelection report of all contributions received, with loans stated separately, and expenditures made between the period covered by the previous report, if any, and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during that period of time which begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;
- (b) No later than thirty (30) days after the end of the month in which the candidate's name has appeared on the ballot in any preferential primary election, runoff election, general election, school election, or special election, **or when only one (1) candidate qualifies for a particular office or position and no position or name of an unopposed candidate shall appear on a ballot**, file a final report of all contributions received, with loans stated separately, and expenditures made which have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500);
- (c) File supplemental reports of all contributions received, with loans stated separately, and expenditures made after the date of preparation of the final report, and the supplemental reports shall be filed within thirty (30) days after the receipt of a contribution or the making of an expenditure; and
- (d) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, file a final report of all contributions received, with loans stated separately, and expenditures made which have not been disclosed on reports previously required to be filed. Moreover, if a candidate withdraws from the campaign, the candidate shall notify the county clerk in writing of the withdrawal.
- (e) A report is timely filed when it is received in the county clerk's office no later than the date the report is due.

**§ 240 Contents of Reports of Contributions-Candidates for School District, Township, or Municipal Office**

The Campaign Contribution and Expenditure Reports required by § 239 shall indicate:

- (a) The total amount of contributions received, with loans stated separately, and the total amount of expenditures made during the filing periods, and the cumulative amount of these totals for the entire election cycle;
- (b) The name and address of each person, including the candidate, who has made a contribution or contributions which, in the aggregate, exceed fifty dollars (\$50), the contributor's principal place of business, employer, occupation, the date the contribution was accepted by the candidate, the amount contributed and the aggregate contributed for each election;
- (c) The name and address of each person, including the candidate, 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;
- (d) An itemization of all single expenditures made which exceed one hundred dollars (\$100), including the amount of the expenditure, the name and address of any person, including the candidate, to whom the expenditure was made, and the date of the expenditure;
- (e) A list of all paid campaign workers and the amount the workers were paid;
- (f) A list of all expenditures by category, including, but not limited to, television, radio, print and other advertising, direct mail, office supplies, rent, travel, expenses, entertainment, and telephone;
- (g) The total amount of all nonitemized expenditures during the filing period; and
- (h) The current balance of campaign funds.
- (i) When the candidate's campaign has ended, the final report shall also indicate which option under Ark. Code Ann. § 7-6-203(h) and § 226(c) of these rules was used to dispose of any surplus campaign funds, as well as provide the amount of carryover funds retained by the candidate. If the candidate's campaign has not ended, disposal of campaign funds is not required and the candidate may carry forward any remaining campaign funds to the general primary election, general election, or general runoff election for that same office.

**§ 241 Exceptions to Filing Reports of Contributions-Candidates for School District, Township, or Municipal Office**

- (a) For those candidates covered by §§ 239-240, the candidate or person acting on the candidate's behalf shall comply with the filings required by this section upon receiving contributions or making expenditures totaling in excess of five hundred dollars (\$500).
- (b) A candidate or any person acting on the candidate's behalf who has not received contributions or made expenditures in excess of five hundred dollars (\$500) as of the date a preelection report is due, shall not be required to file the preelection report required by Ark. Code Ann. § 7-6-208(a)(1) and § 239(a). In calculating the amount of contributions received or expenditures made for purposes of this exception, the payment of the filing fee from the candidate's personal funds shall not be counted towards the five hundred dollar (\$500) reporting trigger. Once a report becomes due, however, the payment of the filing fee from the candidate's personal funds must be reported as either a loan or contribution to the campaign and also as a campaign expenditure.
- (c) The preelection reports referenced in § 239(a) are only required for candidates with opponents in those elections.
- (d) If an unopposed candidate agrees not to solicit further campaign contributions by filing an affidavit declaring such agreement, the candidate may dispose of any surplus campaign funds prior to a general election as soon as the time has passed to declare an intent to be a write-in candidate pursuant to Ark. Code Ann. § 7-5-205. For unopposed candidates for nonpartisan office, the candidate may dispose of any surplus campaign funds prior to a nonpartisan general election by filing such an affidavit as soon as the time has passed to declare an intent to be a filing fee candidate, a petition candidate, or a write-in candidate pursuant to Ark. Code Ann. § 7-10-103. The affidavit shall be filed in the office where the candidate is required to file reports of contributions received and expenditures made. Unopposed candidates and defeated candidates who file the affidavit are exempt from further reporting requirements provided that the affidavit contains all campaign activity not previously reported and a statement that the candidate's fund has a zero balance.

**§ 242 Reports of Contributions-Candidates for County Office**

**Required Reports and Time For Filing**

Except as provided in § 244 of these rules and Ark. Code Ann. § 7-6-209(d), each candidate for a county office, or a person acting on the candidate's behalf, shall file with the county clerk in the county where the election is held on the appropriate forms furnished by the Secretary of State, the following Contribution and Expenditure Reports:

- (a) No later than seven (7) days prior to any preferential primary election, runoff election, general election, or special election in which the candidate's name appears on the ballot, file a preelection report of all contributions received, with loans stated separately, and expenditures made between the period covered by the previous report, if any, and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during that period

of time which begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;

- (b) No later than thirty (30) days after the end of the month in which the candidate's name has appeared on the ballot in any preferential primary election, runoff election, general election, or special election, **or when only one (1) candidate qualifies for a particular office or position and no position or name of an unopposed candidate shall appear on a ballot**, file a final report of all contributions received, with loans stated separately, and expenditures made which have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500);
- (c) File supplemental reports of all contributions received, with loans stated separately, and expenditures made after the date of preparation of the final report, and the supplemental reports shall be filed within thirty (30) days after the receipt of a contribution or the making of an expenditure;
- (d) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, a final report of all contributions received, with loans stated separately, and expenditures made which have not been disclosed on reports previously required to be filed. Moreover, if a candidate withdraws from the campaign, the candidate shall notify the county clerk in writing of the withdrawal; and
- (e) A report is timely filed when it is received in the county clerk's office no later than the date the report is due.

#### **§ 243 Contents of Reports of Contributions-Candidates for County Office**

The campaign contribution reports required by § 242 shall indicate:

- (a) The total amount of contributions received, with loans stated separately, and the total amount of expenditures made during the filing periods, and the cumulative amount of these totals for the entire election cycle;
- (b) The name and address of each person, including the candidate, who has made a contribution or contributions which, in the aggregate, exceed fifty dollars (\$50), the contributor's principal place of business, employer, occupation, and the date the contribution was accepted by the candidate, the amount contributed and the aggregate contributed for each election;
- (c) The name and address of each person, including the candidate, 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;
- (d) An itemization of all single expenditures made which exceed one hundred dollars (\$100), including the amount of the expenditure, the name and address of any person, including the candidate, to whom the expenditure was made, and the date of the expenditure;
- (e) A list of all paid campaign workers and the amount the workers were paid;

- (f) A list of all expenditures by category, including, but not limited to, television, radio, print and other advertising, direct mail, office supplies, rent, travel, expenses, entertainment, and telephone;
- (g) The total amount of all nonitemized expenditures during the filing period; and
- (h) The current balance of campaign funds.

In addition to the information required in subsection (a), when the candidate's campaign has ended, the final report shall also indicate which option under Ark. Code Ann. § 7-6-203(h) and § 226(c) of these rules was used to dispose of any surplus campaign funds, as well as provide the amount of carryover funds retained by the candidate. If the candidate's campaign has not ended, disposal of campaign funds is not required and the candidate may carry forward any remaining funds in the campaign to the general primary election, general election, or general runoff election for that same office.

#### **§ 244 Exceptions to Filing Reports of Contributions-Candidates for County Office**

- (a) For those candidates covered by §§ 242-243, the candidate or person acting on the candidate's behalf shall comply with the filings required by this section upon receiving contributions or making expenditures totaling in excess of five hundred dollars (\$500).
- (b) A candidate or any person acting on the candidate's behalf who has not received contributions or made expenditures in excess of five hundred dollars (\$500) as of the date a preelection report is due, shall not be required to file the preelection report required by Ark. Code Ann. § 7-6-209(a)(1) and § 242(a). In calculating the amount of contributions received or expenditures made for purposes of this exception, the payment of the filing fee from the candidate's personal funds shall not be counted towards the five hundred dollar (\$500) reporting trigger. Once a report becomes due, however, the payment of the filing fee from the candidate's personal funds must be reported as either a loan or contribution to the campaign and also as a campaign expenditure.
- (c) The preelection reports referenced in § 242(a) are only required for candidates with opponents in those elections.
- (d) If an unopposed candidate agrees not to solicit further campaign contributions by filing an affidavit declaring such agreement, the candidate may dispose of any surplus campaign funds prior to a general election as soon as the time has passed to declare an intent to be a write-in candidate pursuant to Ark. Code Ann. § 7-5-205. For unopposed candidates for nonpartisan office, the candidate may dispose of any surplus campaign funds prior to a nonpartisan general election by filing such an affidavit as soon as the time has passed to declare an intent to be a filing fee candidate, a petition candidate, or a write-in candidate pursuant to Ark. Code Ann. § 7-10-103. The affidavit shall be filed in the office where the candidate is required to file reports of contributions received and expenditures made. Unopposed candidates and defeated candidates who file the affidavit are exempt from further reporting requirements provided that the affidavit contains all campaign activity not previously reported and a statement that the candidate's fund has a zero balance.

**§ 245 Prohibited Campaign Activities Concerning Public Servants and Public Property; Advertising Disclaimer; Display of Campaign Literature on State Capitol Grounds**

- (a) No public servant shall devote any time or labor during usual office hours toward the campaign of any other candidate for office or for the nomination to any office. Devoting any time or labor during usual office hours toward the campaign of any other candidate for office or for the nomination to any office includes without limitation the gathering of signatures for a nominating petition.<sup>53</sup> Public servants who have usual office hours but are on call 24 hours a day would only be prohibited from campaigning for another candidate during their usual office hours.<sup>54</sup>
- (b) No public servant shall circulate an initiative or referendum petition or solicit signatures on an initiative or referendum petition in any public office of the state, county, or municipal governments of Arkansas or while on duty for any state agency or any county or municipal government in Arkansas.<sup>55</sup>
- (c) No public servant shall coerce by threats or otherwise any public employee into devoting time or labor toward the campaign of any candidate for office or for the nomination to any office.<sup>56</sup>
- (d) No public servant shall use any office or room furnished at public expense to distribute any letters, circulars, or other campaign materials, unless such office or room is regularly used by members of the public for such purposes without regard to political affiliation.<sup>57</sup> “Campaign materials” refers to the campaign of a candidate for public office and efforts to support or oppose a ballot measure, except as provided in Ark. Code Ann. § 7-1-111.<sup>58</sup>
- (e) No public servant shall use for campaign purposes any item of personal property provided with public funds.<sup>59</sup> “Campaign purposes” refers to the campaign of a candidate for public office and efforts to support or oppose a ballot measure, except as provided in Ark. Code Ann. § 7-1-111.<sup>60</sup>

<sup>53</sup> Ark. Code Ann. § 7-1-103(a)(2)(A).

<sup>54</sup> Arkansas Ethics Commission Opinion No. 2002-EC-005.

<sup>55</sup> Ark. Code Ann. § 7-1-103(a)(2)(B).

<sup>56</sup> Ark. Code Ann. § 7-1-103(a)(2)(C).

<sup>57</sup> Ark. Code Ann. § 7-1-103(a)(3).

<sup>58</sup> 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. 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 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.

<sup>59</sup> Ark. Code Ann. § 7-1-103(a)(3).

<sup>60</sup> See footnote 56.



- (f) No person shall assess any public employee for any political purpose whatever or coerce by threats or otherwise any public employee into making a subscription or contribution for any political purpose.<sup>61</sup>
- (g) No person shall place any campaign banners, campaign signs, or other campaign literature on any cars, trucks, tractors or other vehicles belonging to the State of Arkansas or any municipality, county, or school district in the state.<sup>62</sup>
- (h) (1) All articles, statements, or communications appearing in any newspaper printed or circulated in this state intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words "Paid Political Advertisement", "Paid Political Ad", or "Paid for by" the candidate, committee, or person who paid for the message. Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer. In addition, all articles, statements, or communications appearing in any radio, television, or any other electronic medium intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words "Paid Political Advertisement" or "Paid Political Ad" or "Paid for by", "Sponsored by", or "Furnished by" the true sponsor of the advertisement. Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer.<sup>63</sup>
  - (2) (a) Printed campaign materials as defined in § 200 (~~uv~~) of these rules, shall clearly contain the words "Paid for by" followed by the name of the candidate, committee, or person who paid for the campaign sign, campaign literature, or other printed campaign materials.
  - (b) Subdivision (h)(2)(a) of this section applies only to campaign signs, campaign literature, and other printed campaign materials created by or sponsored by a political candidate, ~~or~~ the campaign of a political candidate, **a political action committee, or an independent expenditure committee.**
- (i) It is unlawful for a candidate or a public official, as defined in Ark. Code Ann. § 21-8-402,<sup>64</sup> to display one (1) or more campaign banners, campaign signs, or other campaign literature larger than twelve inches by twelve inches (12" x 12") on a car, truck, tractor, or other vehicle belonging to the candidate or public official while on the State Capitol grounds.<sup>65</sup>

## § 246 Interest-Bearing Accounts

It shall be permissible for candidates to keep their campaign funds in interest-bearing accounts such as a bank checking account, a money market fund or a certificate of deposit. Candidates shall disclose the interest-

<sup>61</sup> Ark. Code Ann. § 7-1-103(a)(4).

<sup>62</sup> Ark. Code Ann. § 7-1-103(a)(6).

<sup>63</sup> Ark. Code Ann. § 7-1-103(a)(7).

<sup>64</sup> The term "public official" is defined in Ark. Code Ann. § 21-8-402 to mean "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[.]"

<sup>65</sup> Ark. Code Ann. § 7-1-114. It is noted that the imposition of a fine for violation of Ark. Code Ann. § 7-1-114 shall not exceed one hundred fifty dollars (\$150).

bearing account on their Campaign Contribution and Expenditure Reports and report the interest earned as a contribution.

**§ 247 Penalty Schedule for Failure to File or Late Filing of Contribution & Expenditure Reports**

(a) In addition to being sanctioned as provided for in Ark. Code Ann. § 7-6-218(b)(4), candidates who fail to file or file untimely Contribution and Expenditure Reports, other than the preelection report required by Ark. Code Ann. § 7-6-207(a)(1)(C), § 7-6-208(a)(1), and § 7-6-209(a)(1), as required by law, and referenced throughout these rules, shall be subject to fines for the late filing of reports. Although fines are assessed on the facts of each case, the following schedule serves as a guideline in determining the amount of the fine:

<u>Date Report Filed</u>	<u>First Time Delinquency</u>	<u>Repeated Delinquency by Same Candidate</u>
1 to 10 days late	\$ 25.00 per report	\$ 50.00 per report
11 to 20 days late	\$ 50.00 per report	\$ 100.00 per report
21 to 30 days late	\$ 100.00 per report	\$ 200.00 per report

(b) In addition to being sanctioned as provided for in Ark. Code Ann. § 7-6-218(b)(4), candidates who fail to file or file untimely the preelection Contribution and Expenditure Reports, required by Ark. Code Ann. § 7-6-207(a)(1)(C), § 7-6-208(a)(1), or § 7-6-209(a)(1), shall be subject to fines for the late filing of reports. Although fines are assessed on the facts of each case, the following schedule serves as a guideline in determining the amount of the fine:

<u>Date Report Filed</u>	<u>First Time Delinquency</u>	<u>Repeated Delinquency by Same Candidate</u>
1 to 3 days late	\$ 50.00 per report	\$ 100.00 per report
4 to 10 days late	\$ 100.00 per report	\$ 150.00 per report
11 to 30 days late	\$ 150.00 per report	\$ 250.00 per report

(c) For purposes of this rule, "repeated delinquency" shall refer to each different time, during the entire election cycle, a candidate fails to file any Contribution and Expenditure Report while running for office and until such time as the final report has been filed.

(d) In addition to the fines and sanctions discussed above, candidates who fail to file their Contribution and Expenditure Reports will be ordered to file such reports within ten (10) days.

- (e) A candidate who gives false or materially misleading information on a Contribution and Expenditure Report or omits information from that report as required herein may be assessed by the Arkansas Ethics Commission a fine of not less than \$50 or more than ~~\$2,000~~ \$3,500 for each violation and may be issued a public letter of caution, warning or reprimand.
- (f) It is an affirmative defense to prosecution or disciplinary action if a candidate who is required to file a Campaign Contribution and Expenditure Report under Subchapter 2 of Chapter 6, Title 7 of the Arkansas Code amends the report within thirty (30) days of discovering or learning of an unintentional error in the report. However, assertion of the affirmative defense provision shall not be construed to remove the duty to file a report or authorize a candidate to knowingly fail to file a report required under Subchapter 2 of Chapter 6, Title 7 of the Arkansas Code. <sup>66</sup> ~~66~~

**§ 248 Statement of Financial Interest-Filing Required of Candidates**

- (a) Pursuant to Ark. Code Ann. § 21-8-701(a)(2), any candidate for elective office, other than candidates for levee and drainage districts, must file a Statement of Financial Interest.
- (b) Candidates shall file the Statement of Financial Interest on the first Monday following the close of the period to file as a candidate for office for which he or she seeks election. In addition, if a party filing period under Ark. Code Ann. § 7-7-203 ends before January 1 of the year of the general election, a candidate for elective office shall file an additional Statement of Financial Interest for the previous calendar year no later than January 31 of the year of the general election.
- (c) The Statement of Financial Interest shall include the information sought by Ark. Code Ann. § 21-8-701(d).<sup>67</sup>
- (d) The Statement of Financial Interest shall be filed as follows:
  - (1) Candidates for state or district office shall file with the Secretary of State;
  - (2) Candidates for county or township office shall file with the county clerk;
  - (3) Candidates for municipal office shall file with the city clerk or recorder; and
  - (4) Candidates for city attorneys shall file with the city clerk of the municipality within which they serve.<sup>68</sup>
  - (5) Candidates for District Judge shall file with the Secretary of State.
- (e) The Statement of Financial Interest shall be deemed to be timely filed if it is:

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<sup>66</sup> Ark. Code Ann. § 7-6-229.

<sup>67</sup> Subsections (a)-(c) are taken directly from Ark. Code Ann. § 21-8-701. *See also* Arkansas Ethics Commission Opinion No. 97-EC-014, which discusses debts arising out of the ordinary course of business.

<sup>68</sup> Ark. Code Ann. § 21-8-703.

- (1) Hand-delivered to the appropriate public official on or before the due date;
- (2) Mailed to the appropriate public official, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on or before the date due;
- (3) Received via facsimile by the appropriate public official on or before the due date, provided the original is received by the public official within ten (10) days of the transmission; or
- (4) Received by the appropriate public official in a readable electronic format which is acceptable to the appropriate public official and approved by the Ethics Commission.

**§ 249 Statement of Financial Interest-Filing Required of Public Officials, Appointees and Employees**

(a) Pursuant to Ark. Code Ann. § 21-8-701(a), the following persons are required to file a Statement of Financial Interest in addition to candidates for elective office:

- A public official, as defined in Ark. Code Ann. § 21-8-402(17);
- A district judge or city attorney, whether elected or appointed;
- Any agency head, department director, or division director of state government, or a chief of staff or chief deputy of a constitutional officer, the Senate, or the House of Representatives;
- Any public appointee to a state board or commission that is authorized or charged by law with the exercise of regulatory authority or is authorized to receive or disburse state or federal funds (however, a public appointee to a state board or commission which is not charged by law with the exercise of regulatory authority and which receives or disburses state or federal funds only in the form of mileage reimbursement for members attending meetings of the board or commission shall not be required to file a written statement of financial interest);
- All persons who are elected members of a school board or who are candidates for a position on a school board;
- All public and charter school superintendents;
- All executive directors of education service cooperatives;
- Any person appointed to a municipal, county or regional (i) planning board or commission, (ii) airport board or commission, (iii) water or sewer board or commission, (iv) utility board or commission, or (v) civil service commission;
- Any member of an advertising and promotion commission; and
- Any member of a research authority board existing under Ark. Code Ann. § 14-144-201 *et seq.*

If a person is included in one of these categories for any part of a calendar year, then he or she must file a Statement of Financial Interest covering that period of time regardless of whether he or she has left his or her office or position as of the date the statement is due.

- (b) Public officials, appointees or employees shall file the Statement of Financial Interest no later than January 31 of each year. As an exception to § 248 of these rules, incumbent officeholders who filed the Statement of Financial Interest by January 31 of the year in which an election is held shall not be required to file an additional Statement of Financial Interest upon becoming a candidate for reelection or election to another office at any election held during the year.<sup>69</sup>
- (c) All appointees appointed to state boards or commissions after July 30, 1999, shall file a Statement of Financial Interest covering the previous calendar year within thirty (30) days of appointment. Any person hired, promoted, or selected as an agency head, department director, or division director within state government after July 30, 1999, shall file a Statement of Financial Interest covering the previous calendar year within thirty (30) days of filling such a position.<sup>70</sup>
- (d) The Statement of Financial Interest shall include all the information required in Ark. Code Ann. § 21-8-701(d).<sup>71</sup>
- (e) The Statement of Financial Interest shall be filed as follows:
  - (1) State or district public servants shall file with the Secretary of State;
  - (2) County, township or school district public servants shall file with the county clerk;
  - (3) Municipal public servants shall file with the city clerk or recorder;
  - (4) City attorneys shall file with the city clerk of the municipality within which they serve;
  - (5) Persons appointed to regional boards or commissions shall file with the county clerk of the county where they reside;<sup>72</sup> and
  - (6) District judges shall file with the Secretary of State.
- (f) The Statement of Financial Interest shall be deemed to be timely filed if it is:
  - (1) Hand-delivered to the appropriate public official on or before the due date;
  - (2) Mailed to the appropriate public official, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on or before the date due;
  - (3) Received via facsimile by the appropriate public official on or before the due date, provided the original is received by the public official within ten (10) days of the transmission; or

<sup>69</sup> Ark. Code Ann. § 21-8-701(c)(2).

<sup>70</sup> Act 553 of 1999, codified at Ark. Code Ann § 21-8-701(c)(1).

<sup>71</sup> Subsections (a) - (c) are derived directly from Ark. Code Ann. § 21-8-701. *See also* Arkansas Ethics Commission Opinion No. 97-EC-014, which discusses debts arising out of the ordinary course of business.

<sup>72</sup> Ark. Code Ann. § 21-8-703.

- (4) Received by the appropriate public official in a readable electronic format which is acceptable to the appropriate public official and approved by the Ethics Commission.

**§ 250 Penalty Schedule for Failure to File or Late Filing of Statements of Financial Interest**

- (a) In addition to being sanctioned as provided for in Ark. Code Ann. § 7-6-218(b)(4), candidates and public servants who fail to file or file untimely the Statement of Financial Interest as required by law, and referenced in § 248 of these rules, shall be subject to fines for the late filing of statements. Although fines are assessed on the facts of each case, the following serves as a guideline in determining the amount of the fine:

<u>Date Statement Filed</u>	<u>Amount of Fine</u>
1 to 15 days late	\$ 50.00
16 to 30 days late	\$ 100.00

- (b) A public servant or candidate who gives false or materially misleading information on a Statement of Financial Interest or omits information from the Statement as required by Ark. Code Ann. § 21-8-701 *et seq.* may be assessed by the Arkansas Ethics Commission a fine of not less than \$50 or more than ~~\$2,000~~ \$3,500 for each violation and issued a public letter of caution, warning or reprimand.
- (c) In addition to the fines and sanctions discussed above, candidates and public servants who fail to file their Statement of Financial Interest will be ordered to file such reports within ten (10) days.
- (d) It is an affirmative defense to prosecution or disciplinary action if a candidate who is required to file a Statement of Financial Interest under Subchapter 7 of Chapter 8, Title 21 of the Arkansas Code amends the Statement within thirty (30) days of discovering or learning of an unintentional error in the Statement of Financial Interest. However, assertion of the affirmative defense provision shall not be construed to remove the duty to file a Statement of Financial Interest or authorize a candidate to knowingly fail to file a Statement of Financial Interest required under Subchapter 7 of Chapter 8, Title 21 of the Arkansas Code.<sup>73</sup>

**§ 251 Exploratory Committees-Registration and Reporting**

- (a) An exploratory committee is a person who receives contributions held to be transferred later to a single candidate. It shall not include: (1) a political party that meets the definition of a political party under Ark. Code Ann. § 7-1-101 or the requirements of Ark. Code Ann. § 7-7-205; or (2) the candidate's own campaign committee.<sup>74</sup>

<sup>73</sup> Ark. Code Ann. § 21-8-701(f).

<sup>74</sup> Ark. Code Ann. § 7-6-201(9).

- (b)** Exploratory committees must register within fifteen (15) days after receiving contributions during a calendar year which, in the aggregate, exceed \$500. The committee must also disclose the name, address and telephone numbers of the committee and its officers as well as the name of the person who, upon becoming a candidate, is intended to receive the contributions received by the committee. The place of filing for an exploratory committee for a state or district office shall be the Secretary of State's office, and the place of filing for an exploratory committee for a county, municipal, township, or school district office shall be the county clerk's office.<sup>75</sup>
- (c)**
- (1) Within thirty (30) days of the end of each month, an exploratory committee shall file a report indicating the total amount of contributions received during the filing period and/or the previous month and disclose the names and addresses of persons contributing in excess of \$50, along with the contributor's principal place of business, employer, occupation, and the amount contributed, and the total amount of expenditures made and, for each single expenditure which exceeds one hundred dollars (\$100), an itemization including the amount of the expenditure, the name and address of the person to whom the expenditure was made, and the date the expenditure was made.<sup>76</sup> The first report shall be filed for the month in which the committee files its registration. A final report shall be filed within thirty (30) days after the end of the month in which the committee either transfers the contributions received to the candidate or no longer intends to accept contributions on behalf of the candidate.<sup>77</sup>
  - (2) The reports required by this section shall be filed in electronic form through the official website of the Secretary of State.
  - (3) The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of exploratory reports in electronic form to ensure that all required information is requested.
  - (4) The official website of the Secretary of State shall allow for searches of exploratory committee report information filed in electronic form.
- (d)** An exploratory committee under this section may file reports in paper form under this section if:
- (1) The exploratory committee does not have access to the technology necessary to submit reports in electronic form; and
  - (2) Submitting reports in electronic form would constitute a substantial hardship for the exploratory committee.
- (e)** An exploratory committee shall not accept contributions after the filing of a final report.

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<sup>75</sup> Ark. Code Ann. § 7-6-216 (a) and (b).

<sup>76</sup> Ark. Code Ann. § 7-6-207 (b)(1)(B) requires itemization of all contributions to campaign committees in excess of \$50.00. *See* Arkansas Ethics Commission Opinion No. 97-EC-007.

<sup>77</sup> Ark. Code Ann. § 7-6-216(c) and (d).

**§ 252 Exploratory Committees-Contribution Limits**

- (a) An exploratory committee is a person who receives contributions held to be transferred later to a single candidate.<sup>78</sup> Furthermore, an exploratory committee is one designated by a candidate to promote the candidate's campaign and to serve as recipient of all contributions and the distributor of all expenditures for a candidate prior to the time the candidate formally announces his intentions to run for office.<sup>79</sup>
- (b) An exploratory committee is under the same guidelines applicable to maximum contribution limits per election as the candidate's campaign committee. Contributions to an exploratory committee count toward the maximum limit a candidate may receive.
- (c) Expenditures from exploratory committees must be for campaign purposes. As with any other campaign funds, candidates or their exploratory committees are prohibited from using any campaign funds, including funds given to an exploratory committee, as personal income or for personal purposes.
- (d) An exploratory committee may be formed on a candidate's behalf even if the candidate is presently an officeholder and has an existing campaign fund. The exploratory committee must not be formed for the same office as currently held by the officeholder. The monies which make up the existing campaign fund relate to a prior election. Funds contributed to an exploratory committee will apply toward the contribution limits of the election for which the exploratory committee was formed and are exclusive from funds already maintained in an officeholder account.
- (e) Funds raised by the exploratory committee on the candidate's behalf will be treated as contributions if the individual elects to become a candidate. The contribution limits for the election/office being sought by the individual will apply. The money contributed will apply against the limits applicable to the primary election for the candidate when, and if, the person decides to run for office.
- (f) A potential candidate may have more than one exploratory committee. If a potential candidate or individual establishes more than one exploratory committee, or if the person elects to run for an office other than the one for which the exploratory committee was receiving contributions, the candidate must dispose of the funds received by the exploratory committee for the office not sought pursuant to § 226 and/or Ark. Code Ann. § 7-6-203(h)(1)(A)-(E) within thirty (30) days of the close of filing for public office.
- (g) Exploratory committees must maintain bank accounts separate from the candidate's personal account and separate from any concurrent officeholder/candidate's account. When the candidate announces for election, the exploratory committee may convert the funds remaining in its account to the candidate's campaign account.
- (h) (1) More than one exploratory committee for a potential candidate may exist simultaneously

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<sup>78</sup>Ark. Code Ann. § 7-6-201(9).

<sup>79</sup>Arkansas Ethics Commission Opinion No. 97-EC-007.



which designates the same or different campaigns to be explored. If the committees are for the same office (e.g., different committees in different counties), the contributions received will be applied toward the limitations for contributions as noted herein in subsection (e). The committees should keep accurate and separate bank accounts and be able to verify that no contributor has given more than the maximum in the aggregate to any exploratory committees. As an example, if a contributor gives the maximum amount to the candidate's Pulaski County Exploratory Committee for Governor, such contributor could not give any money to any other exploratory committee for the same candidate, same office.

- (2) If the committees are for different offices, the candidate must ensure that the funds retained by the committee for the office not sought are disposed pursuant to § 226 of these rules and Ark. Code Ann. § 7-6-203(h)(1)(A)-(E) and subsection (f) above.

(i)

- (1) If the candidate ultimately seeks the office being explored, the funds raised by the exploratory committee should be transferred to the candidate's campaign committee and reported in the final report pursuant to § 251 of these rules and Ark. Code Ann. § 7-6-216. The amount(s) a person contributes to an exploratory committee shall count towards the limit on campaign contributions which such person may make to the candidate.
- (2) If the candidate seeks another office, the committee should file a final report, note this fact on the report, and dispose of the funds pursuant to § 226 of these rules and Ark. Code Ann. § 7-6-203(h)(1)(A)-(E).
- (3) If the person elects not to seek office, the committee must file a final report and note this fact on the report. Since the person is not going to be a candidate, any funds remaining in the exploratory committee's account should be disposed pursuant to § 226 of these rules and Ark. Code Ann. § 7-6-203(h)(1)(A)-(E). Within thirty (30) days after the end of the month in which the candidate decides not to run for office or the committee no longer intends to accept contributions on his or her behalf, the committee must file its final report and note how any remaining funds were disposed of by the committee. The funds should be disposed pursuant to one of the five options in § 7-6-203(h)(1). The Commission encourages exploratory committees to consider refunding the contributions on a *pro rata* basis to the contributors. The funds must not be used by the candidate for personal purposes.

**§ 253 Prohibition Against a Person Convicted of a Public Trust Crime Filing or Running as a Candidate for Constitutional Office or Holding Constitutional Office**

- (a) If a person has pleaded guilty or nolo contendere to or has been found guilty of a public trust crime, he or she shall not:
  - (1) File as a candidate for a constitutional office;
  - (2) Run as a candidate for a constitutional office; or

- (3) Hold a constitutional office.
- (b) (1) The sealing of any public trust crime or any similar offense under the Comprehensive Criminal Record Sealing Act of 2013, Ark. Code Ann. § 16-90-1401, *et seq.* or any sealing or expungement act in any jurisdiction shall not restore a privilege, eligibility, or qualification to file as a candidate for, run as a candidate for, or hold a constitutional office under this section.
- (2) A person who has pleaded guilty or nolo contendere to or has been found guilty of a public trust crime that was sealed or expunged as described in subdivision (b)(1) of this section:
  - (A) Upon inquiry, shall disclose the fact and nature of the crime which the person pleaded guilty or nolo contendere to or was found guilty of; and
  - (B) Shall not publicly state or affirm under oath that the:
    - (i) Conduct underlying the plea or finding did not occur;
    - (ii) Record of the underlying plea or finding does not exist; or
    - (iii) Person has not been convicted of a criminal offense.
- (3) If a person has plead guilty or nolo contendere to or has been found guilty of a public trust crime or similar offense that was sealed under the Comprehensive Criminal Record Sealing Act of 2013, Ark. Code Ann. § 16-90-1401, *et seq.* or any sealing or expungement act in any jurisdiction, evidence of the plea, finding, and conduct underlying the plea or finding shall be admissible in a court of competent jurisdiction or an action concerning the person's filing for, candidacy for, or holding of a constitutional office.