

ARKANSAS REGISTER

Transmittal Sheet



Sharon Priest
Secretary of State
State Capitol Rm. 026
Little Rock, Arkansas 72201-1094

For Office Use Only: Effective Date 12/2/99 Code Number 153.00.99-004

Name of Agency Arkansas Ethics Commission

Department _____

Contact Person Bob Brooks

Statutory Authority for Promulgating Rules Ark. Code Ann. § 7-6-217(g)(1)

Intended Effective Date	Date
<input type="checkbox"/> Emergency	Legal Notice Published <u>Oct 1-7, 1999</u>
<input checked="" type="checkbox"/> 10 Days After Filing	Final Date for Public Comment <u>Nov. 15, 1999</u>
<input type="checkbox"/> Other	Reviewed by Legislative Council <u>Jan. 6, 2000</u>
_____	Adopted by State Agency <u>Nov. 19, 1999</u>

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted In Compliance with Act 434 of 1967 As Amended

[Signature]
Signature

324-9600
Phone Number

Director
Title

11/22/99
Date

FILED
AR. REGISTER DIV.
99 NOV 22 PM 3:12
SHARON PRIEST
SECRETARY OF STATE
STATE OF ARKANSAS

DEPARTMENT: *Arkansas Ethics Commission*
DIVISION:
PERSON COMPLETING THIS STATEMENT: *Bob Brooks*
TELEPHONE NO.: *324-9600*

FILED
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99 NOV 22 PM 3: 12
324-9602 DON PRIEST
SECRETARY OF STATE
STATE OF ARKANSAS

FINANCIAL IMPACT STATEMENT BY _____

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file with the questionnaire and proposed rules.

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

1. Does this proposed, amended, or repealed rule or regulation have a financial impact? Yes No *X*
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain. *N/A*
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. *N/A*

1999-2000 Fiscal Year

General Revenue -
Federal Funds -
Cash Funds -
Special Revenue -
Other -
Total -

2000-01 Fiscal Year

General Revenue -
Federal Funds -
Cash Funds -
Special Revenue -
Other -
Total -

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation?

1999-2000 Fiscal Year

0

2000-01 Fiscal Year

0

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

1999-2000 Fiscal Year

0

2000-01 Fiscal Year

0

July 28, 1995

FILED
AR. REGISTER DIV.

99 NOV 22 PM 3:13

SHARON PRIEST
SECRETARY OF STATE
STATE OF ARKANSAS

BY. _____

RULES

on

CAMPAIGN FINANCE & DISCLOSURE

ARKANSAS ETHICS COMMISSION
910 West Second Street, Suite 100
Post Office Box 1917
Little Rock, AR 72203-1917.
(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; does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5000.00) from any person in any calendar year; and has been registered with the Secretary of State pursuant to Ark. Code Ann. § 7-6-215 for at least four (4) continuous months prior to making contributions to candidates. Approved political action committee does not include political parties, the candidate's own campaign committee or an exploratory committee.

(b) "Candidate" means any person 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.¹

(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, similar fund raising events; the granting of discounts or rebates by television and 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 this subchapter. 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.²

(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.³

(e) "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, a runoff, a special and a general election shall each constitute a separate election.⁴

(f) "Expenditure" means a purchase, payment, distribution, gift, loan or advance of money or anything of value, and a contract, promise, or agreement to make any expenditure, made for the purpose of influencing the nomination or election of any candidate.⁵

¹ Ark. Code Ann. § 7-6-201(5).

² Ark. Code Ann. § 7-6-201(2).

³ Ark. Code Ann. § 7-6-201(15).

⁴ Ark. Code Ann. § 7-6-201(6).

⁵ Ark. Code Ann. § 7-6-201(3).

- (g) "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 an organized political party as defined in Ark. Code Ann. § 7-1-101(1) or the candidate's own campaign committee.⁶ For a more detailed description of an "exploratory committee" and its duties, see §§ 251-252 herein.

- (h) "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).

- (i) "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 that is subject to state or federal regulation.⁷

- (j) "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 herein.

- (k) "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 organized political parties as defined in Ark. Code Ann. § 7-1-101(1).⁸

- (l) "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 files with the Secretary of State a petition signed by qualified electors equal in number to at least three percent (3%) of the total vote cast for the Office of Governor or nominees for presidential electors at the last-preceding election, declaring their intention of organizing a political party, the name of which shall be stated in the declaration, and of participating in the next-succeeding general election.

The petition shall be filed with the Secretary of State not later than the first Monday in May before the general election in which the political party filing the petition desires to participate. No group of electors shall assume a name or designation which is so similar, in the opinion of the Secretary of State, to that of an existing political party as to confuse or mislead the voters at an election.

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.⁹

⁶ Ark. Code Ann. § 7-6-201(11).

⁷ Ark. Code Ann. § 7-6-201(8).

⁸ Ark. Code Ann. § 7-6-201(1).

⁹ Ark. Code Ann. § 7-1-101(1).

- (m) "Prohibited political action committee" means any person who receives contributions from one or more persons in order to make contributions to candidates but who does not meet the requirements of an approved political action committee. "Prohibited political action committee" shall not include an organized political party as defined in Ark. Code Ann. § 7-1-101, the candidate's own campaign committee or an exploratory committee.¹⁰
- (n) "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.¹¹
- (o) "Small donor political action committee" means any person who receives contributions from one or more persons in order to make contributions to candidates; does not accept any contribution or cumulative contributions in excess of twenty five dollars (\$25.00) from any individual in any calendar year; and has been registered with the Secretary of State pursuant to Ark. Code Ann. § 7-6-215 prior to making contributions to candidates. Small donor political action committee does not include political parties, the candidate's own campaign committee or an exploratory committee.¹²
- (p) "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 reimburse the candidate for personal funds contributed to the campaign or to repay loans made by financial institutions to the candidate and applied to the campaign.¹³

¹⁰ Ark. Code Ann. § 7-6-201(10).

¹¹ Ark. Code Ann. § 7-6-201(7).

¹² Ark. Code Ann. § 7-6-201(12).

¹³ Ark. Code Ann. § 7-6-201(16).

§ 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 loan must disclose the loan as a contribution on the proper contribution and expenditure report. On the issue of loans, see *also* § 225 and § 234 *infra*.

§ 202 Prohibited Contributions

(a)

(1) A candidate or a person acting in 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.¹⁴

(b)

No campaign contribution shall be made to a candidate, a political action 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.¹⁵

(c)

No contribution shall be made to or knowingly accepted by a candidate or his or her campaign committee, a political action 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.¹⁶

(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.¹⁷

(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.¹⁸

¹⁴ Ark. Code Ann. § 7-6-203(e).

¹⁵ Ark. Code Ann. § 7-6-205(a).

¹⁶ Ark. Code Ann. § 7-6-205(b).

¹⁷ Ark. Code Ann. § 7-6-205(c).

¹⁸ Ark. Code Ann. § 7-6-205(d).

- (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.¹⁹

§ 203 Contribution Amounts

- (a) A candidate or a person acting in the candidate's behalf shall not accept contributions or cumulative contributions which exceed \$1000.00 per person per election.
- (b) A person shall not make contributions or cumulative contributions to a candidate or to a person acting in the candidate's behalf which exceed \$1000.00 per person per election.
- (c) The above limitations shall not apply to:
- (1) a candidate's own contribution from his or her own personal funds; or
 - (2) personal loans that financial institutions make to a candidate and that are applied to his or her campaign; or independent expenditures, as defined in Ark Code Ann. § 7-6-201(13).
- (d) A state political party may contribute up to \$2500.00 to its candidate's campaign per election.²⁰
- (e) A small donor political action committee, as defined in Ark. Code Ann. § 7-6-201(12), may contribute up to \$ 1000.00 to a candidate's campaign per election.
- (h) No campaign contribution exceeding \$100.00 ²¹ shall be received in cash nor shall any campaign expenditure exceeding \$50.00 be made in cash. ²²
- (i) All contributions²³ in behalf of a campaign activity, other than in-kind contributions,²⁴ in excess of \$100.00 shall be made by a written instrument containing the name of the donor and the name of the payee.
- (j) 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 election, primary, runoff or general, in which his or her name appears on the ballot, whether opposed or unopposed in the election. 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.

¹⁹ Ark. Code Ann. § 7-6-205(e).

²⁰ Ark. Code Ann. § 7-6-203(a)-(d).

²¹ Ark. Code Ann. § 7-6-204(a).

²² Ark. Code Ann. § 7-6-204.

²³ Ark. Code Ann. § 7-6-204(b).

²⁴ See definition of in-kind contribution in § 200(j).

§ 204 Limitations on Soliciting and Accepting Contributions

A candidate, a person acting in 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.²⁵

§ 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 by § 200(j), herein.
- (b) For reporting purposes, the value of an in-kind contribution shall be its fair market value if it had been purchased, sold or leased in the ordinary course of business. An in-kind contribution constitutes a contribution. Those transactions which are specifically excluded from the definition of "contribution" are likewise excluded from the definition of "in-kind contribution."
- (c) A person makes an "in-kind contribution" whenever, in conjunction with the nomination or election of a specific candidate, such person 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/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 determination 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(4), 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.

²⁵ Ark. Code Ann. § 7-6-203(f).

- (f) Political advertising, as detailed in subsection 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. 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 she or he 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 arise 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.²⁶
- (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 invitations²⁷ used in connection with 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 \$1000 per candidate per election. Any amounts over \$1000, 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.
- (e) An individual may spend a reasonable amount for his or her normal living expenses incurred while engaging in volunteer activity.

²⁶ Arkansas Ethics Commission Opinion No. 96-EC-005.

²⁷ This exemption does not cover the cost of mailing invitations, only the cost of printing invitations.

§ 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;²⁸ 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, retained as "carryover funds", as defined by § 200(d), herein, and Ark. Code Ann. § 7-6-201(15), 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 Funds-Personal Use Defined

- (a) For purposes of this section and throughout these rules and regulations, "personal use" is any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or responsibilities as an officeholder.
- (b) 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 or surplus funds.
- (c) 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.

§ 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.

²⁸ Ark. Code Ann. § 7-6-203(i)(1).

- (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 the 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/her family, even if a portion of the residence is used by the campaign. It does not include payments made with respect to other buildings or offices or office space used solely for campaign purposes, such as the company's headquarters, even if the candidate owns the space used so long as the space is not the candidate's personal residence and the campaign pays a fair market value for use of the space. Furthermore, this prohibition does not apply to long distance telephone calls/bills made for campaign 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 fundraising 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 election 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(j)(1)(C).
- (f) **Contributions to the Campaigns of Others** -Generally, campaign funds may not be used to make a contribution to another candidate's campaign. Contributions are construed as a personal matter and transferring a contribution from one campaign to another person's campaign is considered a "personal use" of the funds. However, this general rule is a rebuttable presumption. There could be times and circumstances when a candidate may attend a fund raiser for another candidate and the purpose of attending would be to further the candidate's own campaign. Therefore, buying a ticket to the fund raiser would be permitted. Factual circumstances thus may indicate a need to deviate from the general rule that campaign contributions are personal uses of funds. As noted in § 210 below, for this reason, the Commission will approach each such situation on a case-by-case basis with the rebuttable presumption that such use is prohibited as a personal use of campaign funds.²⁹

²⁹ Arkansas Ethics Commission Opinion No. 97-EC-001.

§ 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 on a case-by-case basis. 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 campaign-related travel on a reasonable mileage rate not to exceed \$ 0.28 per mile for actual miles driven relating to campaign activity.³⁰
 - (2) The campaign must maintain records showing the date of travel, destination(s) involved, purpose of travel and odometer readings of each travel for which reimbursement is allowed.
 - (3) The candidate will be held responsible to insure 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 a 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 insure that accurate records are maintained and that the travel relates to campaign activity before using campaign funds to pay for the lease.

³⁰ Arkansas Ethics Commission Opinion No. 97-EC-005(B).

- (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.³¹

§ 213 Payment of Fines Associated with Campaign

A campaign or a 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 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 \$100.00.³²

§ 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 employ 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.

³¹ Arkansas Ethics Commission Opinion No. 97-EC-005(A).

³² Arkansas Ethics Commission Opinion No. 97-EC-002.

§ 215 Campaign Expenditures-Political Conferences or Appearances

- (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. Officeholders are permitted to use carryover funds to reimburse only themselves for travel associated with general political activity.
- (b) After an election, former candidates and officeholders may only use campaign funds for reimbursement for future general political activity and travel if there is a carryover fund, as defined by Ark. Code Ann. § 7-6-201(15) and § 200(d), herein, remaining and available to the former candidate. 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(j)(3)(C).
- (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 or through general political activity or travel. 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-raiser 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 on a case-by-case basis.

§ 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 (\$50.00) shall be made in cash.

- (b) All expenditures on behalf of a campaign activity, in excess of fifty dollars (\$50.00), 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 (\$50.00). The candidate shall obtain a receipt for the payment and shall report it 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 Expenditure 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/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 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 organization and political parties for banquets or other similar special social events. The presence of officeholders increases the public visibility of officeholders and, for that reasons, 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 campaign 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 and regulations, 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 or parades or like events and for related advertising of same; and
 - (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 factual determination to be made by the Arkansas Ethics Commission on a case-by-case basis. 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(j), whether by sale of property for money or transfer of property in accordance with Ark. Code Ann. § 7-6-203(j).³³ The candidate is responsible for assigning a fair market value to all assets of the campaign.³⁴

§ 225 Repayment of Loans

After a general election, a candidate may retain any campaign contributions required to reimburse the candidate for personal funds contributed to the campaign or to repay loans made by financial institutions to the candidate and applied to the campaign.³⁵

§ 226 Surplus or Carryover Funds

- (a) In ascertaining the amount of surplus campaign funds, as defined in § 200(p), 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 less 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(p), 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. The surplus funds may be turned over to:
 - (1) The Treasurer of Arkansas for the benefits of the General Revenue Fund Account of the State Apportionment Fund;

³³ Arkansas Ethics Commission Opinion No. 92-EC-020.

³⁴ For the definition of fair market value, *see* § 200(h) *supra*.

³⁵ Ark. Code Ann. § 7-6-201(16)(B).

- (2) An organized political party as defined in Ark. Code Ann. § 7-1-101(1) 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; or
 - (4) The contributors to the candidate's campaign.
- (c) Notwithstanding the provisions of § 226(b)(1)-(4), 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, below.
- (d) If an unopposed candidate agrees not to solicit further campaign contributions by filing an affidavit with the Secretary of State declaring such agreement, the candidate may dispose of any surplus of 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. Unopposed candidates and defeated candidates who file the affidavit are exempt from further reporting requirements provided that the affidavit contains a statement that the candidate's fund has a zero balance.

§ 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 as surplus campaign funds could be expended.
- (b) If funds are retained pursuant to § 226(d) of this chapter, the candidate shall establish an office 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 office holder 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 office holder 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 or 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 office 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 may 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.³⁶ The person may give such funds to the State Treasurer to be deposited in the General Revenue Fund, to an organized political party as defined by Ark. Code Ann. § 7-1-101(1) or a political party caucus of the Arkansas General Assembly, the Senate or House of Representatives, or to a nonprofit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Upon leaving public office, funds remaining in the carryover office account may not be given to previous contributors.
- (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.
- (g) For all carryover funds related to elections after July 1, 1997, any person having carryover funds and who later decides to become a candidate for another 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.³⁷

§ 228 Carryover Funds-Time Frame for Reporting the Expenditures

Any time carryover funds in excess of \$500.00 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 filed with the Secretary of State on forms approved by the Arkansas Ethics Commission and shall be due by January 31 of each year.

§ 229 Retirement of Debt

- (a) At the time when the candidate's final report is due (the end of the month following the last election), 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

³⁶ Ark. Code Ann. § 7-6-203(j)(3)(D).

³⁷ Ark. Code Ann. § 7-6-203(j)(3)(B).

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 collectibility 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 monthly 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 monthly 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 been undertaken and the related expense not otherwise incurred.
- (f) A candidate is only permitted to solicit funds and hold fund raisers and/or accept contributions more than two (2) years before the next election at which the candidate could seek nomination or election if the funds or contributions are used 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) 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.
- (h) 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, above, are fulfilled. If there is another ongoing campaign account, candidates or officeholders should insure 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/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 above.

§ 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 organized political parties as defined in Ark. Code Ann. § 7-1-101(1) 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 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.

§ 233 Records of Contributions and Expenditures

- (a) A candidate, a political party, or a person acting in 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. §§ 7-6-207, 212 and 219.
- (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(15) and these rules, herein, she or he must maintain records of such carryover fund for no less than ten (10) years or until such time as the funds are expended completed 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.³⁸

§ 234 Reporting of Loans for All Candidates for Public Office

- (a) Any personal loan a financial institution makes to a candidate that is applied to a candidate's campaign shall be reported as a campaign contribution.³⁹
- (b) The candidate or someone acting in the candidate's behalf shall report the name of the financial institution, the amount of the loan and the name of the guarantor.⁴⁰

³⁸ Ark. Code Ann. § 7-6-214.

³⁹ Arkansas Ethics Commission Opinion No. 92-EC-004.

⁴⁰ Ark. Code Ann. § 7-6-210.

Example: On April 5, 1996, Candidate Jane receives a \$2000 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 \$2000 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).

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

All contribution and expenditure reports filed by candidates shall be verified by affidavit by the candidate or a person acting in 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.⁴¹

§ 236 Reports of Contributions-Candidates for Office Other Than School District, Township, Municipal or County Office

Reports Required and Time for Filing

- (a) For all candidates for office other than school district, township, municipal or county office, the candidate or any person acting in 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 a campaign expenditure but shall not be counted towards the five hundred dollar (\$500.00) 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 office, other than a school district, township, municipal or county office, or a person acting in the candidate's behalf, shall file with the Secretary of State and the county clerk in the county where the candidate resides 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 and expenditures made during that quarter. The quarterly report shall be filed no later than fifteen (15) days after the end of each quarter;
 - (2) Beginning with the month of January in the calendar year in which a candidate may be listed on any ballot for election, a monthly report of all contributions received 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), no monthly report for that month shall be due, but those days of that month not included in the preelection report shall be carried forward and included in the final report for that election. In the case of a primary or runoff election, those days of the month not covered by the final report shall be carried forward and included in the next monthly report.

⁴¹ Ark. Code Ann. § 7-6-213.

The monthly report shall be filed no later than fifteen (15) 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 a preferential primary election, a runoff election, a general election or a special election, a candidate must file a preelection report of all contributions received and expenditures made between the period covered by the previous report and the period ten (10) days before the election; and
- (4) A final report is due for each election in which the candidate's name appears on the ballot. 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). The final report shall be filed within thirty (30) days after the end of the month in which the last election is held at which the candidate seeks nomination and after the end of the month in which the general election is held.

- (c) For any report, except a preelection report, a report is timely filed if it is either hand-delivered or mailed to the Secretary of State properly addressed, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on or before the date it was due. A preelection report is timely filed if it is received in the Secretary of State's office no later than seven (7) days prior to the election for which it is filed. The Secretary of State shall accept via facsimile any report, provided the original is received by the Secretary of State within ten (10) days of the transmission. The Secretary of State may receive reports in a readable electronic format which is acceptable to the Secretary of State and approved by the Arkansas Ethics Commission.

§ 237 Reports of Contributions and Expenditures-Candidates for Office Other Than School District, Township, Municipal or County Office

Contents of Reports

- (a) The contribution and expenditure reports referenced above in § 236 shall indicate:
 - (1) The total amount of contributions received and the total amount of expenditures made during the filing periods, and the cumulative amount of those totals;
 - (2) The name and address of each person, including the candidate, who made a contribution or contributions which, in the aggregate, exceeds fifty dollars (\$50.00);
 - (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 items, 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 (\$100.00) 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 categories, 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), 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, are to be disposed pursuant to Ark. Code Ann. § 7-6-203(j) and § 226, herein, and shall indicate the amount of funds retained by the candidate as carryover funds.
- (c) Candidates for state and district offices shall file campaign contribution and expenditure reports with the Secretary of State and the county clerk in the county in which the candidate resides.

§ 238 Reports of Contributions-Candidates for Office Other Than School District, Township, Municipal or County Office

Reports Not Required

- (a) For those candidates covered by §§ 236 -237, the candidate or person acting in 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 (\$500.00).
- (b) A candidate who has not received contributions or made expenditures in excess of five hundred dollars (\$ 500.00) shall not be required to file any reports other than the final report 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 considered as either a contribution or expenditure.
- (c) The preelection reports referenced in § 236(b)(3) are only required for candidates with opponents in those elections.

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

Reports Required 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 in 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 contribution reports:

- (a) No later than seven (7) days prior to a preferential primary election, a runoff election, a general election, school election or a special election, a preelection report of all contributions received and expenditures made between the period covered by the previous report, if any, and the period ten (10) days before the election;
- (b) No later than thirty (30) days after preferential primary elections, runoff elections, general elections, school elections, and special elections, file a final report of all contributions received and expenditures made no earlier than nine (9) days prior to the election; and
- (c) File supplemental reports of all contributions received 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 the contributions.

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

Contents of Reports

The campaign contribution and expenditure reports required by § 239 shall indicate:

- (a) the total amount of contributions received and the expenditures made during the filing periods and the cumulative amount of these totals;
- (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 (\$50.00), the contributor's place of business, employer, occupation, the date of the contribution, 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 items, 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 (\$100.00), 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 categories, 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.

The final report shall also indicate which option under Ark. Code Ann. § 7-6-203(j) and § 226(c), herein, was used to dispose of any surplus campaign funds, as well as provide the amount of carryover funds retained by the candidate.

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

Reports Not Required

- (a) For those candidates covered by §§ 239-240, the candidate or person acting in 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 (\$500.00).
- (b) A candidate or any person acting in the candidate's behalf who has not received contributions or made expenditures in excess of five hundred dollars (\$500.00) 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 considered as either a contribution or an expenditure.
- (c) In the event of a runoff election following a preferential primary, a general election, a school election, the final report for that particular election may be included in the final report due for the runoff election.

§ 242 Reports of Contributions-Candidates for County Office

Reports Required 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 in 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 a preferential primary election, a runoff election, a general election, or a special election, a preelection report of all contributions received and expenditures made between the period covered by the previous report, if any and the period ten (10) days before the election;

- (b) No later than thirty (30) days after preferential primary elections, runoff elections, general elections, and special elections, file a final report of all contributions received and expenditures made no earlier than nine (9) days prior to the election; and
- (c) File supplemental reports of all contributions received 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 the contributions.

§ 243 Reports of Contributions-Candidates for County Office

Contents of Records

The campaign contribution reports required by § 242 shall indicate:

- (a) The total amount of contributions received during the filing periods and the name and address of each person, including the candidate, who has made a contribution or contributions which, in the aggregate, exceed fifty dollars (\$50.00), the contributor's place of business, employer, occupation, and the date of the contribution, the amount contributed and the aggregate contributed for each election;
- (b) The name and address of each person, including the candidate, who contributed a nonmoney item, together with a description of the items, the date of receipt, and the value, not including volunteer service by individuals;
- (c) An itemization of all single expenditures made which exceed one hundred dollars (\$100.00), 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;
- (d) A list of all paid campaign workers and the amount the workers were paid;
- (e) A list of all expenditures by categories, including, but not limited to, television, radio, print and other advertising, direct mail, office supplies, rent, travel, expenses, entertainment, and telephone;
- (f) The total amount of all nonitemized expenditures during the filing period; and
- (g) The current balance of campaign funds.

In addition to the information required in subsection (a), the final report shall also indicate which option under Ark. Code Ann. § 7-6-203(j) and § 226(c), herein; was used to dispose of any surplus campaign funds, as well as provide the amount of carryover funds retained by the candidate.

§ 244 Reports of Contributions-Candidates for County Office

Reports Not Required

- (a) For those candidates covered by §§ 242-243, the candidate or person acting in the candidate's behalf shall comply with the filings required by this section upon receiving contributions or making contributions totaling in excess of five hundred dollars (\$500.00).
- (b) A candidate or any person acting in the candidate's behalf who has not received contributions or made expenditures in excess of five hundred dollars (\$500.00) 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 § 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 considered as either a contribution or an expenditure.
- (c) In the event of a runoff election following a preferential primary election, a general election, or a special election, the final report for that particular election may be included in the final report due for the runoff election.

§ 245 Public Property-Prohibited Uses

No public servant shall:

- (a) 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; or
- (b) use for campaign purposes any item of personal property provided with public funds.⁴²

§ 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 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

⁴² Ark. Code Ann. § 7-1-103(a)(3).

law, and referenced throughout these rules, shall be subject to fines for the late filing of reports. Although fines are assessed on a case-by-case basis, 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 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 a case-by-case basis, 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 by herein may be assessed by the Arkansas Ethics Commission a fine of not less than \$25 or more than \$1000 for each violation and may be issued a public letter of caution, warning or reprimand.

§ 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 districts, levee and drainage districts, must file a Statement of Financial Interest.

- (b) Candidates shall file the Statement of Financial Interest within thirty (30) days after the deadline for filing for office for which he or she seeks election.
- (c) The Statement of Financial Interest shall include the information sought by Ark. Code Ann. § 21-8-701(d).⁴³
- (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 municipal judges or city attorneys shall file with the city clerk of the municipality within which they serve.⁴⁴
- (e) 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
 - (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), any public official, municipal judge, city attorney, state agency head, department or division director of state government, public appointee to any state board or commission authorized or charged by law with the exercise of regulatory authority or is authorized to receive or disburse state or federal funds, all persons who are elected members of a school board or who are candidates for a position on a school board, any persons appointed to one (1) of the following types of regional, municipal or county boards or commissions: a planning board or commission; an airport board or commission; a water or sewer board or commission; a utility board or commission; or a civil service commission must file a Statement of Financial Interest.⁴⁵ If

⁴³ 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.

⁴⁴ Ark. Code Ann. § 21-8-703.

⁴⁵ Ark. Code Ann. § 21-8-701(a).

a person is included in this category 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 they have left their 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 § 247 herein, 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 upon becoming a candidate for reelection or election to another office at any election held during the year.⁴⁶
- (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.⁴⁷
- (d) The Statement of Financial Interest shall include all the information required in Ark. Code Ann. § 21-8-701(d).⁴⁸
- (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; and
 - (4) Municipal judges or city attorneys shall file with the city clerk of the municipality within which they serve; and
 - (5) Persons appointed to regional boards or commissions shall file with the county clerk of the county where they reside.⁴⁹
- (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;

⁴⁶ Ark. Code Ann. § 21-8-701(c)(2).

⁴⁷ Act 553 of 1999, codified at Ark. Code Ann § 21-8-701(c)(1).

⁴⁸ 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.

⁴⁹ Ark. Code Ann. § 21-8-703.

- (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.

§ 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 § 247 of these rules, shall be subject to fines for the late filing of statements. Although fines are assessed on a case-by-case basis, 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 \$25 or more than \$1000 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.

§ 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 an organized political party as defined in Ark. Code Ann. § 7-1-101(1) or the candidate's own campaign committee.⁵⁰
- (b) Exploratory committees must register with the Secretary of State within fifteen (15) days after receiving contributions during a calendar year which, in the aggregate, exceed \$500.00. 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.⁵¹
- (c) Within fifteen (15) days of the end of each month, an exploratory committee shall file a contribution

⁵⁰ Ark. Code Ann. § 7-6-201(11).

⁵¹ Ark. Code Ann. § 7-6-216 (a) and (b).

report with the Secretary of State 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 \$50.00, along with the contributor's principal place of business, employer, occupation, and the amount contributed.⁵² 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.⁵³

§ 252 Exploratory Campaign Committees-Contribution Limits

- (a) An exploratory committee is a person who receives contributions held to be transferred later to a single candidate.⁵⁴ 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.⁵⁵
- (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

⁵² 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.

⁵³ Ark. Code Ann. § 7-6-216(c).

⁵⁴ Ark. Code Ann. § 7-6-201(11).

⁵⁵ Arkansas Ethics Commission Opinion No. 97-EC-007.

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(j)(1)(A)-(D) 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 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 person gives \$1,000 to the candidate's Pulaski County Exploratory Committee for Governor, such person 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 insure that the funds retained by the committee for the office not sought are disposed pursuant to § 226 and Ark. Code Ann. § 7-6-203(j)(1)(A)-(D) 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 § 249 and Ark. Code Ann. § 7-6-216 with the maximums applicable remaining in tact for those persons who contributed to the exploratory committee.

(2) If the candidate seeks another office, the committee should file a final report and note this on the report and dispose of the funds pursuant to § 226 and Ark. Code Ann. § 7-6-203(j)(1)(A)-(D).

(3) If the person elects not to seek office, the committee must file a final report and note this 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 and Ark. Code Ann. § 7-6-203(j)(1)(A)-(D). 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 behalf, the committee must file its final report and note how the residue of funds were disposed. The funds should be disposed pursuant to one of the four options in § 7-6-203(j)(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.