

ETHICS INTERPRETATION EI-1993-005
ISSUED OCTOBER 14, 1993

The Ethics Commission [the "Commission"] has received your request for an ethics interpretation asking, in effect:

Does a candidate for statewide public office whose campaign platform rests in material part upon his stand on a state question, to which the candidate transfers campaign funds or toward which he makes independent expenditures, incur the monthly filing obligation for state questions in addition to those required for candidate campaigns? If so, is that candidate required to report all receipts and expenses, including those not relating to the state question?

The answer to the first question lies in whether the candidate and his contributors are functioning as a political action committee ["PAC"], which has met the threshold contribution/expenditure limits requiring registration, designation of an agent and reporting of campaign contributions and expenditures.

ANALYSIS

The Ethics Commission Act, Title 74 O.S. 1991, §4200 et seq., defines political action committee as follows:

Definitions

"Political action committee" means a combination of at least two individuals, or a person other than an individual:

a. with the primary or incidental purpose of:

(1) supporting or opposing a candidate or political party, except those required to file with the Federal Election Commission, or

(2) supporting or opposing a state question, and

b. which accepts contributions or makes expenditures aggregating at least Two Hundred Dollars (\$200.00) during a calendar year;

74 O.S. 1991, §4202 (26)

In this instance, the candidate acknowledges more than an incidental purpose of supporting a state question. Assuming that he receives and/or expends at least Two Hundred Dollars (\$200.00) in the aggregate during a calendar year, the issue becomes whether, in using donated funds, the candidate is supporting or opposing a state question in combination with at least one other individual, or a person other than an individual [i.e. contributors]. If so, the candidate meets the definition of a PAC.

Oklahoma law requires that PAC's register with the Commission within ten days of organization or receiving or expending Two Hundred Dollars (\$200.00).

Registration of committees--Form

(A) Committees shall register with the Ethics Commission within ten (10) days of organization or within ten (10) days of receiving or expending more than Two Hundred Dollars (\$200.00)...

74 O.S. 1991, §4212 (A)

As part of its registration requirement, PAC's must file with the Commission a designation of agent form.

Designation of agent for receipt and expenditure of contributions

(A) Every candidate or committee shall designate a person, who may be the candidate himself for a candidate committee, to be the agent of the committee for the receipt and expenditure of contributions for reporting purposes...

74 O.S. 1991, §4213

PAC's must also report contributions and expenditures.

Reports of contributions from candidates and committees

(A) If a candidate or committee has accepted one or more contributions, or made one or more expenditures during a reporting period, the designated agent shall be required to file a complete written report of all contributions and expenditures as provided for in this act. If a candidate or committee has not accepted any contributions and has made no expenditures during a reporting period, the designated agent shall file a statement of inactivity.

74 O.S. 1991, §4211 (A)

Information required includes:

Campaign contributions and expenditures report

A. The campaign contributions and expenditures reports shall disclose:

* * *

3. The specific identification of each contributor who gives a contribution which exceeds Two Hundred Dollars (\$200.00)...

4. The aggregate value of all contributions received from each such contributor during the campaign for candidates and candidate committees or during the current calendar year for other committees;

5. The aggregate total of all contributions in the amount of Two Hundred Dollars (\$200.00) or less;

6. The total sum of all contributions during the current reporting period;

7. The grand total of all contributions for the campaign or cumulative period to date;

* * *

9. All campaign expenditures in detail by categories or objects of expenditure;

10. The total of all expenditures during the current reporting period; and

11. The grand total of all expenditures for the campaign or cumulative period to date.

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74 O.S. 1991, §4214 (A)

Reports for committees supporting or opposing state questions must be filed as follows:

Time for filing reports of contributions and expenditures

* * *

g. In the case of a campaign for or against a state question which has qualified for the ballot, an additional report shall be filed on or before the fifteenth day after the date of notification that the measure has qualified for the ballot. The report shall include all contributions accepted and expenditures made from the close of the reporting period required by subparagraph d of this paragraph through the tenth day after the date of notification that the measure has qualified for the ballot,

h. In the case of a campaign for or against a state question which has qualified for the ballot, further reports shall be filed monthly up to the and including the month following the month of the election that the state question will appear on the ballot. Reports shall be filed within ten (10) calendar days following the end of the preceding month and shall include all contributions accepted and expenditures made during the preceding month,

i. In the case of a campaign for or against a state question which has qualified for the ballot, a pre-election report shall be filed no later than the tenth day before the election that the state question will appear on the ballot. The report shall include all contributions accepted and expenditures made from the close of the reporting period of the last monthly report through a period of time ending fifteen (15) days prior to the date of the election. Provided, that the monthly report shall substitute for the pre-election report if the closing period of the monthly report is less than fifteen (15) days before said election,

j. In the case of a campaign for or against a state question, supplemental reports shall be required as provided by paragraph 6 of this section...

* * *

74 O.S. 1991, §4215 (g)(h)(i)(j)

The Commission finds that in donating funds to a candidate, who has made a state question an integral part of his campaign, contributors are acting in combination with this individual in supporting or opposing a state question. In so holding, the Commission is persuaded that the state question is such a part of the instant campaign that it cannot be separated from that of the candidate. To permit funds to be solicited by the candidate, then transferred or expended on behalf of the state question without identifying individual sources, undermines Oklahoma's laws on campaign disclosure.

The Commission thus holds that, in this instance, the combination of candidate and contributors meet criteria for a PAC. Assuming the candidate receives or expends Two Hundred Dollars (\$200.00) or more in the aggregate in a calendar year in support of this state question, his campaign will incur those reporting obligations, as well. These include monthly reports, as well as others above specified.

The next question is whether the candidate must report monthly all contributions and expenditures of his campaign. Since, under these facts, it will be impossible to distinguish between those received in support of the state question and those for the candidate, the Commission finds that all contributions and expenditures must be reflected in the reports required of the PAC.

It is, therefore, the ethics interpretation of the Ethics Commission, as voted on at its meeting on October 14, 1993, that a candidate for statewide public office whose campaign platform rests in material part upon his stand on a state question, to which the candidate transfers campaign funds or towards which he makes independent expenditures, incurs the filing obligation for state questions in addition to those required for candidate campaigns. And, further, since contributions with respect to the two are inseparable, the candidate is required to report all receipts and expenses.

Please be aware that ethics interpretations by law will be published by this Commission without identifying petitioners.