

**Advisory Opinion 2018-02 (Cite as: 2018 OK Ethics 02)**

Dear Ms. Hoskin:

We are responding to your advisory opinion request relating to Ethics Rule 2, establishing rules of ethical conduct for elective state office and for campaigns for state initiatives and referenda.<sup>1</sup> You ask, in effect, the following question:

Does Ethics Rule 2.48 extend by 90 days the mandatory dissolution date established by Ethics Rule 2.116 for an officeholder's candidate committee to dissolve?

Your question arises because Ethics Rule 2.116 requires an officeholder's candidate committee to dissolve *before* the officeholder's term expires, but Rule 2.48 provides how surplus funds<sup>2</sup> may be expended *after* the officeholder's term expires.

Ethics Rule 2.116 provides, in pertinent part:

A candidate committee shall dissolve no later than two (2) years after the general election for an office with a two-year term, no later than four (4) years after the general election for an office with a four-year term, and no later than six (6) years after the general election for an office with a six-year term, if not required to dissolve sooner by law or these rules.

Ethics Rule 2.48 provides, in pertinent part:

Any surplus funds remaining in the candidate committee's possession within ninety (90) days after the expiration of the term to which the candidate was elected or, for candidates who were not elected, within (90) days after the second year following the general election, shall be deposited in the general revenue fund of the state.

In effect the Ethics Commission recognizes five categories of expenditures for candidate committees: (1) ordinary and necessary campaign expenses; (2) operating

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<sup>1</sup> Ethics Rule 2.1.

<sup>2</sup> "Surplus funds of a candidate committee are those funds not otherwise obligated following the election at which the office for which the candidate committee was formed has been determined which, in the candidate's discretion, are not required to be used for campaign expenses or officeholder expenses." Ethics Rule 2.48.

expenses; (3) contributions to other candidate committees; (4) officeholder expenses; and (5) surplus funds.<sup>3</sup>

Ethics Rule 2.116 establishes a firm mandatory dissolution date. However, the language of Rule 2.48 states that any surplus funds remaining in the candidate committee's possession "within ninety (90) days after the expiration of the term to which the candidate was elected or, for candidates who were not elected, within ninety (90) days after the second year following the general election, shall be deposited in the general revenue fund of the state." Ethics Rule 2.48 provides a limited exception to Rule 2.116 to avoid a situation where a candidate committee failed to dissolve by the mandatory dissolution date and would otherwise be unable to dispose of its remaining funds. Accordingly, the mandatory dissolution date establishes the deadline after which contributions are no longer able to be received and expenditures, *other than* the expenditures permitted in Rule 2.48, may no longer be made.

The Commission has long interpreted this language in Rule 2.48 to require any funds in the candidate committee's possession *more than* 90 days after the officeholder's term expires must be deposited in the State's general revenue fund; any surplus funds in the candidate committee's possession *within* the 90 day period immediately following the expiration of the officeholder's term may be used for any of the permitted purposes for surplus funds outlined in Rule 2.48. Any other interpretation would lead to an absurdity, which must be avoided.<sup>4</sup> For example, a construction that Rule 2.48 only permits expenditure of funds in the possession of the candidate committee *within* the 90 day period immediately following an officeholder's term would mean the Ethics Rules fail to permit any disposition of funds in the possession of the candidate committee *more than* 90 days following the officeholder's term.

Under the Commission's construction of Rule 2.48, there is a period of 90 days which begins after the mandatory dissolution date established in Rule 2.116, or, for officeholders following the expiration of the officeholder's term, in which a candidate or officeholder may use surplus funds for any of the seven permitted purposes in Rule 2.48. After that 90 day period, funds in the candidate committee's possession must be

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<sup>3</sup> Ethics Rules 2.43, 2.44 and Rule 2.48.

<sup>4</sup> See, e.g., *Ledbetter v. Oklahoma Alcoholic Beverage Laws Enforcement Com'n*, 764 P.2d 172, 179 (Okla. 1988) ("statutory construction that would lead to an absurdity must be avoided and a rational construction should be given to a statute if the language fairly permits").

deposited in the State's general revenue fund. This is illustrated by the following example:

Representative Doe formed a candidate committee and was elected to office for her first term on November 8, 2016. Representative Doe must dissolve her candidate committee on or before November 7, 2018—two years after her 2016 election—though Representative Doe's term of office does not expire until November 23, 2018. If she fails to dissolve her committee on November 7<sup>th</sup>, she has until February 19, 2019 (90 days from November 23<sup>st</sup>) to use those surplus funds for any of the seven permitted purposes in Rule 2.48. On February 20<sup>th</sup>, (after the 90 day period) those funds must be deposited in the State's general revenue fund.

Rule 2.48 recognizes that even though Rule 2.116 requires an officeholder's candidate committee to dissolve before the end of the officeholder's term, a candidate committee may fail to dissolve by the mandatory dissolution date or may unintentionally receive and/or accept funds after the candidate committee has dissolved. Without Rule 2.48, the candidate committee would be unable to dispose of the funds remaining after the mandatory dissolution date.

If a candidate committee fails to dissolve on or before the mandatory dissolution date established in Rule 2.116, it may be assessed a compliance fee pursuant to Ethics Rule 6.19. During that 90 day period outlined in Rule 2.48, a candidate committee may dispose of surplus funds through any of the permitted purposes in Rule 2.48: transfer of funds to a candidate committee for use in a future state election; return to contributors (other than the candidate), contribute to the various committees of a state political party, or donation to a charity, state government, or political subdivision. Any funds remaining in a candidate committee's possession more than 90 days following the end of an officeholder's term (or for unelected candidates two years after the general election) are unable to be utilized as surplus funds and must be deposited in the State's general revenue fund.

After the mandatory dissolution date, a candidate or candidate committee may not engage in accepting funds or making expenditures other than those permitted in Rule 2.48. However, there may be instances where, through no action of the candidate or candidate committee, funds are unintentionally received and/or accepted. For example, a contribution may be sent through the mail and received by a candidate or committee without an opportunity to reject it. Alternatively, interest accruing to the committee's

depository account may be deposited automatically. The following sets forth the proper procedure for disposition of such funds.

**Therefore, it is the official opinion of the Ethics Commission that:**

- 1. Ethics Rule 2.48 does not extend by 90 days the mandatory dissolution date established by Ethics Rule 2.116 for a candidate committee to dissolve;**
- 2. Ethics Rule 2.116 establishes a mandatory dissolution date, thereby establishing the deadline for receipt of funds and expenditure of funds;**
- 3. Because Rule 2.48 does not extend the mandatory dissolution date to the end of an officeholder's term of office, an officeholder may not expend candidate committee funds for officeholder expenses during that portion of the officeholder's term that extends past the mandatory dissolution date.**
- 4. Ethics Rule 2.48 creates a limited exception to permit the disposal of remaining funds through surplus funds provisions for 90 days, thereafter the only allowable expenditure is to the State's general revenue fund;**
- 5. A candidate committee that fails to dissolve on or before the mandatory dissolution date established by Ethics Rule 2.116 may be assessed a compliance fee, pursuant to Ethics Rule 6.19;**
- 6. Although a candidate or candidate committee may not intentionally receive or accept funds after the mandatory dissolution date there may be instances where, through no action of the candidate or candidate committee, funds are received after the mandatory dissolution date;**
- 7. A candidate committee that fails to dissolve on or before the mandatory dissolution date established by Ethics Rule 2.116, and subsequently unintentionally accepts funds, must either return the funds to the contributor or deposit the funds in the State's general revenue fund;**
- 8. A candidate or candidate committee that unintentionally accepts funds after a candidate committee's mandatory dissolution date and is unable to return the funds to the contributor should contact the Ethics Commission for the process of depositing the funds to the general revenue fund and to document the receipt and disposition of the funds with the Commission.**