

**ARKANSAS ETHICS COMMISSION**

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September 9, 2021

**Via Email**

Ms. Jessica C. Whittaker, Administrator  
Administrative Rules Review Section  
Bureau of Legislative Research  
One Capitol Mall, 5th Floor  
Little Rock, Arkansas 72201

**Re: Act 595 Monthly Written Updates**

Dear Jessica:

I apologize for the mix-up on the monthly report which was due September 1, 2021. I am enclosing a copy of the report which the Arkansas Ethics Commission's ("AEC") staff prepared in accordance with Ark. Code Ann. § 25-15-216 and presented to the AEC on July 15, 2021.

As reflected in the report, legislation passed during the 93rd General Assembly has necessitated that the AEC amend the following three (3) sets of existing rules:

1. Rules on Political Committees;
2. Rules on Campaign Finance & Disclosure; and
3. Rules on Campaign Contribution Limit.

The third set of Rules, i.e., the Rules on Campaign Contribution Limit, has already been amended to reflect the changes made by Act 384. The amended set of Rules became effective on August 5, 2021. I am enclosing a copy of that amended set of Rules.

The AEC has approved drafts of amended sets of Rules on Political Committees and Rules on Campaign Finance & Disclosure. Those drafts have been submitted to the Governor's office for approval. Such approval is required before the AEC can start the actual rule making process.

Ms. Jessica C. Whittaker, Administrator  
September 9, 2021  
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I will continue providing you with monthly updates until the rule making process is completed.

Sincerely,



Graham F. Sloan  
Director

Enclosures

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## MEMORANDUM

**To: Commissioners**  
**From: Graham F. Sloan and  
Jill Rogers Barham**  
**Re: Report of 2021 Regular Session**  
**Date: July 15, 2021**

Pursuant to Ark. Code Ann. § 25-15-216, staff has reviewed the laws enacted by the 93<sup>rd</sup> General Assembly in its Regular Session as of the date provided above to determine whether any of the existing rules of the Arkansas Ethics Commission ("AEC") should be repealed or amended, or whether any new rule should be adopted. Having reviewed the laws and analyzed the effect of such laws on the rules of the AEC this report sets forth the results of such review.

ARKANSAS CODE ANNOTATED	ACT	DESCRIPTION	RULE AFFECTED
§ 7-6-203(d)(4)	254	Act 254 clarifies that a "prohibited political action committee" is prohibited from making campaign contributions to another "prohibited political action committee." (Approved: 3/4/21)	RPC
§ 7-6-203(e)	254	In keeping with <i>Jones v. Jegley</i> , 947 F.3d 1100 (8th Cir. 2020), Act 254 removes the two-year fundraising blackout window. Candidates for public office are now permitted to raise campaign contributions more than two (2) years before an election. (Approved: 3/4/21)	RCF&D

ARKANSAS CODE ANNOTATED	ACT	DESCRIPTION	RULE AFFECTED
§ 7-6-207(f)(1)	254	<p>Act 254 requires that a candidate and committee working on the candidate's behalf disclose each financial institution used for receiving contributions or making expenditures, specifically the financial institution's name and address, to the Secretary of State ("SoS") with the initial report to be filed with the SoS.</p> <p>Likewise, Act 254 provides that the information shall be made available to the AEC upon request, is not a public record, and is exempt under FOIA.</p> <p>This Act does not address county, municipal, or school board candidates. (Approved: 3/4/21)</p>	RCF&D
§ 21-8-705	254	<p>Act 254 provides that if the party filing period under § 7-7-203 ends before January 1 of the year of the general election, a candidate for elective office shall file a Statement of Financial Interest ("SFI") for the previous calendar year no later than January 31 of the year of the general election in addition to the SFI required under § 21-8-701. (Approved: 3/4/21)</p>	RCF&D
§ 7-6-201(3)	272	<p>Regarding carryover funds, Act 272 amended the definition of carryover funds to add that if the office sought does not have an annual salary, "carryover funds" means an amount of three thousand dollars (\$3,000) or less. (This would have meant that, for the first time, candidates for elected offices that do not receive an annual salary will still be permitted to retain carryover funds.)</p> <p>However, Act 737 (discussed later), completely eliminates the concept of carryover funds, including repealing § 7-6-201(3), so Act 272 became irrelevant. (Approved: 3/4/21)</p>	RCF&D (See Act 737)

ARKANSAS CODE ANNOTATED	ACT	DESCRIPTION	RULE AFFECTED
§ 7-6-203(f)(4)(A) & § 7-6-203(g)(4)	324	<p>Pursuant to Act 324, if a candidate or officeholder is assessed a fine by the AEC under § 7-6-218(b)(4)(B) for the use of campaign funds or carryover funds as personal income, a candidate or officeholder shall not use campaign funds or carryover funds to pay that fine.</p> <p>If a candidate or officeholder uses campaign funds or carryover funds to pay a fine imposed by the AEC under § 7-6-218(b)(4)(B) for the use of campaign funds or carryover funds as personal income, the candidate or officeholder shall be deemed to have taken campaign funds as personal income.</p> <p>(Prior to the passage of Act 324, it would have been legally permissible to pay fines issued for taking campaign funds as personal income with campaign funds.) (Approved: 3/15/21)</p>	RCF&D
§ 7-6-203(a)(1)(A)	384	<p>Act 384 amends the campaign contribution limit from being a set dollar amount written into the Arkansas Code, to instead read as follows: "the maximum campaign contribution level established by rule of the Arkansas Ethics Commission under subsection (i) of this section..." Act 384 did not change the formula that must be used by the AEC to determine the contribution limit (pursuant to Ark. Code Ann. § 7-6-203(i)). This amendment will prevent the Arkansas Code from listing a potentially inaccurate and/or outdated/stale contribution limit every two years. It likewise reinforces that the AEC "shall" set the campaign contribution limit via rule. (Approved: 3/17/21)</p>	RCCL
§ 7-6-203(b)(1)	385	<p>The effective date for Act 385 is for all elections <i>after</i> January 1, 2023.</p> <p>The amendments found in Act 385 address the campaign contribution limit, adding the words "total" and aggregate "amount" per</p>	RCF&D

ARKANSAS CODE ANNOTATED	ACT	DESCRIPTION	RULE AFFECTED
		<p>election, then go on to state that, "The total aggregate amount per election is based on the total contributions made to a candidate by a donor during an election regardless of which office or offices the candidate is seeking, and the aggregate amount during an election applies even if a candidate: (i) Seeks more than one (1) office during the election; or (ii) Concludes a campaign or otherwise withdraws from the election."</p> <p>This amendment clarifies, for example, that it would not be permissible for a candidate to accept a maximum campaign contribution from Contributor "A" to run for Office #1, and then switch races during the same election cycle to run for Office #2 and accept a second, maximum contribution from Contributor "A", all while keeping both contributions.</p> <p>Put another way, the contribution limit from a single contributor to a single candidate for a single election cycle cannot be exceeded or circumvented by switching the office for which the candidate is running. (Approved: 3/18/21)</p>	
§ 21-8-305	540	<p>Act 540 expands the types of offices that a person who has been convicted of a public trust crime is ineligible to file for, run for, or hold as a candidate beyond constitutional offices to also include a county elected office and an elected office in a municipality, city, township, or other political subdivision of the state. (Approved: 4/1/21)</p>	RCF&D
§ 7-6-203(f)(2)	734	<p>Act 734 provides that the use of campaign funds to pay a candidate's childcare expenses shall not be considered as taking of campaign funds as personal income if the campaign funds are used to pay for childcare for the time the candidate is engaging in campaign activity</p>	RCF&D

ARKANSAS CODE ANNOTATED	ACT	DESCRIPTION	RULE AFFECTED
		and the childcare expenses would not exist in the absence of the campaign. (Approved: 4/15/21)	
§ 7-6-201(3) § 7-6-201(17)(A) § 7-6-203(f)(4)(A) § 7-6-203(f)(5) § 7-6-203(f)(7) § 7-6-203(g) § 7-6-207(a)(1) § 7-6-207(b)(1) § 7-6-207(b)(2) § 7-6-208(a) § 7-6-209(a)	737	<p>Act 737 removes the term “surplus” campaign funds and replaces it with the term “remaining” campaign funds, and eliminates the term “carryover funds” whenever it appears.</p> <p>Likewise, Act 737 removes the requirement that a candidate must dispose of surplus funds after the campaign has ended (i.e. dispose of the amount over the annual salary of the office sought.) This change will mean that an uncapped amount of money can be kept after an election has ended.</p> <p>Act 737 removes all the current reporting requirements for carryover funds and instead provides, “If a candidate keeps remaining campaign funds after an election, the candidate shall continue filing the reports required by this subsection.”</p> <p>Likewise, with regard to reporting, it adds that the filer shall disclose on their report, “A list of all disbursements made under 7-6-203(g)(1).”</p> <p>Furthermore, with regard to reporting for candidates for school district, township, or municipal office, it adds such candidates shall, “For each year in which a candidate is not listed on a ballot for election, file an annual report of all contributions received and expenditures made during that year, and that the annual report shall be filed no later than fifteen (15) days after the end of the year.” (Approved: 4/16/21)</p>	RCF&D
§ 7-6-228(c)	755	Act 755 amends the law with regard to “Campaign signs, campaign literature, and other printed campaign materials” by	RCF&D

ARKANSAS CODE ANNOTATED	ACT	DESCRIPTION	RULE AFFECTED
		<p>removing the phrase "under this section", clarifying that all such printed campaign materials (not just ones referenced earlier in the sub-section), shall clearly contain the words "Paid for by" followed by the name of the candidate, committee, or person who paid for the campaign sign, campaign literature, or other printed campaign materials.</p> <p>Likewise, Act 755 clarifies accountability with regard to the "Paid for by" disclaimer: "The candidate printing the campaign sign, campaign literature, or other printed campaign materials shall be responsible for including the language required by this section." (Approved: 4/19/21)</p>	
§ 7-6-230(a)	1029	<p>Act 1029 eliminates the requirement that Contribution &amp; Expenditure Reports are filed in paper form only when (A) The candidate does not have access to the technology necessary to submit reports in electronic form; and (B) Submitting reports in electronic form would constitute a substantial hardship for the candidate.</p> <p>It does not remove the requirement that paper filers submit an affidavit, but does eliminate the requirement that the affidavit declare: (i) The candidate does not have access to the technology necessary to submit reports in electronic form; (ii) Submitting reports in electronic form would constitute a substantial hardship for the candidate; and (iii) The candidate agrees to file all other reports in paper form for the duration of the election cycle.</p> <p>Likewise, Act 1029 provides that the SoS shall develop electronic reporting forms, including without limitation: (i) A cover sheet for a reporting period; (ii) Campaign contribution reports; and (iii) Campaign expenditure reports.</p>	RCF&D



ARKANSAS CODE ANNOTATED	ACT	DESCRIPTION	RULE AFFECTED
		<p>Furthermore, Act 1029 provides that the SoS shall develop electronic reporting forms in a manner that allows a candidate to: (i) Fill out an electronic form for each reporting period in an electronic word processing file, portable document format, or equivalent format that may be saved in a read-only format; (ii) Upload the electronic reporting forms electronically by an upload to the internet or delivered by electronic media to the SoS; and (iii) Combine all electronic forms into a single document that is available to the public in an electronically searchable format.</p> <p>Act 1029 also includes the following uncodified timetable: "DO NOT CODIFY".  <b>Duty of SoS. The SoS shall: (1) Develop criteria for an updated and simplified electronic campaign finance online reporting system by January 1, 2022; and (2) Develop a timeline of the expected time to implement the updated and simplified electronic campaign finance online reporting system.</b></p> <p>This could affect the AEC Forms, which are included in the appendix of the RP&amp;P. (Although, pursuant to Act 64, the list of items that need not be considered Rules has expanded).</p> <p><b>EMERGENCY CLAUSE.</b>            (Approved: 4/29/21)</p>	
<p>§ 25-1-125</p>	<p>1043</p>	<p>Borrowing language from the campaign advertisements disclaimer, Act 1043 now requires a disclaimer to be placed on advertisements appearing in newspapers, on television, on radio, and on other electronic medium that use the image or voice of an elected official and are paid for with federal, state, or county taxpayer funds.</p>	<p><b>NOTE:</b>            Although this Act authorized a citizen to file a complaint, it did not give the AEC sanctioning</p>

Abbreviation Code for Rules: RCCL—Rules on Campaign Contribution Limit; RCF&D—Rules on Campaign Finance & Disclosure; RPC—Rules on Political Committees.

ARKANSAS CODE ANNOTATED	ACT	DESCRIPTION	RULE AFFECTED
		<p>Act 1043 places the responsibility of including the disclaimer on both the person submitting the communication and the elected official. However, Act 1043 specifically states: "Any citizen may file a complaint with the Arkansas Ethics Commission against an elected official who violates this section."</p> <p>Act 1043 does not list any amendments to 7-6-217 or 7-6-218.</p> <p>(Approved: 4/29/21)</p>	<p>or rule making authority.</p>

# **ARKANSAS ETHICS COMMISSION**

## **RULES ON CAMPAIGN CONTRIBUTION LIMIT**

**ARKANSAS ETHICS COMMISSION  
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**§ 100 Definitions**

(a) **Approved political action committee** – As used in these rules, the term “approved political action committee” means any person that receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees; does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and has registered pursuant to Ark. Code Ann. § 7-6-215 prior to making contributions. “Approved political action committee” does not include political parties, county political party committees, the candidate’s own campaign committee, exploratory committees, ballot question committees, or legislative question committees.

(b) **Candidate** – As used in these rules, the term “candidate” means any individual who has knowingly and willingly taken affirmative action, including solicitation of funds, for the purpose of seeking nomination for or election to any public office.

(c) **Contribution** – As used in these rules, the term “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, or pledges or promises of money or anything of value, whether or not legally enforceable, to a candidate, committee, or holder of elective office made for the purpose of influencing the nomination or election of any candidate;

“Contribution” includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the granting of discounts or rebates by television stations, radio stations, and newspapers not extended on an equal basis to all candidates for the same office; and any payments for the services of any person serving as an agent of a candidate or committee by a person other than the candidate or committee or persons whose expenditures the candidates or committee must report under subchapter 2, Chapter 6 of Title 7 of the Arkansas Code. 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.

“Contribution and expenditure” shall not include activity sponsored and funded by a political party to promote its candidates or nominees through events such as dinners, luncheons, rallies, or similar gatherings and shall not include nonpartisan activity designed to encourage individuals to register to vote or to vote or any communication by any membership organization to its members or stockholders if the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election or election of any candidate.

(d) **County political party committee** – As used in these rules, the term “county political party committee” means a person that is organized at the county level for the purpose of supporting its affiliate party and making contributions; is recognized by an organized political party, as defined in Ark. Code Ann. § 7-1-101, as being affiliated with that

political party; receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, political action committees, or other county political party committees; does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and registers pursuant to Ark. Code Ann. § 7-6-226 prior to making contributions.

- (e) **Election** – As used in these rules, the term “election” means each election to be held to nominate or elect a candidate to any public office, including school elections. For the purposes of these rules, a preferential primary election, a general primary election, a runoff election, a special election, and a general election shall each constitute a separate election.
- (f) **Individual** – As used in these rules, the term “individual” means a human being.
- (g) **Legislative caucus committee** – As used in these rules, the term “legislative caucus committee” means a person that is composed exclusively of members of the General Assembly, that elects or appoints officers and recognizes identified legislators as members of the organization, and that exists for research and other support of policy development and interests that the membership hold in common. A “legislative caucus committee” includes, but is not limited to, a political party caucus of the General Assembly, the Senate, or the House of Representatives. An organization whose only nonlegislator members are the Lieutenant Governor or the Governor is a “legislative caucus committee” under these rules.
- (h) **Person** – As used in these rules, the term “person” means any individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert. It shall also include a political party, a county political party committee, and a legislative caucus committee.
- (i) **Political party** – As used in these rules, the term “political party” means any group of voters which, at the last-preceding general election, polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office; or which has filed a petition with the Secretary of State containing at the time of filing the signatures of at least ten thousand (10,000) registered voters in the State of Arkansas, declaring the intention of organizing a political party, the name of which shall be stated in the declaration, and of participating in the next general election, and which has been declared a new political party by the Secretary of State. When any political party fails to obtain three percent (3%) of the total votes cast at an election for the Office of Governor or nominees for presidential electors, it shall cease to be a political party.

**§ 101 Contribution Limit**

As of February 2, 2021, a candidate may accept a campaign contribution or contributions up to the maximum amount of two thousand nine hundred dollars (\$2,900) for each election, whether opposed or unopposed, from:

- (a) an individual;
- (b) a political party;
- (c) a county political party committee;
- (d) a legislative caucus committee; or
- (e) an approved political action committee.

**§ 102 Adjustment of Contribution Limit**

The contribution limit shall be adjusted by the Arkansas Ethics Commission at the beginning of each odd-numbered year in an amount equal to the percentage certified to the Federal Election Commission by the Bureau of Labor Statistics of the Department of Labor under 52 U.S.C. § 30116(c) as existing on January 1, 2015. If the amount after adjustment is not a multiple of one hundred dollars (\$100), the Arkansas Ethics Commission shall round the amount to the nearest multiple of one hundred dollars (\$100).