

The Honorable Betsey Bayless
Arizona Secretary of State

December 28, 1999
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Questions Presented

Does the Secretary of State, the Citizens Clean Elections Commission, or some other public officer or body have the duty or authority to enforce the provisions of Arizona Revised Statutes ("A.R.S.") § 16-944 requiring lobbyists to pay an annual fee?

Summary Answer

The Citizens Clean Elections Commission has the duty and authority to enforce the provisions of A.R.S. § 16-944 requiring lobbyists to pay an annual fee.

Background

Arizona voters passed Proposition 200, the Citizens Clean Elections Act ("Act"), as an initiative in the 1998 general election. The Act authorizes public funding for the campaigns of political candidates who voluntarily limit campaign spending and fund-raising in statewide and State legislative elections. *See generally* A.R.S. §§ 16-940 through -961. A Citizens Clean Elections Fund ("Fund"), established by the Act, pays the costs of the program. A.R.S. § 16-949(D). The Act also creates funding mechanisms, one of which is a new fee on certain registered lobbyists. A.R.S. § 16-944. According to A.R.S. § 16-944, this "fee shall be in the amount of one hundred dollars annually per lobbyist and shall be collected by the secretary of state and transmitted to the state treasurer for deposit into the fund."⁽¹⁾

The initiative also established a Citizens Clean Elections Commission ("Commission") to administer and enforce the Act. Among other things, the Commission is required to "[e]nforce the provisions of this article [Title 16, ch. 6, art. 2] . . . and ensure that money required by this article to be paid to the fund is deposited in the fund." A.R.S. § 16-956(B)(5). In addition, the Act sets out enforcement procedures that the Commission is to follow if it finds "that there is reason to believe that a person has violated" a provision of the Act. A.R.S. § 16-957. After making a public finding of violation, the Commission may assess a civil penalty in accordance with A.R.S. § 16-942. *See* A.R.S. § 16-957(B). However, none of the civil penalties contained in A.R.S. § 16-942 apply to a lobbyist's failure to pay the required annual fee. Similarly, the criminal violations provided for in the Act do not include failure to pay the lobbyist fee. *See* A.R.S. § 16-943.

Analysis

Although the Act prescribes that the Secretary of State shall collect the one hundred dollar annual fee imposed on lobbyists, A.R.S. § 16-944, the Act does not give the Secretary of State any duty or authority to enforce its provisions. Moreover, other statutes providing the Secretary of State with enforcement responsibilities do not extend to the lobbyist fee imposed by the Act. Section 41-1237.01, A.R.S., which establishes the Secretary of State's enforcement responsibilities regarding lobbyists, specifically applies only to violations of the article in Title 41 regulating lobbyists. Similarly, the authority of the Secretary of State to enforce the provisions of the campaign finance laws in article 1, chapter 6, of Title 16, is confined to violations of that article. A.R.S. § 16-924. Consequently, that authority does not extend to the Act, which is in article 2, chapter 6 of Title 16.

In contrast, the Commission is specifically authorized to enforce the Act. A.R.S. § 16-956(B)(5). Enforcement tools include assessing civil penalties and issuing orders requiring compliance. A.R.S. § 16-957. Although the Act does not establish a civil penalty for failure to pay the one hundred dollar lobbyist fee, the Commission may issue orders requiring compliance with the lobbyist fee provision in the Act. A.R.S. § 16-957(A). If the lobbyist fee remains unpaid, the Commission may make a public finding to that effect. A.R.S. § 16-957(B). The subject of the order may appeal this finding to the superior court. *Id.* If no appeal is filed, the amount of the unpaid fee would become a debt owed the State and subject to collection by this

office. A.R.S. § 41-191.04 (permitting the Attorney General to initiate proceedings to collect debts to this State, or to any agency, board, commission or department of this State).⁽²⁾

Conclusion

The Secretary of State is not authorized to enforce the requirement in A.R.S. § 16-944 that lobbyists pay a one hundred dollar fee that is deposited into the Fund. Rather, the Commission has the duty and authority to enforce the lobbyist fee

imposed by A.R.S. § 16-944.

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1) State law also requires the registration and regulation of lobbyists. See A.R.S. §§ 41-1231 through -1239. Under these registration provisions each person or entity, "at the time of registering or re-registering, shall pay a registration or re-registration fee of twenty-five dollars to the secretary of state." A.R.S. §§ 41-1232(E) (registration of principals), and -1232.01(E) (registration of public bodies). These fees are deposited in the general fund. Id.

2) The Attorney General, or the appropriate county, city or town attorney, is authorized to enforce any of the provisions of Title 16 in any election. A.R.S. § 16-1021. However, because the payment of a lobbyist fee is not an election, that broad authority does not apply under these circumstances.

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