

**To: The Honorable Betsy Bayless
Arizona Secretary of State**

**January 19, 2000
Re: I00-001(R99-051)**

Questions Presented

You have asked the following questions about the reporting requirements in the Citizens Clean Elections Act ("Act"), Arizona Revised Statutes ("A.R.S.") §§ 16-940 to -961:

(1) What amount of contributions may non-participating candidates for the Legislature and the Corporation Commission receive that would require those candidates to file original reports with the Secretary of State's Office under A.R.S. § 16-941(B)(2); and

(2) if, by September 28, 1999, a non-participating candidate had received the amount of contributions requiring an original report, when would that candidate be required to file the report?⁽¹⁾

Summary Answer

(1) Before the primary election, a non-participating legislative candidate must file a report when that candidate's expenditures exceed \$7,000, and a non-participating Corporation Commission candidate must file a report when expenditures exceed \$28,000. After the primary election, reports are triggered when contributions less expenditures through the primary election exceed \$10,500 for non-participating legislative candidates and \$42,000 for Corporation Commission candidates. For elections after 2000, the amounts that establish reporting obligations will be adjusted for inflation under A.R.S. § 16-959.

(2) Contributions received as of September 28, 1999, will not trigger a reporting requirement because through the primary election, reports are triggered by expenditures, not contributions. After the primary election, reports are triggered by contributions less expenditures through primary election day.

Background

At the 1998 general election, Arizona's voters passed Proposition 200, which created the Act.⁽²⁾ The Act establishes public funding of legislative and statewide election campaigns for those political candidates who voluntarily participate in limiting campaign spending and fundraising. See Betsy Bayless, Secretary of State, Ballot Propositions For The General Election of November 3, 1998 at 84 (1998) (analysis by Legislative Council). Candidates who qualify for the clean elections program receive public funding for their campaigns, based on amounts specified in the Act. See A.R.S. §§ 16-951, -961(G), (H).

The Act also establishes reporting requirements, some of which apply to non-participating candidates. See A.R.S. §§ 16-941(B), -958(B). Non-participating candidates must comply with the Act's reporting requirements, as well as the campaign finance reporting requirements under A.R.S. § 16-913.⁽³⁾ The Act provides that such reports shall be filed with the Secretary of State in electronic format. A.R.S. § 16-958(E). The Citizens Clean Elections Commission ("Commission"), which is responsible for implementing the Act, uses the non-participating candidates' reports to determine whether participating candidates are entitled to receive additional public funding. See A.R.S. § 16-952.

Through the primary election, a non-participating candidate must file a report when "expenditures other than independent expenditures on behalf of the candidate, from the beginning of the election cycle to any date up to primary election day, exceed seventy percent of the original primary election spending limit applicable to a participating candidate seeking the same office." A.R.S. § 16-941(B)(2)(a). The Act refers to this as an "original report." A.R.S. § 16-958(A).⁽⁴⁾ For the 2000 elections, this report requirement applies to expenditures after November 3, 1998 (the date of the last general election, which begins the election cycle) and up to September 12, 2000 (the date of the primary election).

The timing for filing a report depends on when a non-participating candidate triggers the reporting requirement. Before the beginning of the primary election period (which, for the 2000 election, begins July 11, 2000), the report is due on

the first of each month unless the candidate has not reached the amount requiring a report on that date.⁽⁵⁾ A.R.S. § 16-958(B)(1). After the primary election period begins, the report is due on the Tuesday after the candidate has reached the amount triggering a reporting requirement, except during the last two weeks before the primary election, when a report is due within one business day of triggering a reporting requirement. A.R.S. §§ 16-958(B)(2), (3).

After the primary election, the obligation to file an original report is based on total contributions less the candidate's expenditures through the primary election. A.R.S. § 16-941(B)(2)(b). An original report is required when "contributions to a candidate from the beginning of the election cycle to any date during the general election period, less expenditures made from the beginning of the election cycle through primary election day exceed seventy percent of the original general election spending limit" *Id.*⁽⁶⁾ The candidate must file this original report, and any supplemental report that may be required, on any Tuesday after the candidate has triggered a reporting requirement, except during the last two weeks before the general election when a report must be filed within one business day of triggering the reporting requirement. A.R.S. § 16-958(B).

Non-participating candidates file these reports with the Secretary of State. A.R.S. §§ 16-941(B)(2), - 958(A). The Secretary of State "immediately" notifies the Commission of the report and delivers a copy to the Commission. A.R.S. § 16-958(D). The Commission, in turn, provides a copy of the report to participating candidates opposing the candidate identified in the report. *Id.* The report must identify (1) the dollar amount being reported, (2) the candidate, and (3) the date. A.R.S. § 16-958(A).

Analysis

A. Through the Primary Election, Expenditures Trigger Reporting Requirements; After the Primary Election, Contributions Less Expenditures through the Primary Election Trigger the Reporting Requirements.

1. Primary Election Reports.

Through the primary election, a non-participating candidate must file an original report when expenditures from the start of the election cycle to any date up to primary election day exceed 70 percent of the original primary election spending limit. A.R.S. § 16-941(B)(2)(a). For the 2000 elections, the original primary election spending limit for a legislative candidate is \$10,000 (A.R.S. § 16-961(G)(1)), and for Corporation Commission candidates it is \$40,000 (A.R.S. § 16-961(G)(3)).⁽⁷⁾ Therefore, a non-participating candidate for the Legislature must file a report when expenditures up to primary election day exceed \$7,000 (70 percent of \$10,000), and non-participating Corporation Commission candidates must file when expenditures up to the primary election exceed \$28,000 (70 percent of \$40,000).

If non-participating candidates for those offices reach that expenditure level before the primary election, those candidates must file reports according to the schedule in A.R.S. § 16-958. If the reporting requirement is triggered "before the beginning of the primary election period," (which, for the 2000 election, means before July 11, 2000), the report is due the first of the month. A.R.S. § 16-958(B)(1). From the beginning of the primary election period (July 11, 2000), but not during the last two weeks before the primary election, the report is due on the first Tuesday after the candidate reaches the expenditure level triggering a report. A.R.S. § 16-958(B)(2). During the last two weeks before the primary election, a candidate must file a report within one day of reaching the expenditure level triggering a report. A.R.S. § 16-958(B)(3).

2. General Election Reports.

After the primary election, a non-participating candidate must file an original report when "contributions . . . from the beginning of the election cycle to any date during the general election period, less expenditures made from the beginning of the election cycle through primary election day . . . exceed seventy percent of the original general election spending limit." A.R.S. § 16-941(B)(2)(b). Although the Act does not specifically state that this report is only required after the primary election, this conclusion follows logically from the statutory language. A candidate cannot make the necessary calculation for this report until after the primary because the calculation requires contributions "to any date in the general election period," which begins the day after the primary (A.R.S. § 16-961(B)(5)), and "expenditures *through* the primary." *Id.*

The original general election spending limit is fifty percent greater than the primary election spending limit for that office. A.R.S. § 16-961(G), (H). Because the primary election spending limit for a candidate for the Legislature is \$10,000, A.R.S. § 16-961(G)(1), the original general election spending limit for a legislative candidate is \$15,000.

Thus, if a non-participating legislative candidate's contributions to any point in the general election period less expenditures through primary election day exceed \$10,500 (70 percent of \$15,000), the legislative candidate must file a report with the Secretary of State.

The general election spending limit for Corporation Commission candidates is \$60,000, which is fifty percent greater than the \$40,000 primary spending limit. See A.R.S. § 16-961(G)(3), (H). If the candidate's contributions through any date in the general election period less expenditures through primary election day exceed \$42,000 (70 percent of \$60,000), the Corporation Commission candidate must file an original report with the Secretary of State. This report must be filed on the first Tuesday by which the candidate has reached the specified dollar amount and, within the last two weeks before the general election, must be filed within one business day after the candidate triggers the reporting requirement. A.R.S. § 16-958(B)(2), (3).

B. Contributions to a Non-Participating Candidate by September 28, 1999.

Do Not Trigger a Reporting Requirement.

As described above, contributions alone do not trigger reporting requirements under the Act because expenditures are always considered. Before the primary election, expenditures determine whether a non-participating candidate must file a report. See A.R.S. § 16-941(B)(2)(a). After the primary election, contributions to any point in the general election period less expenditures through the primary trigger a report. Contributions to a non-participating candidate through September 28, 1999 do not trigger a reporting requirement at that point because additional analysis of the candidate's expenditures, as described above, is necessary to determine whether the candidate must file a report and when that report is due.

Conclusion

For the 2000 election cycle, before the primary election, a non-participating candidate for the Legislature must file an original report when expenditures exceed \$7,000. A non-participating candidate for the Corporation Commission must file a similar report when expenditures before the primary exceed \$28,000. After the primary election, when total contributions to a non-participating legislative candidate less expenditures through the primary exceed \$10,500, the candidate must file a report. A non-participating Corporation Commission candidate must file this report when contributions less expenditures through the primary exceed \$42,000. For elections after 2000, these amounts will be adjusted for inflation pursuant to A.R.S. § 16-958.

Contributions as of September 28, 1999, do not establish a reporting obligation under the Act. Instead, through the primary election, the reporting requirement is determined by expenditures, and after the primary election, the reporting requirement is determined by contributions less expenditures through the primary election.

¹ A "non-participating" candidate is a candidate who is not participating in the clean elections public campaign funding program established by the Act. See A.R.S. § 16-961(C)(2).

2. The Governor proclaimed the Act valid on November 23, 1998. In addition, the provisions of the Act relevant to this Opinion were pre-cleared by the United States Justice Department on February 16, 1999. See 42 U.S.C. § 1973(c).

3. In an election year, A.R.S. § 16-913 requires that political committees file the following campaign finance reports: (1) a report filed by June 30, covering January 1 through May 31, (2) pre-election reports that are complete through the twentieth day before the primary election and general election, and (3) post-election reports that are complete through the twentieth day after the primary election day and general election day. For non-election years, a single campaign finance report is due no later than January 31 of the following year. A.R.S. § 16-913.

4. The Act also requires supplemental reports if additional unreported expenditures exceed ten percent of the original primary election spending limit or \$25,000, whichever is lower, before the general election period. A.R.S. § 16-958(A).

5. The primary election period is the nine-week period ending on the day of the primary election. A.R.S. § 16-961(B)(4). For the 2000 election cycle, that period runs from July 11, 2000, to September 12, 2000.

6. During the general election period, supplemental reports are required when expenditures or contributions exceed "ten

percent of the original general election spending limit or twenty-five thousand dollars, whichever is lower." A.R.S. § 16-958(A).

7. The term "original" means the primary election spending limits adjusted for inflation every two years, as specified in A.R.S. § 16-959. A.R.S. § 16-961(I)(1). Because the Act was passed less than two years ago, the "original primary election spending limit" is the same as the "primary election spending limit."

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