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September 6, 2013

Re: Case No. 2013-CO-026

Dear Mr. Campbell:

This letter serves to confirm receipt of your citizen complaint against Lieutenant Governor Mark Darr. That complaint was brought against him in his official capacity and as a candidate for Lieutenant Governor during the 2010 election cycle.

Briefly restated, your complaint raises the following essential allegations:

1. Lieutenant Governor Darr "improperly spent campaign funds after his election [to the office of Lieutenant Governor] in 2010 for purposes other than campaign-debt reduction".

With regard to this allegation, Lieutenant Governor Darr's Campaign Contribution and Expenditure ("C&E") Report for Debt Retirement filed on "April 12, 2011...lists the following expenditures:

- \$222.00...rental...Statehouse Convention Center on January 5, 2011.
- \$147.23...hotel room...Hampton Inn in Little Rock on January 12, 2011.
- \$165.09...hotel room...Doubletree in Memphis, TN, on January 31, 2011.
- \$2,000.00...consulting...MVP, LLC, on January 4, 2011.
- \$197.20...supplies...Target on February 9, 2011.

- \$422.80...airline tickets...American Airlines on February 23, 2011.
- \$1,277.31...hotel expenses...Doubletree...on February 16, 2011.
- \$800.00...photography...Carmen Fedder on February 23, 2011.
- \$205.04...flowers...Tipton & Hurst on March 16, 2011.
- \$160.00...signs...Dale Wood on March 11, 2011.”

In addition, Lieutenant Governor Darr’s C&E Report for Debt Retirement filed on April 12, 2011 “lists four fundraisers, at least three of which appear to be nothing more than a personal dinner expense for [him] and possibly a few guests (\$343.35 at Anderson’s Cajun in Little Rock on January 10, 2011; \$200 at Cotham’s in Little Rock on January 24, 2011; and \$111.20 at Anderson’s Cajun on February 18, 2011)”. With regard to these “personal dinner expense” expenditures, “no contributions to [his] campaign appear [to have been received] on any of those fundraiser dates”.

In addition, Lieutenant Governor Darr’s C&E Report for Debt Retirement filed on July 11, 2011 “lists more ‘fundraisers’ that appear to be private dinners (\$101.24 at Sushi Café in Little Rock on April 1, 2011; \$100.10 at Loca Luna in Little Rock on May 24, 2011)”. However, there appear to be “no contributions” received by his campaign in connection with these “fundraisers”.

In addition, Lieutenant Governor Darr’s C&E Report for Debt Retirement filed on October 12, 2011 “lists the following expenditures [which do not appear] to be in support of a debt-retirement fundraiser:

- \$100.14...supplies...Wal-Mart in Rogers, AR, on July 5, 2011.
- \$256.91...supplies...Sunstation in Little Rock on July 18, 2011.
- \$124.70...supplies...Jos. A. Bank in Little Rock on July 20, 2011.
- \$155.31...food...Vince Young’s Steakhouse in Austin, TX, on July 26, 2011.
- \$100.98...supplies...Prime Mart in Austin, TX, on July 27, 2011.
- \$123.86...supplies...Wal-Mart in Little Rock on July 28, 2011.
- \$106.75...supplies...Crackerbox in Lonoke, AR, on August 1, 2011.
- \$105.94...supplies...Pilot in Russellville, AR, on August 2, 2011.
- \$111.72...supplies...Love’s in Ozark, AR, on August 5, 2011.
- \$120.76...supplies...Love’s in Ozark, AR, on August 9, 2011.
- \$113.04...supplies...Pilot in Russellville, AR, on August 11, 2011.
- \$111.97...supplies...Kum & Go in Springdale, AR, on August 29, 2011.
- \$111.08...supplies...Pilot in Russellville, AR, on August 31, 2011.
- \$163.50...supplies...Dillard’s in Rogers, AR, on September 6, 2011.
- \$123.84...supplies...Kum & Go in Lowell, AR, on September 13, 2011.
- \$105.00...supplies...Fastrip in Springdale, AR, on September 16, 2011.
- \$119.62...supplies...Walker Bros. in Fayetteville, AR, on September 19, 2011.
- \$105.86...supplies...Love’s in Ozark, AR, on September 26, 2011.
- \$106.60...supplies...Kum & Go in Springdale, AR, on September 27, 2011.”

In addition, Lieutenant Governor Darr's C&E Report for Debt Retirement filed on October 12, 2011 "lists an expenditure of \$1,500.00 for 'fundraiser' to the University of Arkansas at Fayetteville." However, based upon customer invoice records, "[t]he University has confirmed that this purchase was actually for four season tickets to the games in Little Rock and Fayetteville for the 2011 season".

In addition, Lieutenant Governor Darr's C&E Report for Debt Retirement filed on January 17, 2012 "lists the following expenditures that appear to have nothing to do with debt-retirement fundraisers:

- \$160.18...supplies...Apple Store in Little Rock on October 5, 2011.
- \$106.37...supplies...Apple Store in Little Rock on October 5, 2011.
- \$106.99...supplies...Kum & Go in Bentonville, AR, on October 12, 2011.
- \$127.37...food...BJG Golden Palace in Beijing, China, on October 21, 2011.
- \$105.59...supplies...Kum & Go in Springdale, AR, on October 26, 2011.
- \$176.55...supplies...Belk in Rogers, AR, on October 31, 2011.
- \$269.30...supplies...Walker Bros. in Fayetteville, AR, on November 15, 2011.
- \$195.56...supplies...Dillard's in Fayetteville, AR, on November 15, 2011.
- \$105.28...supplies...Kum & Go in Springdale, AR, on November 21, 2011.
- \$144.96...supplies...Belk in Rogers, AR, on November 21, 2011.
- \$172.00...supplies...Dillard's in Little Rock on December 1, 2011.
- \$146.50...supplies...Justice in Rogers, AR, on December 8, 2011.
- \$202.00...supplies...New York & Co. in Rogers, AR, on December 27, 2011.
- \$103.51...supplies...Pilot in Benton, AR, on December 28, 2011."

In addition, Lieutenant Governor Darr "filed an amended [C&E Report for Debt Retirement] on January 24, 2012, that removed the purchases [listed above concerning] the Apple Store, BJB Golden Palace, Belk, Walker Brothers, Dillard's, Justice, and New York & Co., and treated those purchases as part of [his] loan repayment". However, "there is no statutory authority for allowing otherwise prohibited use of campaign funds to be treated as an offset against loan amounts".

In addition, Lieutenant Governor Darr's C&E Report for Debt Retirement filed on "January 17, 2011...and the amended [report] also show 'fundraiser' expenditures in the amount of \$1,775.00 to Lost Springs Country Club on October 11, 2011, and \$3,589.12 to Laurie Masterson on November 17, 2011". However, "[t]here are no contributions [received by his campaign and disclosed] in the [report] that are attributable to those expenditures".

2. Lieutenant Governor Darr “used his state-provided office, telephone, and credit cards to engage in campaign activities”.

With regard to this allegation, during the time period “from when he took office in January 2011 until early May 2011, [Lieutenant Governor] Darr used his state-issued fuel card for \$1,342.93 in personal fuel purchases, for which he subsequently reimbursed the state on 6/1/11.” Based upon “Exxon Mobil monthly invoices and cancelled checks from [Lieutenant Governor] Darr to [the] State of Arkansas”, it appears that the “fundraisers” disclosed on his C&E Report for Debt Retirement filed on “July 12, 2011...begin shortly after his last personal purchase of fuel on his state card, and those ‘fundraisers’ occurred at some of the same gas stations as were found on the gas-card receipts”. In addition, based upon “U.S. Bank monthly invoices and cancelled checks from [Lieutenant Governor] Darr to [the] State of Arkansas,” he “also used his state-issued credit cards at some of these same gas stations to make personal fuel purchases in 2012, which his spokesperson acknowledged was in error, and for which he reimbursed the state on 6/6/2012, 7/1/2012, and [12/3/12].”

In addition, Lieutenant Governor Darr’s “purchase of the Razorback tickets listed on his [C&E Report for Debt Retirement filed] October 12, 2011...was made from his state-issued office, using his office address and proper title as contact information”.

In addition, based upon a “U.S. Bank August 2011 invoice,” Lieutenant Governor Darr’s “purchase of food at Vince Young’s Steakhouse in Austin and supplies at Prime mart, listed as campaign expenditures, were made on a trip paid for in part with his state-issued credit card, in which he went to Austin to meet with Texas Gov. Rick Perry”. However, “[t]here was no debt-retirement fundraiser involved...and [such] a trip...should not be underwritten by having the State of Arkansas pay for his hotel room”.

In addition, Lieutenant Governor Darr “reserved a hotel room at the Embassy Suites in Little Rock in 2012, only to have the purpose for the reservation cancelled, and he had his PAC reimburse the State for that expense”.

3. Lieutenant Governor Darr “certified several campaign contribution & expenditure reports as being ‘true, correct and complete,’ when said reports contained obviously incorrect classification of expenditures”. With regard to this allegation, he “signed [C&E Reports for Debt Retirement], verifying them as true and correct statements, under penalty of perjury”.

4. Lieutenant Governor Darr “paid for an airplane ticket with his state-issued credit card, then listed that same purchase as a campaign expenditure on his financial disclosures”. Based upon a “U.S. Bank March 2011 invoice,” the “airline tickets that appear on [Lieutenant Governor] Darr’s C&E Report for Debt Retirement filed on] April 12, 2011...were purchased with a state-issued credit card”.
5. Lieutenant Governor Darr “filed several campaign contribution & expenditure reports that did not comply with [the provisions of] Ark. Code Ann. § 7-6-207(b)”, which sets forth the required contents of such disclosure reports. In addition, those reports are “in violation of Ark. Code Ann. § 7-6-206”, which sets forth the requirement to maintain records of contributions and expenditures. With regard to this allegation, “[a]ll of the [C&E Reports in question] contain many incomplete entries, [including] a campaign donor’s Place of Business/Employer/Occupation is simply listed as ‘unk’”.
6. Lieutenant Governor Darr “improperly classified personal fuel purchases as ‘fundraisers’ and ‘supplies’ and charged [these expenditures] to his campaign”. With regard to this allegation, his C&E Report for Debt Retirement filed “July 12, 2011...lists the following expenditures at gas stations, [which were] classified by [him] as ‘fundraisers’:
 - \$132.12...7T Kwik Stop in Ola, AR, on May 16, 2011.
 - \$120.06...Love’s Country Store in Ozark, AR, on June 7, 2011.
 - \$109.21...Pilot in Russellville, AR, on June 17, 2011.
 - \$105.00...Tobo’s 66 in Fayetteville, AR. on June 21, 2011.”
7. Lieutenant Governor Darr “improperly accepted funds from a political action committee without indicating that donation on his contribution reports”. With regard to this allegation and as set forth above in allegation number 2, Lieutenant Governor “Darr reserved a hotel room at the Embassy Suites in Little Rock in 2012, only to have the purpose for the reservation cancelled, and he had his PAC reimburse the State for that expense”. However, the receipt of this nonmoney contribution from the PAC in question was not disclosed on his C&E Report for Debt Retirement for the 4th quarter of 2012.
8. Lieutenant Governor Darr “used campaign funds after [the date of the 2010 general election] for the purchase [of] personal items, then treated those expenditures as repayment of a personal loan”. With regard to the acceptance of these campaign funds and “the offset of otherwise improper purchases...against the amount [of campaign debt owed to him]”, his C&E Reports for Debt Retirement “show[]

far more than the \$18,494.83” in repayment of the debt “owed [to him by] the campaign”.

It has been determined that said complaint meets the requirements set forth in subparagraph A(3) of Section V of the Ethics Commission’s Rules of Practice and Procedure. Accordingly, an investigation is being commenced.

The Ethics Commission’s focus of the investigation with regard to allegation number 1 will be whether or not, in his capacity as a candidate for Lieutenant Governor during the 2010 election cycle and in connection with his C&E Reports for Debt Retirement that were filed concerning the 2010 general election, Lieutenant Governor Darr violated:

- (i) Ark. Code Ann. § 7-6-203(g) by taking campaign funds as personal income in connection with expenditures made that were not specific to fundraising activities conducted to retire the campaign debt owed to him;
- (ii) Ark. Code Ann. § 7-6-207(b)(1)(A) through (I) by failing to accurately disclose campaign contributions received and expenditures made, specifically with regard to the retirement of his campaign debt for the 2010 general election; and/or
- (iii) Ark. Code Ann. § 7-6-219 by soliciting funds and/or expending funds for the purpose of holding fundraisers in connection with the 2010 general election in order to receive contributions in excess of the amount required to retire the campaign debt owed to him.

The Ethics Commission’s focus of the investigation with regard to allegation number 2 will be whether or not, in his capacity as Lieutenant Governor, Lieutenant Governor Darr violated:

- (i) Ark. Code Ann. § 7-1-103(a)(3)(A) by using for campaign purposes his office, telephone, and state-issued credit cards in connection with expenditures made to retire his campaign debt for the 2010 general election; and/or
- (ii) Ark. Code Ann. § 21-8-304(a) by using or attempting to use his official position to secure special privileges or exemptions in connection with using his office, telephone, and state-issued credit cards to make expenditures made for the purpose of retiring his campaign debt for the 2010 general election.

The Ethics Commission’s focus of the investigation with regard to allegation number 3 will be whether or not, in his capacity as Lieutenant Governor, Lieutenant Governor Darr violated Ark. Code Ann. § 21-1-404(b) by falsely certifying under penalty of perjury that C&E Reports for Debt Retirement on file with the Secretary of State’s office were verified by him to contain true and correct statements.

The Ethics Commission's focus of the investigation with regard to allegation number 4 will be whether or not, in his capacity as Lieutenant Governor and as a candidate for Lieutenant Governor during the 2010 election cycle, in connection with his C&E Reports for Debt Retirement that were filed concerning the 2010 general election, Lieutenant Governor Darr violated:

- (i) Ark. Code Ann. § 7-6-207(b)(1)(A) through (I) by failing to accurately disclose campaign expenditures made, specifically with regard to the purchase of an airplane ticket;
- (ii) Ark. Code Ann. § 21-1-404(b) by falsely certifying, under penalty of perjury on disclosure statements and other information required to be furnished to the Department of Finance and Administration, that information concerning the purchase of an airline ticket with his state-issued credit card was verified by him to contain true and correct statements; and/or
- (iii) Ark. Code Ann. § 21-8-304(a) by using or attempting to use his official position to secure special privileges or exemptions in connection with expenditures made to purchase an airplane ticket in connection with the retirement of his campaign debt for the 2010 general election.

The Ethics Commission's focus of the investigation with regard to allegation number 5 will be whether or not, as a candidate for Lieutenant Governor during the 2010 election cycle and in connection with his C&E Reports for Debt Retirement that were filed concerning the 2010 general election, Lieutenant Governor Darr violated:

- (i) Ark. Code Ann. § 7-6-206 by failing to keep records of all contributions and expenditures in a manner sufficient to evidence compliance with Ark. Code Ann. §§ 7-6-207 through 7-6-210; and/or
- (ii) Ark. Code Ann. § 7-6-207(b)(1)(A) through (I) by failing to accurately disclose statutorily-required information on C&E Reports for Debt Retirement concerning campaign contributions received and expenditures made, specifically with regard to the retirement of his campaign debt for the 2010 general election.

The Ethics Commission's focus of the investigation with regard to allegation number 6 will be whether or not, in his capacity as a candidate for Lieutenant Governor during the 2010 election cycle and in connection with his C&E Reports for Debt Retirement that were filed concerning the 2010 general election, Lieutenant Governor Darr violated:

- (i) Ark. Code Ann. § 7-6-203(g) by taking campaign funds as personal income in connection with expenditures made that were not specific to fundraising activities conducted to retire the campaign debt owed to him; and/or

- (ii) Ark. Code Ann. § 7-6-207(b)(1)(A) through (I) by failing to accurately disclose campaign contributions received and expenditures made, specifically with regard to the retirement of his campaign debt for the 2010 general election.

The Ethics Commission's focus of the investigation with regard to allegation number 7 will be whether or not, in his capacity as a candidate for Lieutenant Governor during the 2010 election cycle and in connection with his C&E Reports for Debt Retirement that were filed concerning the 2010 general election, Lieutenant Governor Darr violated Ark. Code Ann. § 7-6-207(b)(1)(D) by failing to accurately disclose campaign contributions received, specifically with regard to the receipt of a nonmoney contribution from a PAC in connection with payment by the PAC for the cost of a hotel reservation.

The Ethics Commission's focus of the investigation with regard to allegation number 8 will be whether or not, in his capacity as a candidate for Lieutenant Governor during the 2010 election cycle and in connection with his Final C&E Report and subsequent C&E Reports for Debt Retirement that were filed concerning the 2010 general election, Lieutenant Governor Darr violated:

- (i) Ark. Code Ann. § 7-6-203(f) by soliciting or accepting campaign contributions more than two (2) years before an election at which he may seek nomination or election, specifically with regard to contributions accepted and/or expenditures made in excess of the amount of debt owed to him by his campaign;
- (ii) Ark. Code Ann. § 7-6-203(g) by taking campaign funds as personal income in connection with expenditures made that were not specific to fundraising activities conducted to retire the campaign debt owed to him;
- (iii) Ark. Code Ann. § 7-6-203(h)(5) by accepting contributions after the date of an election for other than the sole purpose of debt retirement; and/or
- (iv) Ark. Code Ann. § 7-6-207(b)(1)(A) through (I) by failing to accurately disclose campaign contributions received and expenditures made, specifically with regard to his failure to accurately disclose the current balance of campaign funds (i.e., campaign debt) on his final C&E Report for the 2010 general election.

With respect to the Ethics Commission's investigation, the following statutes have been referenced: Ark. Code Ann. §§ 7-1-103(a)(3)(A), 7-6-203(f), 7-6-203(g), 7-6-203(h)(5), 7-6-206, 7-6-207(b)(1)(A) thru (I), 7-6-219, 21-1-404, and 21-8-304(a).

The first statute, Ark. Code Ann. § 7-1-103(a)(3)(A), provides as follows:

It shall be unlawful for any public servant, as defined in [Ark. Code Ann.] § 21-8-402, to use any room or office furnished at public expense to distribute any letters, circulars, or other campaign materials unless such office or room is regularly used by members of the public for such purposes without regard to political affiliation. It shall further be unlawful for any public servant to use for campaign purposes any item of personal property provided with public funds.

The second statute, Ark. Code Ann. § 7-6-203(f) provides, in pertinent part, as follows:

It shall be unlawful for any candidate for public office, any person acting in the candidate's behalf...to solicit or accept campaign contributions more than two (2) years before an election at which the candidate seeks nomination or election. This subsection shall not prohibit the solicitation or acceptance of a contribution for the sole purpose of raising funds to retire a previous campaign debt.

The third statute, Ark. Code Ann. § 7-6-203(g), contains a prohibition against a candidate taking campaign funds as personal income and provides, in pertinent part in subsection (1), that "[a] candidate shall not take any campaign funds as personal income." Subsection 4(A) of that statute goes on to provide that "a candidate who uses campaign funds to fulfill any commitment, obligation, or expense that would exist regardless of the candidate's campaign shall be deemed to have taken campaign funds as personal income."

The fourth statute, Ark. Code Ann. § 7-6-203(h)(5), provides as follows:

After the date of an election at which the person is a candidate for nomination or election, the person shall not accept campaign contributions for that election except for the sole purpose of raising funds to retire campaign debt.

The fifth statute, Ark. Code Ann. § 7-6-206, provides, in pertinent part, as follows:

(a) A candidate...or a person acting in the candidate's behalf shall keep records of all contributions and expenditures in a manner sufficient to evidence compliance with [Ark. Code Ann.] §§ 7-6-207 – 7-6-210.

(b) The records shall be made available to the Arkansas Ethics Commission and the prosecuting attorney in the district in which the candidate resides, who are delegated the responsibility of enforcing this subchapter, and shall be maintained for a period of four (4) years.

The sixth statute, Ark. Code Ann. § 7-6-207(b)(1)(A) through (I), provides that C&E Reports shall indicate:

- (A) The total amount of contributions received with loans stated separately, the total amount of expenditures made during the filing periods, and the cumulative amount of those totals;
- (B) The name and address of each person, including the candidate, who made a contribution or contributions that in the aggregate exceeded fifty dollars (\$50.00);
- (C) The contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the candidate, and the aggregate contributed for each election;
- (D) The name and address of each person, including the candidate, who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;
- (E) An itemization of all single expenditures made that exceed one hundred dollars (\$100), including the: (i) Amount of the expenditures; (ii) Name and address of any person, including the candidate, to whom the expenditure was made; and (iii) Date the expenditure was made;
- (F) A list of all paid campaign workers and the amount the workers were paid;
- (G) A list of all expenditures by categories, including but not limited to: (i)(a) Television; (b) Radio; (c) Print; and (d) Other advertising; (ii) Direct mail; (iii) Office supplies; (iv) Rent; (v) Travel; (vi) Expenses; (vii) Entertainment; and (viii) Telephone;
- (H) The total amount of all nonitemized expenditures made during the filing period; and
- (I) The current balance of campaign funds.

The seventh statute, Ark. Code Ann. § 7-6-219, provides as follows:

- (a) (1) Any person who was a candidate and has a campaign debt from an election that has ended may solicit funds and hold fundraisers to retire the campaign debt. (2) The contributions received shall be treated as campaign contributions to the person's previous campaign, and all campaign contribution limits shall continue to apply.

(b) Contributors shall be given notice that the campaign contributions are for the purpose of retiring a campaign debt. Any invitation to or notice of a fundraiser to retire a campaign debt of a previous campaign shall state that the funds are to retire a campaign debt.

(c) A person shall file a campaign contribution and expenditure report concerning a campaign debt if, since the last report concerning the debt, the person has received cumulative contributions in excess of five hundred dollars (\$500). The report shall be filed not later than fifteen (15) days after a calendar quarter in which a report becomes required. No report is required in any calendar quarter in which the cumulative contribution or cumulative expenditure limit has not been exceeded since the person's last report.

The eighth statute, Ark. Code Ann. § 21-1-404, provides as follows:

(a) The Director of the Department of Finance and Administration is authorized to promulgate and implement any necessary rules, regulations, or policies to ensure compliance with subchapter subject to the prior review and approval of the Joint Budget Committee during legislative sessions and the Legislative Council between legislative sessions.

(b) All disclosure statements and other information required to be furnished by constitutional officers and their spouses shall be certified by the constitutional officer or spouse under penalty of perjury.

The ninth statute, Ark. Code Ann. § 21-8-304(a), provides, in pertinent part, as follows:

No public servant shall use or attempt to use his...official position to secure special privileges or exemptions for himself...or his...spouse, child, parents, or other persons standing in the first degree of relationship, or for those with whom he...has a substantial financial relationship that are not available to others except as may be otherwise provided by law.

It is noted that the term "special privileges or exemptions" is defined in § 400(p) of the Ethics Commission's Rules on Conflicts to mean "a particular benefit or advantage unfairly extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others." In addition, the term "public servant" is defined in Ark. Code Ann. § 21-8-402(18) to mean "all public officials, public employees, and public appointees".

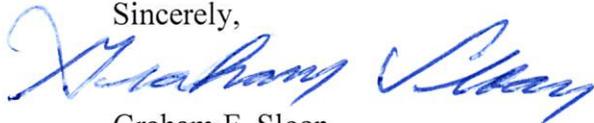
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In accordance with Section VI(3) of the Ethics Commission's Rules of Practice and Procedure, I am requesting that you submit any and all evidence which you may have concerning allegation numbers 1 through 8 set forth in this letter.

If you should have any questions or comments, please do not hesitate to contact us.

Sincerely,



Graham F. Sloan
Director