

# ARKANSAS ETHICS COMMISSION

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August 12, 2019

Mr. Matthew Campbell  
104 Winnwood Rd.  
Little Rock, Arkansas 72207

**Re: Case No. 2019-CO-021**

Dear Mr. Campbell:

This letter serves to confirm receipt of your citizen complaint against Michael John Gray. That complaint was filed against Mr. Gray in his capacity as a candidate for State Representative - District 47 during the 2018 election cycle.

Briefly stated, the complaint contains the following essential allegations:

1. Mr. Gray failed to file a 10 day preelection report and a final report for the 2018 general election.
2. Three payments of \$5,000 were made to FJW Consulting ("FJW") which was only owed \$10,000. FJW returned the extra \$5,000 in campaign funds and Mr. Gray then paid the \$5,000 to himself even though his Campaign Contribution and Expenditure ("C&E") Reports never reflected that he had loaned \$5,000 to his campaign.
3. On August 29, 2018, Mr. Gray filed an amended June monthly C&E Report upon which the loan amount on page 1 was increased by \$5,000, but he never reported that the loan balance had been reduced by the \$5,000 payment which he made to himself. Essentially, the \$5,000 was just a payment which his campaign made to him with the money returned by FJW.

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.

With respect to allegation number 1, the focus of the investigation will be whether or not, in his capacity as a candidate for State Representative - District 47 during the 2018 election cycle, Mr. Gray violated Ark. Code Ann. § 7-6-207 by failing to file a 10 day preelection report and final C&E Report for the 2018 general election. That statute provides, in pertinent part, as follows:

(a) REPORTS REQUIRED.

(1) Except as provided in subsections (c) and (e) of this section, each candidate for state or district office, including a district judge, or a person acting in the candidate's behalf, shall file with the Secretary of State:

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(C) No later than seven (7) days prior to any preferential primary election, runoff election, general election, or special election in which the candidate's name appears on the ballot, a preelection report of all contributions received and expenditures made between the period covered by the previous report and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during that period of time that begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;

(D) No later than thirty (30) days after the end of the month in which the candidate's name has appeared on the ballot in any primary election, runoff election, general election, or special election, a final report of all contributions received and expenditures made which have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500)[.]

With respect to allegation numbers 2 and 3, the focus of the investigation will be whether or not, in his capacity as a candidate for State Representative - District 47 during the 2018 election cycle, Mr. Gray violated Ark. Code Ann. § 7-6-203(f) by taking campaign funds as personal income. That statute provides, in pertinent part, as follows:

(f)(1) A candidate shall not take any campaign funds as personal income. This subdivision (f)(1) shall not apply to campaign funds that were:

(A) Accumulated prior to the passage of Initiated Act 1 of 1990; or

(B) Disposed of prior to July 28, 1995.

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(4)(A) For purposes of this subsection, 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.

With respect to an unintentional error in a C&E Report, Act 1280 of 2015 established Ark. Code Ann. § 7-6-229, which sets forth the following affirmative defense provision:

(a) It is an affirmative defense to prosecution or disciplinary action if a person required to file a report under this subchapter amends the report within thirty (30) days of discovering or learning of an unintentional error in the report.

(b)(1) The Arkansas Ethics Commission shall not proceed with an investigation of an alleged error in a report filed under this subchapter if the commission determines that a person would be eligible to raise the affirmative defense under subsection (a) of this section.

(2) If the commission does not proceed with an investigation of an alleged error in a report under subdivision (b)(1) of this section, the person shall not be considered to have committed a violation of the applicable statute.

(c) This section shall not be construed to:

(1) Remove the duty to file a report under this subchapter; or

(2) Authorize a person to knowingly fail to file a report under this subchapter.

It appears that this affirmative defense is available with respect to allegation numbers 2 and 3 regarding Mr. Gray's failure to report a loan he made to his campaign and failure to reduce the

Mr. Matthew Campbell  
August 12, 2019  
Page 4

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amount of loans by the amount of the \$5,000 payment which his campaign made to him and any amendments to such Report.

If you have evidence which you believe is relevant concerning the availability of the Ark. Code Ann. § 7-6-229 affirmative defense with respect to allegation numbers 2 and 3, please submit such evidence to the Ethics Commission.

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 this matter.

If you have any questions regarding this matter, please do not hesitate to contact us.

Sincerely,



Graham F. Sloan  
Director