



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 22, 1999

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1999-23

Ken D. Hammonds, Director of Administration  
The Arkansas Bankers Association  
1220 West Third Street  
Little Rock, Arkansas 72201

Dear Mr. Hammond:

This refers to your letter dated August 27, 1999, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to your proposal for the acceptance of a replacement contribution check made to Arkansas Bankers, Inc. PAC ("ABPAC") to cover a similar check lost in 1998.

The Arkansas Bankers Association is the connected organization for ABPAC. You state that on December 29, 1998, Arvest PAC mailed a check payable to ABPAC in the amount of \$4,000. You explain that this check was never received by ABPAC and has not cleared Arvest PAC's checking account. You assert that Commission "records indicate the same."

You state that ABPAC proposes to request a new check from Arvest PAC. Arvest PAC, in turn, is awaiting Commission advice as to the legality of issuing a new replacement check and stopping payment on the previous lost check. You further state that Arvest PAC made a separate contribution to ABPAC in 1999, in the amount of \$5,000, and you do not want this contribution to be "confused" by the Commission for the lost 1998 contribution check.

Under 2 U.S.C §441a(a)(2)(C), no multicandidate political committee shall make contributions to any other political committee in any calendar year which, in the

aggregate, exceed \$5,000. See also 11 CFR 110.2(d). Commission regulations provide at 11 CFR 110.2(b)(6) that for the purposes of section 110.2, a contribution shall be considered to be made when the contributor relinquishes control over the contribution. A contributor shall be considered to relinquish control over the contribution when it is delivered by the contributor to the candidate, to the political committee, or to an agent of the political committee. A contribution that is mailed to the candidate, or to the political committee or to an agent of the political committee, shall be considered to be made on the date of the postmark. See 11 CFR 110.1(1)(4). An in-kind contribution shall be considered to be made on the date that the goods or services are provided by the contributor.

Reports filed with the Commission indicate that Arvest PAC is a multicandidate committee. Further, Arvest PAC listed in its 1998 year end report, the making of a \$4,000 contribution to ABPAC. Neither ABPAC's 1998 year end report, nor its 1999 mid-year report, indicate the receipt of this contribution. Under 11 CFR 110.2(b)(6), the initial contribution of \$4,000 by Arvest PAC would have been considered as having been made on December 29, 1998. However, the Commission notes that ABPAC never received the mailed contribution, and apparently made its inquiry to Commission staff about this situation before the filing due date (July 31, 1999) of the report that would have disclosed the contribution, if it had been received within what would have been the expected or normal time frame for reasonably expecting first class mail delivery service. Further, the circumstances for the failure to receive the first check were apparently beyond the control of either committee or its agents.<sup>1</sup> In this situation, the Commission notes that the initial making of the contribution has been effectively nullified. The Commission, therefore, concludes that ABPAC may request and receive a replacement check for \$4,000 from Arvest PAC without that replacement check affecting Arvest PAC's contribution limits for 1999. However, to ensure that the replacement check properly relates back to the earlier 1998 contribution check, Arvest PAC is required to stop payment on the December 29, 1998 check. ABPAC must also receive, with the replacement check, confirmation of the stop payment order and a written statement from Arvest PAC confirming the initial contribution along with an explanation that the Arvest PAC replacement check is for the lost contribution originally made in 1998.

ABPAC should report this contribution as a 1998 calendar year contribution on Schedule A of its next report covering the period when the replacement check is received. The report should include a brief notation explaining the circumstances of the lost 1998

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<sup>1</sup> The Commission has considered the somewhat similar situation where a committee has received contribution checks, but then its use or deposit of the contribution checks was interrupted by persons or events. The Commission has concluded that where the interruption was caused by events or persons outside of the control of the committee or its agents, the committee should be permitted to deposit the checks or obtain replacement checks. See Advisory Opinions 1993-5 and 1992-42. In contrast, where the interruption was caused by committee negligence, the Commission's interpretation of section 110.1(b) and 110.2(b), and also 103.3(a), has required the committee to refund the checks or not permitted replacement checks where the contributor's contribution limits for the current election would be exceeded. See Advisory Opinion 1992-29.

contribution check, making reference to this opinion and the documentation it has received from Arvest PAC.

This response constitutes an advisory opinion concerning the application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. §437f.

Sincerely,

(signed)  
Scott E. Thomas  
Chairman

Enclosures (AOs 1993-5, 1992-42, and 1992-29)