

**To: L. Gene Lemon
Chairman, Citizens Clean Elections Commission**

February 1, 2001

**Re: Approval for Clean
Elections Funding**

I01-005 (R00-061)

Question Presented

You have asked whether the Secretary of State or the Citizens Clean Elections Commission ("Commission") has the authority to approve or deny clean elections funding to participating candidates pursuant to Arizona Revised Statutes ("A.R.S.") § 16-950.

Summary Answer

The Clean Elections Commission has the authority to deny funding to candidates who fail to meet the requirements of A.R.S. § 16-950, with the exception of A.R.S. § 16-950(C). The Secretary of State has the authority to enforce the requirements of A.R.S. § 16-950(C).

Background

Arizona voters passed Proposition 200, the Citizens Clean Elections Act ("Act"), as an initiative in the November 1998 general election. The Act authorizes public funding for the election 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. The initiative established a Citizens Clean Elections Commission ("Commission") to administer and enforce the Act. *See* A.R.S. § 16-956.

To qualify for funding, a candidate must be certified as a participating candidate and must also obtain the requisite number of qualifying contributions. *See* A.R.S. §§ 16-947, -950(D).⁽¹⁾ In order to be certified as a participating candidate, a candidate must file the required paperwork with the Secretary of State. A.R.S. § 16-947. The Commission has the authority to deny a certification application for good cause. A.R.S. § 16-947(C). Once certified, the candidate must, within a specified time, submit to the Secretary of State a list of people who gave the candidate qualifying contributions, the reporting slips for each qualifying contribution, and an amount of money equal to the sum of the qualifying contributions the candidate received. A.R.S. § 16-950(A), (B). The Secretary of State selects a random sample of the contributors and faxes the selected reporting slips to the counties for verification. A.R.S. § 16-950(C). Funding is contingent on the outcome of the verification process. *Id.*

To receive funding during a party primary, the candidate must also properly file nominating papers and petitions. A.R.S. § 16-950(E)(1). To receive funding during the general election, the candidate must be the party nominee or an independent candidate. A.R.S. § 16-950(E)(2).⁽²⁾ Once these requirements are met, the Commission must provide funding to the candidates as prescribed in statute. *See* A.R.S. §§ 16-951, -952.

Analysis

The Commission is authorized and obligated to enforce the Act. A.R.S. § 16-956(B)(5). Although the Commission is generally responsible for enforcement, the Secretary of State also has a number of responsibilities under the Act. For example, the Secretary of State receives campaign finance reports, lobbyist fees, and certification applications.⁽³⁾ *See* A.R.S. §§ 16-944 (lobbyist fee); -947 (certification application); -958 (reports).

The Act also assigns the Secretary of State a role in approving candidates for funding. After candidates submit their qualifying

contributions and related documentation, the Secretary of State selects a random sample of five percent of the number of names on the qualifying contribution list and forwards them to the county recorder for verification. The county recorder reports to the Secretary of State the number of slips that were disqualified for the specified reasons.⁽⁴⁾ The Secretary of State then multiplies the number of valid slips by twenty. If that number is less than ninety percent of the quantity required, the Secretary of State "shall deny the application for funds." A.R.S. § 16-950(C). If the number is more than one hundred-ten percent of the quantity required, the Secretary of State "shall approve the candidate for funds." *Id.* In these situations, the statute unambiguously gives the Secretary of State, not the Commission, the responsibility to determine whether a candidate has sufficient qualifying contributions, and to either approve or deny the application for funding under A.R.S. § 16-950(C).

The statute is less direct regarding the Secretary of State's role when the number of valid slips in the random sample falls between ninety percent and one hundred-ten percent of the required number. In that situation, the Act provides that "the Secretary of State shall forward facsimiles of all of the slips to the county recorder for verification, and the county recorders shall check all slips in accordance with the process above." A.R.S. § 16-950(C). The reference to the "process above" logically refers to the process for the initial random samples in which the county recorder reviews the slips and declares inadequate slips as disqualified in a report to the Secretary of State. The next step in this process is for the Secretary of State to approve or deny funding based on the report received from the county. Such an interpretation considers the statutory provisions in context of the entire statute and gives effect to all of the statute's provisions. *Pinto Valley Copper Corp. v. Arizona Dep't of Econ. Sec.*, 146 Ariz. 484, 486, 706 P.2d 1251, 1253 (App. 1985).

For these reasons, the Secretary of State approves or denies funding to a candidate under A.R.S. § 16-950(C). If funding is to be approved or denied for some other reason, however, the Commission would make that determination under its general enforcement power.⁽⁵⁾

Conclusion

Although the Act generally assigns enforcement responsibilities and funding decisions to the Commission, A.R.S. §16-950(C) expressly provides that the Secretary of State shall deny or approve funding applications based on whether the candidate submitted a sufficient number of valid contribution slips. Therefore, the Secretary of State approves or denies funding based on whether the candidate submitted sufficient valid contribution slips, and the Commission approves or denies funding based on whether the candidate meets the other requirements of the Act.

Janet Napolitano
Attorney General

1. Qualifying contributions are five dollar contributions that meet certain statutory requirements. *See* A.R.S. § 16-946. The number of required qualifying contributions varies depending on the office the candidate is seeking. A.R.S. § 16-950(D).
2. Independent candidates must meet the general requirements of A.R.S. §16-950 to qualify for funding. A.R.S. § 16-950(E). Independent candidates, however, receive only one payment equal to seventy percent of the sum of the "original primary election spending limit" and the "original general election spending limit," at the beginning of the primary election period. A.R.S. § 16-951(A)(2).
3. Although the Secretary of State collects the lobbyist fees, the Commission is responsible for any enforcement if lobbyists fail to pay this fee. *See* Ariz. Att'y Gen. Op. I00-029.
4. The county recorder is required to provide a report to the Secretary of State which disqualifies "any slips that are unsigned or undated or that the recorder is unable to verify as matching a person who is registered to vote, on the date specified on the slip, inside the electoral district of the office the candidate is seeking." A.R.S. § 16-950(C).

5. This might include, for example, failure to properly file nominating papers under A.R.S. §§ 16-311 and 16-950(E), or failure to present a list of names of persons who contributed under A.R.S. § 16-950(B).

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