

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>November 14, 2005</p>	<p>No. I05-006 (R05-020)</p> <p>Re: Campaign Finance Reports Filed By Candidates Pursuant to A.R.S. §§ 16- 941(B)(2) and -958</p>
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To: The Honorable Janice K. Brewer
Arizona Secretary of State

Questions Presented

1. Under Arizona Revised Statutes (“A.R.S.”) §§ 16-941(B)(2) and -958, must a nonparticipating candidate file a complete campaign finance report in accordance with A.R.S. §§ 16-913 and -915 or is the candidate only required to file a report that indicates that the triggering thresholds listed in A.R.S. § 16-941(B)(2)(A) and (B) have occurred?

2. If the report filed under A.R.S. §§ 16-941(B)(2) and -958 is not required to contain the content otherwise required in a campaign finance report under A.R.S. §§ 16-913 and -915, what content must this report contain?

Summary Answer

Under the Citizens Clean Elections Act (the “Act”), nonparticipating candidates must file campaign finance reports with the Secretary of State when their campaigns reach certain

statutory thresholds in collections or spending. The Act requires the Citizens Clean Elections Commission (the “Commission”) to prescribe the form for these and other reports that the Act requires. A.R.S. § 16-956(A)(3). The Commission has adopted rule R2-20-109, which requires that reports filed pursuant to A.R.S. §§ 16-941 and -958 contain the same information regarding receipts and disbursements as A.R.S. § 16-915 requires.

Background

Arizonans passed the Citizens Clean Elections Act, A.R.S. §§ 16-940 through -961, as a voter initiative in the general election of 1998. The Act’s purposes are recited in its text: “To create a clean elections system that will improve the integrity of Arizona State Government by diminishing the influence of special-interest money, will encourage citizen participation in the political process, and will promote freedom of speech under the U.S. and Arizona Constitutions.” A.R.S. § 16-940(A).

The Act achieves these goals by creating an optional system of public funding for candidates in legislative and statewide campaigns. Candidates that choose the public funding option (“participating candidates”) accept strict spending limits. A.R.S. §§ 16-941; -945. These limits vary by office and depend upon whether the candidate is competing in a primary or a general election.¹ See A.R.S. §§ 16-941; -961(G), (H). Participating candidates must forego all private contributions, other than \$5 “qualifying” contributions and a small amount of “seed” money at the campaign’s outset. A.R.S. §§ 16-941(A)(1); -947(B)(3).

Candidates who wish to run privately financed campaigns (“nonparticipating candidates”) may continue to do so. They face no limits on the total amount of money that they

¹ For instance, the primary election spending limit for the 2004 election was \$11,320 for candidates for the Legislature and \$430,149 for candidates for governor. The general election spending limit was \$16,980 for candidates for the Legislature and \$645,224 for candidates for governor. These limits are collectively referred to herein as the “initial spending limits.”

can raise or spend. The Act reduced the limits on individual contributions to nonparticipating candidates, by twenty percent, A.R.S. § 16-941(B)(1), and authorized the Secretary of State to adjust these limits biennially for inflation, A.R.S. § 16-905(J).

A participating candidate may receive limited matching funds from the Commission. Matching funds are paid when a nonparticipating opponent receives contributions or makes expenditures that exceed the participating candidate's initial spending limit. A.R.S. § 16-952(A), (B). Matching funds also are paid when independent expenditures are made against a participating candidate or in favor of a nonparticipating opponent. A.R.S. § 16-952(C). Matching funds are capped, however, when the participating candidate receives total monies equal to three times the initial spending limit. A.R.S. § 16-952(E).

Campaign finance reports facilitate the accurate and timely disbursement of matching funds. Arizona law requires all candidates to file six campaign finance reports during an election year under provisions that predate the Act. A.R.S. § 16-913. The required contents of the six reports filed pursuant to A.R.S. § 16-913 are set forth under A.R.S. § 16-915. Under that statute, campaign finance reports must provide an itemized list of a candidate's receipts and disbursements, among other information. *See id.*

Nonparticipating candidates may also be required to file additional "trigger" reports under the Act. Pursuant to A.R.S. § 16-941(B)(2), a candidate must file an original trigger report if the campaign's preprimary expenditures have exceeded seventy percent of the original primary election spending limit imposed on a participating opponent or if the contributions to a nonparticipating candidate, less certain expenditures, have exceeded seventy percent of the participating candidate's original general election spending limit.

The number and timing of any supplemental trigger reports that the Act requires also depend upon the nonparticipating candidate's collections or spending.² *See* A.R.S. § 16-958. Candidates are required to file their campaign finance reports electronically using software that the Secretary of State provides to political committees. *See* A.R.S. § 16-958(E). The Secretary of State must inform the Commission "immediately" when trigger reports are filed. A.R.S. § 16-958(D).

Analysis

Your question is whether the trigger reports that are filed pursuant to A.R.S. §§ 16-941 and -958 must contain the same information as the campaign finance reports that are filed pursuant to A.R.S. §§ 16-913 and -915. Section 16-941(B)(2) states that the nonparticipating candidate must comply with A.R.S. § 16-958's reporting requirements, including the requirement of filing reports with the Secretary of State indicating when the candidate's spending or collections has reached the threshold levels that the Act establishes for filing an original trigger report.

Section 16-958 obligates the nonparticipating candidate who engages in a specified amount of additional collections or spending to file supplemental trigger reports with the Secretary of State. That provision states that the supplemental reports that the nonparticipating candidate files shall identify "the dollar amount being reported, the candidate, and the date." A.R.S. § 16-958(A).

The Act leaves the determination of the form of the trigger reports to the Commission. *See* A.R.S. §§ 16-956 -957. The Act grants the Commission broad rulemaking authority "to

² A nonparticipating candidate must file a supplemental trigger report each time new collections or spending exceed (i) ten percent of the original primary election spending limit or twenty-five thousand dollars, whichever is lower, before the general election period, or (ii) ten percent of the original general election spending limit or twenty-five thousand dollars, whichever is lower, during the general election period. A.R.S. § 16-958(A).

carry out the purposes” of the Clean Elections program. A.R.S. § 16-956(C). The Act further provides that the Commission “shall . . . [p]rescribe forms for reports, statements, notices and other documents required by [the Act].” A.R.S. § 16-956(A)(3).³

The Commission’s Rules expressly provide that “[o]riginal and supplemental campaign finance reports filed pursuant to A.R.S. §§ 16-941 shall include the same information regarding receipts and disbursements as required by A.R.S. § 16-915.” A.A.C. R2-20-109(A)(2).

Accordingly, under Commission rules, a nonparticipating candidate must file trigger reports whose contents reflect the requirements found in A.R.S. § 16-915.

Conclusion

Under the rules of the Citizens Clean Elections Commission, the original and supplemental campaign finance reports filed pursuant to A.R.S. §§ 16-941 and -958 must include the same information regarding receipts and disbursements as required under A.R.S. § 16-915.

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³ The Act also instructs the Commission to adopt rules to implement the reporting requirements of A.R.S. § 16-958(D) and (E). *See* A.R.S. § 16-956(A)(6). Those provisions require the Secretary of State to immediately notify the Commission of any trigger reports filed under A.R.S. § 16-958 and to distribute computer software to political committees to accommodate such filing. *See* A.R.S. § 16-958(D), (E).