



# OKLAHOMA ETHICS COMMISSION

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## Staff Memorandum 2017-04

**May a candidate who has opened a 2018 candidate committee for one elective state office move funds to a 2018 candidate committee for the same candidate but for a different elective state office?**

The Ethics Rules do not permit a candidate to raise and spend funds for two different offices *simultaneously*. This is consistent with the Oklahoma Election Code specifically prohibiting a candidate from filing a declaration of candidacy for more than one office in the same election. 26 O.S. §5-106. However, the question presented does not concern a candidate who intends to run for two offices during the same election cycle, but rather a candidate with an active 2018 campaign committee formed for a specific office and who has made the decision not to seek the office for which the committee was formed in order to seek a different office. Importantly, this decision has been made prior to the time frame for filing a declaration of candidacy in order to have his or her name appear on a ballot for a specific office. In such a situation, the original 2018 candidate committee has raised funds and needs guidance on whether those funds may be transferred to the new 2018 candidate committee.

Because Oklahoma law prohibits candidates from seeking multiple offices during the same election, care must be taken for candidates who find themselves in this unusual situation. Staff is therefore issuing this memorandum to provide guidance to these candidates.

### **Generally One Candidate Committee at a Time**

Ethics Rule 2.68 clearly provides that a candidate may have no more than one candidate committee for any state office at any time. This Rule requires a candidate to designate one committee to provide “certainty to contributors who wish to make contributions to the candidate’s campaign.” Annotated Ethics Rules, v. 2017.2, Commission Comment to Rule 2.68. Ethics Rule 2.69 permits a transfer of funds and/or debt from one committee of a candidate to another committee of the same candidate when a candidate is dissolving one committee for state office and opening another committee for state office.

Ethics Rule 2.69 was amended in 2015 to provide for a transition period of 60 days. Previously, a candidate transitioning to a new committee would both dissolve the old committee and immediately open a new committee, while transferring funds and/or debt at that time. The 2015 amendment was a solution to problems presented when the dissolving committee had outstanding checks yet to clear the depository in the old committee and the candidate received contributions for the new committee that needed deposited. **The amendment does not permit a candidate to raise funds for two different offices at the same time.** As soon as the candidate decides to run for the second office, the candidate must cease accepting contributions for the first office. Annotated Ethics Rules, v. 2017.2, Commission Comment to Rule 2.69.

### **Official Records of the State of Oklahoma**

The filing of a Statement of Organization (“SO”) is the filing of an official document proclaiming to the public that the specified candidate intends to seek and hold the office identified on the SO and that funds are being raised and spent for the candidate who is pursuing the office identified in the SO. The SO requires a written acknowledgement that the information contained therein is true and accurate.

An individual may file a SO for an office he or she intends to hold and later change his or her mind, deciding not to run for the office for which the candidate committee was formed. However, an individual is prohibited from filing a SO, or raising funds, for an office when the individual *does not* intend for his or her name to appear on the ballot for that office at the election. In addition to the Ethics Rules, individuals should also be aware that criminal statutes may be implicated for intentional filing of a false document, as well as misrepresentation while raising funds. These criminal statutes are outside the jurisdiction of the Ethics Commission and would be enforced by the District Attorney or Attorney General of the State of Oklahoma.

#### **Statements of Organization are Office Specific**

Among other information, a SO requires the name of the candidate as it *will appear on the ballot*, as well as the official and complete name of the state elective office for which the candidate seeks election. Ethics Rule 2.75. Any change in the information provided on the SO requires new filings with the Commission of the new information within ten (10) days of the change. This includes a change in the office being sought by the candidate.

However, for reasons discussed below, a candidate committee is unable to amend a SO to change the office sought. Consequently, a candidate who has filed a SO for one office during an election cycle and later decides to pursue a different office during the same election cycle is required to register a new candidate committee with the Commission within 10 days. The candidate will have 60 days in which to transition to the new candidate committee. Ethics Rule 2.69.

#### **Candidate Committees Must Have Different Names**

The Ethics Rules require candidate committees for the same candidate to change names each time the candidate opens a new committee. Rule 2.75 requires a committee name to include the first, middle or last name of the candidate *and* the year of the election. Because candidates are unable to have their name on the ballot for multiple offices, a committee generally changes its name simply by changing the year included in the committee name when a candidate decides to run for office in a different election cycle. This assists the public in distinguishing “multiple or otherwise identical committees that a candidate may designate over time.” Annotated Ethics Rules, version 2017.2, Commission Comment to Ethics Rule 2.75. However, when a candidate changes the office sought during an election cycle, the ability to change the election year is unavailable, which prohibit the public from distinguishing between the two committees. Accordingly, the intent of

the Ethics Rules—to assist the public in distinguishing between committees—would be frustrated by allowing a candidate committee to keep the name of a prior committee for the same candidate.

The Ethics Rules also provide the Executive Director the authority to require additional information on the SO when necessary to fulfill the intent and purposes of the Rules. Ethics Rule 2.76. Therefore, when a candidate has opened one candidate committee for an election cycle and later opens a different committee for the same election cycle, the two candidate committees must have different names. In other words, both committees could not be named “Friends of Jane Doe 2018”.

### **Committee Funds**

As explained above, the Ethics Rules intend candidate committees to be separate and distinct entities from the candidate and any prior committees. Generally, the requirements for a candidate committee are as follows: a candidate may not have more than one committee open at any time; each committee must have separate and distinct names tied to specific elections with depositories in the committee name; a committee must be registered within 10 days of specified activity; and a committee must dissolve by a certain date that is tied to the date of the general election for which the committee was formed. Ethics Rules 2.68, 2.69, 2.75, and 2.116.

The SO requires, among other things, that a committee disclose where its depository is located. Ethics Rule 2.75. Depository accounts are required to be maintained in the name of the candidate committee “as it is registered with the Commission.” Ethics Rule 2.95. A candidate with an active committee that files a SO for a subsequent committee during the same election cycle must open a depository account for the subsequent committee that is maintained in the subsequent committee’s name.

All contributions to the new candidate committee must be deposited in the depository maintained in the name of the new candidate committee. All expenditures must be expended from the relevant committee’s account. A committee is unable to deposit contributions to the new candidate committee in the old candidate committee’s depository, or vice versa, and the committee is unable to make expenditures from the old candidate committee for the new candidate committee. The new committee may make expenditures to cover the prior committee debt so long as that debt is carried forward in accordance with the Ethics Rules and properly reported.

### **All Contributions Must Be Voluntary**

Contributions to a candidate committee must be voluntarily given, not coerced, or improperly induced. Annotated Ethics Rules, version 2017.2, Commission Comment to Rule 2.91. The Rules exist to ensure contributions reach the intended recipient by requiring a candidate to identify the name of the committee he or she authorized. The Rules also ensure contributions given are used for the intended purpose—generally, to elect a specific candidate to a specific office and, if the

candidate is successful, to offset expenses related to the public office to which he or she was elected.

It is difficult to declare a contribution as voluntarily given when a contributor gives money to a candidate who is running for a specific office but the contribution is later used to run for a different office during the same election. Contributors are limited as to the amount of funds that may be contributed to a candidate committee during an election cycle. A contributor would not expect a contribution given to a candidate running for a specific office during a specific election cycle to count toward the contributor's contribution limit for that same candidate but for a different office during the same election cycle. There is every possibility a contributor will support a candidate running for one office but not support that same candidate when he or she seeks a different office—especially if the contributor has already made contributions to another candidate in that race.

Ethics Rule 2.37(I) specifically references how contributions are treated when a candidate files a SO for one office and raises funds for that office but later files a SO for a different office prior to the filing period for that office. The Rules require the contributions from the original committee to be aggregated together and counted toward the contribution limits of the contributors for the subsequent committee. However, permitting contributions to be *automatically* transferred from a candidate committee formed for one office during an election cycle to a second candidate committee of the same candidate for a different office decided during the same election cycle would frustrate the intent and purposes of the Rules for voluntary contributions.

Accordingly, the candidate must ascertain from contributors whether they object to their prior contributions supporting the candidate for one office to be counted toward their contribution limit for the same candidate but for a different office during the same election cycle. A candidate committee must send written notice to the contributors and provide those contributors with a reasonable time, i.e., 20 days, to object to their contribution being moved to the new candidate committee. If no objection is received, then the candidate may move the funds from the first candidate committee to the second candidate committee. Both committees must maintain a record of the notice provided to the contributors and any responses thereto. In the event a contributor objects to the subsequent committee using his or her contribution, the original committee should, if funds are available, refund the contribution.

### **No Surplus Funds**

Surplus funds are defined as “those funds not otherwise obligated following the election at which the office for which the candidate committee was formed has been determined.” Ethics Rule 2.48. The Committee may then use those “surplus funds” for any number of specifically identified purposes, including transferring those funds to a future campaign of the same candidate. However, as set forth in Rule 2.37, when a second committee is formed for the same candidate during the same election cycle and prior to the filing period for office, the Commission treats contributions from the first committee as contributions to the second committee. Because all contributions to

the first committee are considered as contributions to the second committee, the original committee will not have surplus funds. A committee's options are to move the funds to the new committee as described above, or return the contributions to the extent practical.

### **Reporting in The Guardian System**

Any funds moved from committees for the same candidate but for different offices during the same election cycle will not be reported as transferred funds in The Guardian System. Transferring funds from one candidate committee to the same candidate's committee for a future office is limited to the transfer of surplus funds. Because there are no surplus funds available to the first 2018 committee, the funds must be reported as contributions from the original contributors in the new candidate committee—provided the contributors do not object to the movement of funds from the first committee to the second. This is also the only way to ensure accurate campaign reports. Without re-entering the contributions, the aggregate contributions limits set forth on the reports for each contributor would be inaccurate.

In the original 2018 committee, the contributions should be reported as “refunded” and in the description shown as “moved to [name of new committee].” Reporting it in this way prevents the duplication of a single contribution. For example, a contributor who contributed \$100 to the first committee, where the contribution was reported by the first committee and later also reported by the second committee, would appear to have contributed \$200. Requiring the original committee to show the contribution as “refunded” ensures the contributions involved in an election are accurately counted. Essentially, the contributions are being treated as refunded and re-contributed to the new committee, as a matter of law, when the contributor has no objection to the transfer.

### **Officeholder Expenses**

Ethics Rule 2.44 allows an officeholder to transfer funds from the committee for which he or she is fulfilling a term of office to a new committee and use up to the amount transferred for officeholder expenses. The Rules do not contemplate the situation presented here where an officeholder has transferred funds from a prior committee to a 2018 committee to be used for officeholder expenses but the candidate no longer intends to seek the office for which the receiving candidate committee was formed. The situation presented then is whether a 2018 candidate committee may transfer funds to another 2018 candidate committee to be used as officeholder expenses when the candidate was not elected to the office for which the transferring committee was formed.

In this specific situation, where the funds for officeholder expenses were transferred to a committee for use for the remainder of the term of office, the Commission will allow an officeholder to further transfer those funds to a candidate committee formed for a different office during the same election cycle. The candidate must be a current officeholder who is seeking office, the funds transferred for officeholder expenses must have been properly transferred from the committee to which the candidate was elected, and the subsequent transfer must occur between committees formed for the

same election cycle. Essentially, the Commission will treat the transfer for officeholder expenses made to the first 2018 committee as a transfer directly to the second 2018 committee—provided, however, that if the first 2018 committee has already expended funds for officeholder expenses, the amount transferred to the new 2018 committee must be reduced by the amount paid for officeholder expenses. The officeholder may then use up to the amount of funds transferred for officeholder expenses through the end of the term of the current office held.

If a candidate has any question about a situation similar to the subject of the question presented, the candidate should contact the Ethics Commission.

### **Conclusion**

A candidate who has opened a candidate committee with the intention of running for one office and raised funds to pursue that specific office may, prior to the period of filing a declaration of candidacy for the office, decide to run for a different office during the same election cycle. The Ethics Rules require contributions for both campaigns to be aggregated together to count toward the contribution limits of contributors. However, because contributions are required to be voluntarily given and are given to a specific candidate running for a specific office, the candidate committee is required to provide contributors the opportunity to object to the use of the contribution by the new committee. Because of this, both committees must maintain appropriate documentation for record keeping purposes that show the notice provided to contributors and any objections received. The committees will not show the movement of contributions from the original committee to the new committee as lump sum “transfers” in The Guardian System; instead, it will show the funds from contributors who do not object to the movement of funds to the second committee as if those contributions were made directly to the second committee. The committee, which originally accepted the contributions, must show each contribution as refunded and “moved to [name of the new committee].”

**This advice is a staff memorandum setting forth the best advice of the staff and is not an Advisory Opinion adopted by the Ethics Commission. Advisory Opinions are binding on the Commission. To request an Advisory Opinion on this, or any other topic, a written request must be provided to the Commission staff by an entity directly impacted by the application of the Rules on the question presented.**

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