

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 2. ADMINISTRATION

#### CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

#### PREAMBLE

#### **1. Sections Affected**

Article 1  
R2-20-101  
R2-20-102  
R2-20-103  
R2-20-104  
R2-20-105  
R2-20-106  
R2-20-107  
R2-20-108  
R2-20-109  
R2-20-110  
R2-20-111  
R2-20-112  
R2-20-113

#### **Rulemaking Action**

New Article  
New Section  
New Section

#### **2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 16-956(D), 16-956(B)(4), 16-958(F). Rulemaking by the Citizens Clean Elections Commission ("Commission") is not subject to Title 41, Article 3, Chapter 6, but instead is governed by A.R.S. § 16-956(D). Section 16-956(D) provides that the "Commission rulemaking is exempt from Title 41, Article 3, Chapter 6, except that the Commission shall submit the rules for publication and the Secretary of State shall publish the rules in the Arizona Administrative Register. The Commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed." These rules were proposed by the Commission at a public meeting on January 31, 2000 and published on the Commission's web page ([www.ccec.state.az.us](http://www.ccec.state.az.us)) on February 2, 2000.

Implementing statutes: A.R.S. §§ 16-940 through 16-961.

#### **3. List of all previous notices appearing in the register addressing the proposed rule:**

Notice of Rule Making Docket Opening: 6 A.A.R. 479, January 28, 2000

#### **4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Colleen Connor, Executive Director  
Citizens Clean Elections Commission

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Address: 2929 N. Central Ave., Ste. 1500  
Phoenix, Arizona 85012

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Facsimile: (602) 263-4784

E-Mail: azccecc@yahoo.com

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The Citizens Clean Elections Commission is complying with A.R.S. §§ 16-956(D), 16-956(B)(4), and 16-958(F). These statutes allow the Commission to enact rules to carry out the purposes and provisions of the Citizens Clean Elections Act (A.R.S. §§ 16-940 through 16-961), to implement the reporting requirements of A.R.S. § 16-958(D) and (E), and to provide procedures for the inspection of a candidate's bank accounts, campaign financial reports, and financial records relating to the candidate's campaign.

**6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

Not applicable

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Not applicable

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

A meeting has been scheduled to hear public comment on the proposed rules on March 27, 2000, at 9:30 a.m. The meeting will be held at the Capitol Center, Basement Level Conference Room B, 15 South 15th Avenue, Phoenix, Arizona. In addition, written comments about the proposed rules may be submitted to the person identified in #4 until 5:00 p.m. on April 3, 2000.

**11. Any other matter prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rule follows:**

**TITLE 2. ADMINISTRATION**

**CHAPTER 20. CITIZENS CLEAN ELECTION COMMISSION**

**ARTICLE 1. GENERAL PROVISIONS**

Section

- R2-20-101. Definitions
- R2-20-102. Prior Activities
- R2-20-103. Campaign Accounts
- R2-20-104. Use of Funds
- R2-20-105. Determining Contributions and Expenditures
- R2-20-106. In-kind Contributions
- R2-20-107. Candidate's Use of Personal Motor Vehicle or Aircraft
- R2-20-108. Commission Procedures for Disbursements
- R2-20-109. Procedures for Verifying Original Reporting Slips

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- R2-20-110. Reporting Procedures and Requirements
- R2-20-111. Refunding Unused Campaign Funds
- R2-20-112. Books and Records Requirements
- R2-20-113. Withdrawal or Resignation of a Participating Candidate

**ARTICLE 1. GENERAL PROVISIONS**

**R2-20-101. Definitions**

In addition to the definitions provided in A.R.S. §§ 16-901 and 16-961, the following shall apply to the Chapter, unless the context otherwise requires:

1. "Act" means the Citizens Clean Elections Act set forth in the Arizona Revised Statutes, Title 16, Chapter 6, Article 2.
2. "Early contributions" means those contributions that are permitted pursuant to A.R.S. § 16-945.
3. "Family Member" means parent, grandparent, spouse, child or sibling of the candidate or a parent or spouse of any of those persons.
4. "Fair market value" means the price a willing buyer would pay and a willing seller would accept.
5. "Fund" means the Citizens Clean Election Fund established pursuant to A.R.S. § 16-949(D).
6. "Public Funds" includes all monies deposited into the Citizens Clean Election Fund and all other monies present in the candidate's account when such funds are deposited. Early contributions and candidates' personal monies expended prior to receipt of monies from the Fund shall not be deemed public funds.

**R2-20-102. Prior Activities**

- A. Except as provided in subsection B, Neither the Act nor these rules apply to a participating candidate's fund-raising activities completed on or before February 16, 1999.
- B. For purposes of calculating equalizing funds pursuant to A.R.S. § 16-952 or reporting under the Act, contributions or expenditures made after the date of the last general election are considered "contributions during the election cycle to date" or "expenditures ... made through the end of the primary election period" unless otherwise provided in these rules.
- C. Before a candidate files an application to become a participating candidate, the candidate shall ensure that any amount in the candidate's campaign account or exploratory account in excess of permitted personal monies, early contributions, and debt-retirement contributions is:
  1. Spent lawfully in a way that does not constitute a direct campaign purpose;
  2. Remitted to the Fund, in the case of permitted early contributions; or
  3. Transferred out of the account as disposal of surplus monies.
- D. An expenditure made from a candidate's campaign account or exploratory account existing on or after February 16, 1999 and in compliance with A.R.S. Title 16, Chapter 6, before the end of the qualifying period will not prevent a candidate from becoming a participating candidate under the Act.
- E. A candidate may use assets such as signs, pamphlets, and office equipment from an earlier election cycle only after the candidate's current campaign account acquires the assets for an amount equal to the fair market value of the assets. If the candidate was a participating candidate during the earlier election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the earlier election cycle, the cash payment shall be made to the prior campaign account.

**R2-20-103. Campaign Accounts**

- A. During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single campaign account and any petty cash account as are permitted by law.
- B. A candidate may maintain a campaign account other than the campaign account described in subsection (A) if the other campaign account is for a campaign in which the candidate was not a participating candidate.
- C. During the exploratory period, a candidate may receive debt-retirement funds for a campaign during an earlier election cycle if the funds are deposited in the account for that campaign.
- D. A candidate shall not deposit funds described in subsection (C) in the account described in subsection (A).
- E. A candidate shall file a report on financial activity for a current election cycle separately from a report on financial activity for a previous election cycle.
- F. The Commission shall not consider a contribution to a candidate to retire debt from a previous election cycle to be a "contribution during the election cycle to date" or "expenditures ... made through the end of the primary election period" for purposes of calculating equalizing funds under A.R.S. § 16-952(B) or reporting under A.R.S. §§ 16-941(B)(2)(b) and 16-958(A).

**R2-20-104. Use of Funds**

- A. Participating candidates shall use campaign account funds only for direct campaign purposes. Expenditures for direct campaign purposes include but are not limited to:
  1. Written materials, pins, bumper stickers, handbills, brochures, posters, yard signs, newsletters, and tabloids;
  2. Travel expenses including mileage reimbursement and lodging when out of town;

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3. Communication expenses, advertising, purchase of media space and time, direct mail services, postage, telephone banks and calling services, and long-distance charges;
  4. Headquarter expenses and lease and utility expenses;
  5. Expenses of volunteers, food for staff and volunteers, and staff salaries and other compensation;
  6. Office supplies;
  7. Accounting, reporting, clerical, campaign advisory, and other consulting services; and
  8. Public relations expenses, membership dues, and amounts allowable under subsection (C) for attendance at political events.
- B.** A participating candidate shall not use campaign account funds for:
1. Costs of legal defense in any campaign law enforcement proceeding;
  2. Indirect campaign purposes including
    - a. The candidate's personal support;
    - b. The candidate's personal appearance;
    - c. Capital assets having a value in excess of \$500.00 and a useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
    - d. A contribution to the campaign of another;
    - e. An independent expenditure;
    - f. A loan to another;
    - g. A gift in excess of \$25 per person;
    - h. Any payment or transfer for which compensating value is not received;
    - i. Compensation to the candidate;
    - j. Compensation to a candidate's family member; or
    - k. A contribution to any political party.
- C.** A participating candidate's payment from a campaign account to a political committee or civic organization is not a contribution if the payment is reasonable in relation to the value received. Payment of customary charges for services rendered, such as for printing voter or telephone lists, and payment of not more than \$150 per person to attend a political event open to the public or to party members shall be considered reasonable in relation to the value received.
- D.** Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fundraising activity is permissible under the Act. To make a request, a candidate shall submit a description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a "no action" letter. A "no action" letter applies only to the candidate who requested it.

**R2-20-105. Determining Contributions and Expenditures**

- A.** The Commission shall use A.R.S. Title 16, Chapter 6 and rules made under that Chapter to determine whether a candidate has received a contribution for all purposes of the Act.
- B.** The Commission shall use the provisions of the Act and the rules in this Chapter to determine whether a candidate or another has made an expenditure for purposes of the Act. If there is no applicable provision in the Act or these rules, the Commission shall apply the law and rules of the Office of the Secretary of State.
- C.** "Contribution" does not include a candidate's use of the candidate's personal telephones, personal electronic equipment, personal utilities subscriptions, and similar property and services acquired or maintained primarily for personal or family purposes and not for campaign purposes.

**R2-20-106. In-kind Contributions**

- A.** The use of a candidate's real or personal property except a motor vehicle or aircraft by the candidate or the candidate's campaign committee in an election campaign is not an in-kind contribution by the candidate if:
1. The property was originally acquired with personal (not business, labor union or political) funds and used by the candidate or a family member primarily for personal, family, or household purposes, and
  2. The property continues to be used by the candidate or a family member primarily for personal, family or household purposes.
- B.** The use of the following property of a candidate or a family member in the candidate's campaign is not an in-kind contribution and expenses associated with its use shall not be reimbursed:
1. The principal residence of the candidate including any office in the personal residence and the mortgage or rental payment, utilities, and all expenditures relating to the principal residence;
  2. The phone service at the principal residence and service charges including long-distance service and toll charges;
  3. One fax machine;
  4. One personal computer;
  5. One cellular phone and charges; and
  6. All miscellaneous service charges and maintenance and repair expenses associated with any of the above.

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**R2-20-107. Candidate's Use of Personal Motor Vehicle or Aircraft**

- A.** If a motor vehicle owned or leased by a candidate is used in the candidate's campaign, the per mile amount allowed at the time by the Arizona Department of Administration to state employees as reimbursement shall be considered an in-kind contribution of the candidate unless a reasonable reimbursement of at least 10¢ per mile from the candidate's campaign account is paid within 30 days. A campaign committee may reimburse a candidate for campaign use of a personal motor vehicle if records to substantiate mileage and use for campaign purposes are kept and filed with a request for reimbursement. A campaign committee may not reimburse the costs of gasoline, oil, repairs, maintenance, or insurance as a campaign expense.
- B.** Aircraft owned or leased by a candidate and used in the candidate's campaign is an in-kind contribution by the candidate equal to the fair market hourly rental rate charged commercially for similar aircraft unless reimbursed from the candidate's campaign committee.

**R2-20-108. Commission Procedures for Disbursements**

- A.** The Commission shall not disburse monies to a qualifying candidate before January 2 of an election year.
- B.** Within 10 days from the date the Secretary of State certifies candidates for the ballot a participating candidate who receives monies from the Fund and who is not certified for the ballot shall refund the full amount received from the Fund minus any amounts expended or obligated to pay any campaign-related debts incurred prior to date the campaign ended.
- C.** Before disbursing funds during a candidate's qualifying period, the Commission shall review the candidate's application for funding and all relevant facts and circumstances and:
- 1.** Verify that the number of signatures on the candidate's nominating petitions equals or exceeds the number required pursuant to A.R.S. § 16-322 as follows:
    - a.** If the application is submitted before the March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions equals or exceeds 115 percent of the number required pursuant to A.R.S. § 16-322 based on the prior election voter registration list as determined by the Secretary of State; or
    - b.** If the application is submitted after the current year March 1 voter registration list is determined the Commission shall verify that the number of signatures on the candidate's nominating petitions is equal to or greater than the number required pursuant to A.R.S. § 16-322.
  - 2.** Determine that the required number of qualifying contributions have been received and paid to the Secretary of State for deposit in the Fund; and
  - 3.** Determine whether the candidate is opposed in the election. The Commission shall consider a candidate as being opposed in the election for purposes of this section when a qualified participating candidate is opposed for the same office in that candidate's primary, or will be opposed in the general election because another candidate for the same office is seeking the nomination of another party, or will be opposed in the general election because an independent candidate is seeking the same office.
- D.** In making the reviews, verifications and determinations in subsection (C)(3), the Commission shall consider all relevant facts and circumstances, and it shall not be bound by election formalities such as the filing of nominating petitions by others in determining whether an applicant is opposed. Among other evidence the Commission may consider is the existence of exploratory committees or filings made to organize campaign committees of opponents and other like indicia.
- E.** Upon its own initiative or a written request from a candidate, the Commission may review and affirm or change its determination that the candidate is or is not opposed until the ballot for the election is established.
- F.** Within 7 days after a primary election and before the Secretary of State completes the canvass, the Commission shall disburse monies for general election campaigns to the participating candidates who received the greatest number of votes at each primary election, provided that the candidate with the highest number of votes has at least 2 percentage points, of the total votes cast, greater than the candidate with the next highest votes based on the unofficial results as of that date. In a legislative race for the Arizona House of Representative, eligible candidates shall be the candidate with the highest or second highest number of votes cast, provided such candidate received votes totaling at least 2 percentage points, of the total ballots cast, larger than the vote total cast for the candidate with the 3rd highest vote total.
- G.** Promptly after the Secretary of State completes the canvass, the Commission shall disburse monies for general election campaigns to all eligible participating candidates to whom payment has not been made. If a participating candidate has received monies from the Commission pursuant to subsection (F) and it is determined that the candidate is not eligible to appear on the general election ballot based on a recount as set forth in A.R.S. § 16-661, the participating candidate shall return all unused monies to the fund within 10 days after the recount is made public.

**R2-20-109. Procedures for Verifying Original Reporting Slips**

- A.** If the total number of reporting slips submitted by a candidate to the Secretary of State minus the number of disqualified reporting slips used in the random sample required by A.R.S. § 16-950(C) equals less than the number of qualifying contributions required for the office sought by the candidate, the Commission shall deny the candidate's application for funding without further verification.

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- B.** If a candidate submits a list to the Secretary of State under A.R.S. § 16-950(B) that contains fewer names of persons making qualifying contributions than is required for the office sought by the candidate, the Secretary of State may refuse to accept the list, original reporting slips, or amount tendered for deposit in the Fund.
- C.** Provided that the qualifying period has not expired, a certified candidate whose application for funding is denied may reapply for funds pursuant to A.R.S. § 16-950 and may resubmit reporting slips not disqualified in a prior application.
- D.** Qualifying contributions received with disqualified reporting slips shall be deposited in the Fund.
- E.** Qualifying contributions collected by a candidate seeking election to one office may not be used by that candidate for any other office.

**R2-20-110. Reporting Procedures and Requirements**

- A.** Each elections official shall promptly transmit to the Commission (in electronic or tangible form) any campaign report that is tendered to the official including one that is not accepted for filing as a result of an incorrect filing, mistake, tardiness, defect, or omission.
- B.** In each campaign finance report, a candidate shall list:
  - 1. Any extensions of credit made after the date of the previous report;
  - 2. All debts under bills or contracts that are due and payable on or before the date of the report; and
  - 3. All debts for goods or services received on or before the date of the report.
- C.** For the sole purpose of timing equalizing payments to a participating candidate under A.R.S. § 16-952, if at any time during a general election period the total expenditures of an opposing non-participating candidate who has surpassed the general election spending limit exceed the total contributions to the non-participating candidate during the election cycle to date, the Commission shall presume:
  - 1. An extension of credit to the non-participating candidate is matched by a contribution to the non-participating candidate at the time the credit is extended; and
  - 2. An unpaid debt of the non-participating candidate is matched by a contribution to the non-participating candidate on the date the debt becomes due and payable, or the date the goods or services giving rise to the debt are received, whichever is earlier.
- D.** Neither extensions of credit nor unpaid debts shall be presumed to be contributions to a candidate by the creditor for any other purpose by virtue of this rule.

**R2-20-111. Refunding Unused Campaign Funds**

- A.** With a campaign financial report filed immediately prior to, on, or first following an election day, each candidate shall include a recap of all expenditures made in connection with such election, all contributions received in the election cycle in which such election occurs, and if a participating candidate all payments made from such candidate's campaign fund to the Citizens Clean Elections Fund.
- B.** If the recap shows any amount unspent by a participating candidate, the report shall be accompanied by a check from the candidate's campaign account which will refund to the Fund all unspent monies provided by the Fund.

**R2-20-112. Books and Records Requirements**

- A.** All candidates shall maintain at a single location within the State the books, records of financial transactions, and other information required by law. Such location shall in all cases be that of the principal headquarters of the candidate's campaign, and at such location all such information shall be maintained available for inspection by the Commission during the regular business hours of the Commission.
- B.** The principal location of each candidate's principal campaign headquarters shall be maintained in the same County as that of the principal residence of the candidate.

**R2-20-113. Withdrawal or Resignation of a Participating Candidate**

- A.** A participating candidate who has been certified pursuant to A.R.S. § 16-947 may resign or withdraw by notifying the Commission and returning all unspent public funds to the Fund. A candidate who has applied and received certification as a participating candidate pursuant to A.R.S. § 16-947, may not seek election to any other public office during that election cycle, except as a participating candidate. A participating candidate who resigns prior to submitting an application for funds and qualifying contributions to the Secretary of State shall use the candidate's best efforts to return all qualifying contributions collected to the contributor. If the contributor cannot be located, the qualifying contributions collected by the candidate shall be remitted to the Fund.
- B.** A participating candidate who has not applied for funds may notify the Commission that the candidate seeks to run for another office as a participating candidate.