

# ARKANSAS ETHICS COMMISSION

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August 17, 2012

Bentonville Public Schools  
Attn: Michael Poore, Superintendent  
500 Tiger Boulevard  
Bentonville, Arkansas 72712

**Re: Case No. 2012-CO-016**

Dear Superintendent Poore:

On June 13, 2012, the Ethics Commission mailed you a letter in your capacity as Superintendent of Bentonville Public School. That letter contained a copy of the citizen complaint which was filed against Bentonville Public School ("BPS") in connection with a millage increase presented to voters at an election on June 26, 2012.

In the June 13<sup>th</sup> letter, BPS was notified that an investigation was being commenced regarding the issue of whether or not it violated the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters (Ark. Code Ann. § 7-9-401 *et seq.*) by spending public funds to expressly advocate the passage of said millage increase and failing to comply with the disclosure requirements of that Act.

The reporting requirements applicable to a public servant or governmental body spending public funds are set forth in Ark. Code Ann. § 7-9-406(c). Pursuant thereto,

[a] public servant or governmental body expending public funds in excess of five hundred dollars (\$500) for the purpose of *expressly advocating* the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question shall file with the commission financial reports as required by §§ 7-9-407 – 7-9-409. (emphasis added)

It is noted that the subject of “express advocacy” was previously addressed by the Commission in Advisory Opinion Nos. 2006-EC-004 and 2008-EC-008. The following is an excerpt from the second such opinion:

In Advisory Opinion 2006-EC-004, the Commission specifically addressed the meaning of the phrase “expressly advocates” as used in the definition of an “independent expenditure.” That opinion contained a lengthy discussion of case precedent, including the landmark case of *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612 (1976)(“Buckley I”). Although the opinion addressed express advocacy in the context of *candidate* support or opposition, the rationale set forth therein provides guidance regarding the question at hand. Moreover, the Supreme Court has made it clear that the principles enunciated in *Buckley I* extend equally to issue-based elections. See *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 115 S.Ct. 1511 (1995).

As this Commission has previously opined, express advocacy which is subject to Arkansas’ campaign finance laws requires explicit words urging action (i.e., “vote for” “vote against”) in order to be constitutionally regulated by the State. Accordingly, when a public servant or a governmental body expends more than five hundred dollars (\$500) of public funds urging action in support or opposition of a ballot measure, that public servant or governmental body is required to file financial reports pursuant to Ark. Code Ann. §§ 7-9-407-7-9-409. Communication which falls short of urging action is unregulated political speech and not subject to the Disclosure Act.

Please be advised that the results of staff’s investigation were presented to the Commission for a determination concerning probable cause at the Commission meeting held on today’s date. At that time, the Commission decided, by a vote of 3-0, Commissioners Dumas and Bird not present, to **DISMISS** the complaint.

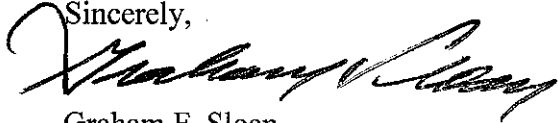
Evidence gathered during the course of the investigation reflected that BPS prepared and distributed eight (8) flyers in connection with the millage increase in question. Although BPS spent public funds in excess of five hundred dollars (\$500) in connection with the printing and mailing of those flyers, the Commission concluded that the flyers did not rise to the level of *expressly advocating* the passage of the millage increase.

In reviewing the flyers which BPS prepared and distributed, the Commission concluded that the information contained therein was generally favorable towards the millage increase. However, the flyers did not contain the explicit words urging the reader to vote for the millage increase. Because the flyers fell short of *expressly advocating* a particular election result, the Commission determined that BPS did not trigger reporting under the Disclosure Act.

In accordance with Ark. Code Ann. § 7-6-218(b)(1)(C), this letter serves as notice of the Commission's final action together with the reasons for such action. This letter is a public document and a copy is being sent to the Complainant, Jim Parsons, to notify him of the outcome of these proceedings.

If you should have any questions or comments regarding this matter, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Graham F. Sloan". The signature is written in a cursive style with a large initial "G".

Graham F. Sloan  
Director

cc: Jim Parsons