

Article 7. Use of Funds and Repayment

R2-20-701. Purpose and scope

A participating candidate may spend clean elections monies only for reasonable and necessary expenses that are directly related to the campaign of that participating candidate.

R2-20-702. Use of Campaign Funds

- A.** A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).
- B.** 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 \$200 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.
- C.** A participating candidate shall not use funds in the candidate's campaign account for:
1. Costs of legal defense in any campaign law enforcement proceeding or for any affirmative claim or litigation in court or before the Commission regarding a campaign. This prohibition does not bar use of campaign funds for payments to attorneys or certified accountants for proactive compliance advice and assistance.
 2. Food and beverages for staff and volunteers exceeding \$11 for breakfast, \$16 for lunch, and \$27 for dinner, per person.
 3. Personal use, which includes, but is not limited to, any item listed below:
 - a. Household food items or supplies.
 - b. Clothing, other than items of de minimis value that are used in the campaign, such as campaign "t-shirts" or caps with campaign slogans.
 - c. Tuition payments, other than those associated with training campaign staff.
 - d. Mortgage, loan, rent, lease or utility payments:
 - i. For any part of any personal residence of the candidate or a member of the candidate's family; or
 - ii. For real or personal property that is owned or leased by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.
 - e. Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign activity.
 - f. Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises.
 - g. Gifts or donations.
 - h. Extended warranties or other similar purchase options that extend beyond the campaign.
 4. Payment to a candidate or a candidate's family member, as defined in R2-20-101(13), or an enterprise owned in whole or part by a candidate or family member, for the provisions of goods or services to the extent the payments exceed the fair market value of the goods or services. All payments made to family members or to

enterprises owned in whole or part by the candidate or a family member shall be clearly itemized and indicated as such in all campaign finance reports.

- D.** Participating candidates may purchase fixed assets with a value not to exceed \$800. Fixed assets, including accessories, purchased with campaign funds that can be used for non-campaign purposes with a value of \$200 or more shall be turned into the Commission no later than 14 days after the primary election or the general election if the candidate was successful in the primary. For purposes of determining whether a fixed asset is valued at \$200 or more, the value shall include any accessories purchased for use with the fixed asset in question. A candidate may elect to keep an item by reimbursing the Commission for 80% of the original purchase price including the cost of accessories.
- E.** During the primary election period, a participating candidate shall not make any expenditure greater than the difference between
 - 1. the sum of early contributions received plus public funds disbursed through the primary election period; less
 - 2. all other expenditures made during and for the exploratory, qualifying and primary election periods.
- F.** During the general election period, a participating candidate shall not make any expenditure greater than the difference between
 - 1. the amount of public funds disbursed during and for the general election period; less
 - 2. all other expenditures made during and for the general election period.
- G.** Transportation expenses.
 - 1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
 - 2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:
 - a. Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.
 - b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.
 - 3. Use of airplanes.
 - a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable

to accept reimbursement, the participating candidate shall remit to the fund an amount equal to \$150 per hour of flying time.

- b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.
4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.

R2-20-702.01. Use of Assets

A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign pays for the assets in an amount equal to the fair market value of the assets, which amount shall in no event be less than one-fifth (1/5) the original purchase price of such assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate.

R2-20-703. Documentation for direct campaign expenditures

- A. In addition to the general books and records requirements prescribed in A.A.C. R2-20-111, participating candidates shall comply with the following requirements:
 1. All participating candidates shall have the burden of proving that expenditures made by the candidate were for direct campaign purposes. The candidate shall obtain and furnish to the Commission on request any evidence regarding direct campaign expenses made by the candidate as provided in subsection 2 of this rule.
 2. All participating candidates shall retain records with respect to each expenditure and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.
 3. All participating candidates shall maintain a list of all fixed assets whose purchase price exceeded \$200 when acquired by the campaign. The list shall include a brief description of each fixed asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition.
- B. Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fund-raising activity is permissible under the Act. To make a request, a candidate shall submit a written 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.

- ~~C. Joint expenditures. Expenditures may be made in conjunction with other candidates, but each candidate shall pay his or her proportionate share of the cost. A candidate’s payment for an advertisement, literature, material, campaign event or other activity shall be considered a joint expenditure including, but not limited to, the following criteria:~~
- ~~1. The activity includes express advocacy of the election or defeat of more than 2 candidates;~~
 - ~~2. The purpose of the material or activity is to promote or facilitate the election of a second candidate;~~
 - ~~3. The use and prominence of a second candidate or his or her name or likeness in the material or activity;~~
 - ~~4. The material or activity includes an expression by a second candidate of his or her view on issues brought up during the election campaign;~~
 - ~~5. The timing of the material or activity in relation to the election of a second candidate;~~
 - ~~6. The distribution of the material or the activity is targeted to a second candidate’s electorate; or~~
 - ~~7. The amount of control a second candidate has over the material or activity.~~
- DC.** Any expenditure made by the candidate or the candidate’s committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate’s personal monies.

R2-20-704. Repayment

- A.** In general, the Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund as determined by the Commission.
1. A candidate who has received payments from the Fund shall pay the Fund any amounts that the Commission determines to be repayable. In making repayment determinations, the Commission may utilize information obtained from audits and examinations or otherwise obtained by the Commission in carrying out its responsibilities.
 2. The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than one year after the day of the election.
 3. Once the candidate receives notice of the Commission’s repayment determination, the candidate should give preference to the repayment over all other outstanding obligations of the candidate, except for any taxes owed by the candidate.
 4. Repayments may be made only from the following sources: personal funds of the candidate, funds in the candidate’s current election campaign account, and any additional funds raised subject to the limitations and prohibitions of the Act.
 5. The Commission may withhold the portion of funds required to be repaid from future payments to a participating candidate if the Commission has made a repayment determination.
- B.** The Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund under any of the following circumstances:
1. Payments in excess of candidate’s entitlement. If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate

- payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the Fund an amount equal to such portion.
2. Use of funds not for direct campaign expenses. If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than direct campaign purposes described in A.A.C. R2-20-702, it will notify the candidate of the amount so used, and such candidate shall pay to the Fund an amount equal to such amount.
 3. Expenditures that were not documented in accordance with campaign finance reporting requirements, expended in violation of State or Federal law, or used to defray expenses resulting from a violation of State or Federal law, such as the payment of fines or penalties.
 4. Surplus. If the Commission determines that a portion of payments from the Fund remains unspent after all direct campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the Fund that portion of surplus funds.
 5. Income on investment or other use of payments from the Fund. If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the Fund, it shall so notify the candidate, and such candidate shall pay to the Fund an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.
 6. Unlawful acceptance of contributions by an eligible candidate. If the Commission determines that a participating candidate accepted contributions, other than early contributions or qualifying contributions, it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the Fund an amount equal to such amount, plus any civil penalties assessed.
- C.** Repayment determination procedures. The Commission's repayment determination will be made in accordance with the following procedures:
1. Repayment determination. The Commission will send a repayment determination pursuant to Article 2, Compliance and Enforcement Procedures, and will set forth the legal and factual reasons for such determination, as well as the evidence upon which any such determination is based. The candidate shall repay, in accordance with subsection D of this rule, the amount that the Commission has determined to be repayable.
 2. Administrative review of repayment determination. If a candidate disputes the Commission's repayment determination, he or she may request an administrative appeal of the determination in accordance with A.R.S. § 41-1092 et. seq.
- D.** Repayment period.
1. Within 30 days of service of the notice of the Commission's repayment determination, the candidate shall repay the amounts the Commission has determined must be repaid. Upon application by the candidate, the Commission may grant an extension of time in which to make repayment.
 2. If the candidate requests an administrative appeal of the Commission's repayment determination of this section, the time for repayment will be suspended until the Commission has concluded its review of the Administrative Law Judge's (ALJ) decision. Within 30 days after service of the notice of the Commission's review of the ALJ's decision, the candidate shall repay the amounts that the Commission has

- determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 30 days in which to make repayment.
3. Interest shall be assessed on all repayments made after the initial 30-day repayment period or the 30-day repayment period established by this section. The amount of interest due shall be the greater of:
 - a. An amount calculated in accordance with A.R.S. § 44-1201(A); or
 - b. The amount actually earned on the funds set aside or to be repaid under this rule.

R2-20-705. Additional audits or repayment determinations

- A.** The Commission may conduct an additional audit or examination of any candidate in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.
- B.** The Commission may make additional repayment determinations after it has made an initial repayment determination pursuant to A.A.C. R2-20-704. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous determination. Any such additional repayment determination will be made in accordance with the provisions of this Article.