



A REPORT
TO THE
ARIZONA LEGISLATURE

Financial Audit Division

Special Review

Citizens Clean Elections Commission

For The 2004 Election Cycle



Debra K. Davenport
Auditor General

The **Auditor General** is appointed by the Joint Legislative Audit Committee, a bipartisan committee composed of five senators and five representatives. Her mission is to provide independent and impartial information and specific recommendations to improve the operations of state and local government entities. To this end, she provides financial audits and accounting services to the State and political subdivisions, investigates possible misuse of public monies, and conducts performance audits of school districts, state agencies, and the programs they administer.



Copies of the Auditor General's reports are free.
You may request them by contacting us at:

Office of the Auditor General

2910 N. 44th Street, Suite 410 • Phoenix, AZ 85018 • (602) 553-0333

Additionally, many of our reports can be found in electronic format at:

www.azauditor.gov



DEBRA K. DAVENPORT, CPA
AUDITOR GENERAL

**STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL**

WILLIAM THOMSON
DEPUTY AUDITOR GENERAL

November 10, 2005

Members of the Arizona State Legislature

The Honorable Janet Napolitano, Governor

Marcia J. Busching, Chair
Citizens Clean Elections Commission

Transmitted herewith is a report of the Auditor General, a special review of the Citizens Clean Elections Commission. The review was conducted in accordance with Arizona Revised Statutes (A.R.S.) §§16-949(D) and 41-1279.03.

Our review disclosed internal control weaknesses the Commission should correct to ensure that it adequately monitors candidate compliance with campaign finance laws established by the Citizens Clean Elections Act. Specifically, commission staff should perform a detailed analysis of campaign finance reports submitted by participating candidates receiving public monies to determine whether candidates complied with contribution limits and returned unspent monies. In addition, the Commission should require that participating candidates submit reports that are sufficiently detailed so that it can determine whether candidates complied with spending limits and limits on petty cash accounts. Finally, commission staff should review reports submitted by nonparticipating candidates to determine whether those candidates complied with campaign contribution limits. Our recommendations are described in the accompanying report.

As outlined in its response, the Commission agrees with all of the findings and plans to implement all of the recommendations.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on November 14, 2005.

Sincerely,

Debbie Davenport
Auditor General

TABLE OF CONTENTS



Introduction & Background	1
Finding 1: The Commission should perform detailed reviews of participating candidates' campaign finance reports	7
Finding 2: The Commission should require candidates to submit reports in sufficient detail to determine compliance	9
Finding 3: Commission staff should review nonparticipating candidates' campaign finance reports	11
Commission Response	
Tables:	
1 Distributions to Participating Candidates for the 2004 Elections	1
2 Clean Elections Candidate Contribution Limits 2004 Election Cycle	4
3 Primary and General Election Base Amounts and Equalization Limits 2004 Election Cycle	4
4 Nonparticipating Candidates Campaign Contribution Limits 2004 Election Cycle	6
Figures:	
1 Revenue Sources January 1, 2004 through December 31, 2004	2

INTRODUCTION & BACKGROUND

The Office of the Auditor General has conducted a compliance and internal control review of the Citizens Clean Elections Commission (Commission). This review was performed under the authority given to the Auditor General by A.R.S. §§16-949(D) and 41-1279.03. The Auditor General is required to review the revenues and expenditures of the Citizens Clean Elections Fund (Fund) at least every 4 years. In addition, the Auditor General is authorized to review and evaluate administrative and accounting internal controls established by state agencies. The first review of the Commission was completed for the 2000 election cycle.

The Citizens Clean Elections Act (Act) was passed by voters in November 1998 and became effective in February 1999. The Act established a campaign financing system to provide public funding to qualified candidates running for legislative and state-wide offices and created the Citizens Clean Elections Commission to enforce the Act's provisions. The Commission is responsible for adopting rules to carry out the Act's provisions and to govern its procedures.

Candidates who receive monies from the Commission are known as participating candidates. To be certified as a participating candidate, individuals must file an "Application for Certification as a Participating Candidate" with the Secretary of State's Office. The Commission must deny the application within 7 days, or the candidate is certified as a participating candidate. Once certified, participating candidates must follow strict contribution and spending limits and participate in required debates. In addition, candidates must certify that they will use all monies received for direct campaign purposes only. To qualify for Clean Elections funding, a certified participating candidate must obtain a predetermined number of \$5 qualifying contributions from constituents.

For the 2004 elections, 118 candidates were certified as participating candidates and 109 of those candidates received money from the Commission. Table 1 shows the number of participating candidates for the 2004 elections and the amount of money they received from the Fund.

Table 1: Distributions to Participating Candidates for the 2004 Elections

	Primary Election	General Election	Elected to Office
Number of candidates	109	88	46
Total monies distributed	\$2,246,255	\$2,111,271	-

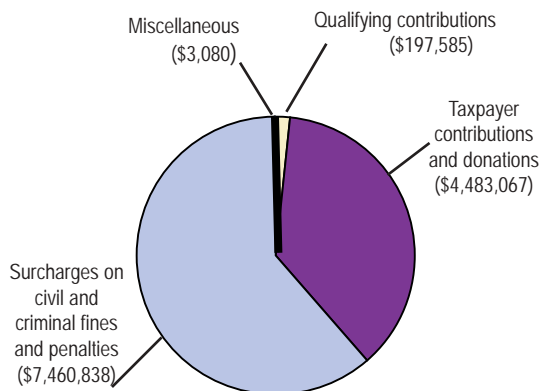
Source: Auditor General staff analysis of Commission distributions for the 2004 elections.

Sources of revenue

Fund monies come from five public funding sources:

- A 10 percent surcharge imposed on certain civil and criminal fines and penalties.
- Voluntary \$5 contributions from taxpayers who mark an optional check-off box on their state income tax returns.
- Donations from taxpayers who receive a dollar-for-dollar tax credit of 20 percent of their taxpayer's tax liability or \$500 per taxpayer, whichever is greater.
- Qualifying \$5 contributions collected by participating candidates, which are deposited into the Fund.
- Miscellaneous receipts, such as charges for public documents.

Figure 1: Revenue Sources
January 1, 2004 through December 31, 2004



Source: Auditor General staff analysis of commission revenues recorded in the Arizona Financial Information System and the Commission's December 2004 Report on Revenues and Expenditures.

Figure 1 shows the monies the Commission collected from January 1, 2004 through December 31, 2004, by source.

Organization and staffing

The Commission consists of five members, each serving a 5-year term. No more than two commission members may be from the same political party. Vacancies are filled through a process in which remaining commissioners nominate a slate of three candidates. The Governor and the highest-ranking official holding a state-wide office who is not a member of the same political party as the Governor shall alternate in selecting a new commissioner. The Commission employed eight full-time staff members during the 2004 elections who were responsible for administering daily operations and enforcing the Act.

Commission's roles and responsibilities

The Commission is responsible for providing public funding to qualified candidates, publishing voter education pamphlets, sponsoring debates, administering the Fund,

and enforcing campaign finance laws that the Act established. The Act established campaign contribution limits, spending limits, reporting requirements, and debate requirements for participating candidates. It also established campaign contribution limits and reporting requirements for candidates who elect not to receive public funding for their campaigns. These candidates are referred to as nonparticipating candidates.

To carry out its responsibilities, the Commission has the power to adopt rules, prescribe forms for reports, monitor reports and financial records, regulate spending, and discipline candidates. The Commission may initiate an enforcement action based on a staff recommendation or as a result of a written complaint from a member of the public, including opposing candidates. The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of books, papers, records, or other items. The Commission has the authority to conduct audits of all candidates' campaign accounts, including audits to aid in the investigation of an enforcement action and random audits. For specified violations, the Act requires the Commission to make its findings public and assess civil penalties. As a result of the 2004 elections, the Commission initiated 76 enforcement actions. As of July 29, 2005, 68 actions have been closed or settled, and 8 actions are pending.

Impact on participating candidates

The Act established campaign contribution limits, spending limits, reporting requirements, and debate requirements for participating candidates. A description of these limits and requirements follows:

- **Contribution limits**—The Act is specific about the timing and total amount of campaign contributions that a participating candidate may accept. Candidates may accept early contributions from individuals not exceeding \$110 per individual during an election cycle. Candidates may not accept contributions from corporations, political action committees, or political parties. Use of personal monies, which includes monies of certain family members, is limited to \$550 for legislative candidates and \$1,100 for state-wide office candidates.

Early contributions must be received and spent for direct campaign purposes during the exploratory and qualifying periods. Any amount unspent by the end of the qualifying period must be remitted to the Commission for deposit in the Fund. All candidates are required to submit campaign finance reports to the Secretary of State's Office that detail individual campaign contributions. The

Election Cycle—The time between successive general elections for a particular office.

Exploratory Period—Begins the day after a general election and ends the day before the qualifying period starts. Candidates can accept and spend early contributions during this period.

Qualifying Period—Begins the first day of August in a year preceding an election for a state-wide office, or the first day of January of an election year for a legislative office, and ends 75 days before the general election day. During this period, candidates collect \$5 qualifying contributions and apply with the Commission to run as a participating candidate.

**Table 2: Clean Elections Candidate Contribution Limits
2004 Election Cycle**

Office	Aggregate Early Contributions	Personal Monies	Total Limit
Corporation Commissioner	\$11,320	\$1,100	\$12,420
Legislator	2,830	550	3,380

Source: Citizens Clean Elections Commission 2004 Participating Candidate Guide.

Commission uses these reports to evaluate a candidate's compliance with contribution limits. A candidate who violates contribution limits is subject to various penalties. Table 2 shows the contribution limits in effect during the 2004 election cycle for legislators and corporation commissioners. These were the only qualifying offices on the ballot for the 2004 elections.

- Spending limits**—Clean elections funding is intended to provide participating candidates with a base spending amount for conducting an election campaign. The calculation of spending limits is established in statute and varies by office and type of election. The amount of funding a participating candidate is eligible to receive is determined by a number of factors, such as whether a candidate is running unopposed or is in a district dominated by one political party. The base amount can be increased by equalization payments if an opposing nonparticipating candidate spends more than the base amount for the primary election or generates more in contributions after deducting primary election expenditures (net contributions) than the base amount for the general election. These equalization payments increase a participating candidate's spending limit. Equalization amounts are limited and vary by office. Table 3 shows the base amounts and equalization limits by office in effect for the 2004 election cycle.

**Table 3: Primary and General Election Base Amounts and Equalization Limits
2004 Election Cycle**

Office	Primary Election		General Election	
	Base Amount	Equalization Limit	Base Amount	Equalization Limit
Legislator	\$11,320	\$22,640	\$16,980	\$ 33,960
Legislator—one-party-dominant district ¹	16,980	33,960	11,320	22,640
Legislator—independent ²	19,810	N/A	N/A	33,960
Corporation Commissioner	45,280	90,560	67,920	135,840
Corporation Commissioner—independent ²	79,240	N/A	N/A	135,840

¹ One-party dominant district—A legislative district in which the number of voters registered in the party with the highest number of registered voters exceeds the number of registered voters in the district by at least ten percent.

² Independent—A qualified candidate who is not a registered member of a recognized political party.

Source: Citizens Clean Elections Commission 2004 Participating Candidate Guide.

The Commission calculates equalization payments based on the nonparticipating candidate with the highest amount of expenditures in the

primary election and net contributions for the general election. Equalization payment calculations are based on information contained in the campaign finance reports that nonparticipating candidates submit to the Secretary of State's Office. Participating candidates must return all unspent monies to the Commission. A participating candidate who violates a spending limit is subject to various penalties.

- **Reporting requirements**—Participating candidates are required to submit periodic reports using campaign finance software provided by the Secretary of State's Office. The Secretary of State's Office requires participating candidates to submit six campaign finance reports at statutorily designated times during the election cycle. These reports present the candidate's campaign receipts and disbursements. The Commission has adopted rules that require participating candidates to submit four additional campaign finance reports. These reports are due prior to submitting an application for funding, at the end of the qualifying period, following the primary election, and following general election. The reports allow the Commission to identify any unspent monies at the end of the reporting period that must be returned to the Fund.
- **Debate requirements**—The Act requires the Commission to sponsor debates among candidates. Participating candidates are required to participate in these debates, and the Commission is authorized to establish penalties for nonparticipation. Candidates may be excused from the debates with the Commission's permission. During the 2004 election cycle, the Commission contracted with 15 debate sponsors to hold a total of 43 debates across the State—22 for the primary election and 21 for the general election.

Impact on nonparticipating candidates

The Act affects nonparticipating candidates in two significant areas—reporting requirements and campaign contribution limits.

- **Reporting requirements**—All nonparticipating candidates must submit the same six campaign finance reports to the Secretary of State's Office that participating candidates submit. In addition, the Act requires nonparticipating candidates to submit reports (called trigger reports) to the Secretary of State's Office when they reach certain dollar thresholds. Nonparticipating candidates must submit these reports during the primary election when their spending exceeds statutorily defined limits and during the general election when net contributions exceed statutorily defined limits. The Commission relies on nonparticipating candidates to submit accurate and timely trigger reports to determine when equalization payments are due to participating candidates. Nonparticipating

candidates are subject to the same civil penalties as participating candidates for failure to file accurate and timely reports.

- Campaign contribution limits**—The Act reduced the statutory limits on campaign contributions that all nonparticipating candidates are allowed to accept by 20 percent. The limit on campaign contributions addresses one of the Act’s core concepts of leveling the playing field. The Secretary of State’s Office is authorized to impose a civil penalty if contributions exceed the applicable limit. Table 4 lists the campaign contribution limits for nonparticipating candidates for the 2004 elections.

Table 4: Nonparticipating Candidates Campaign Contribution Limits 2004 Election Cycle

	Legislative Candidates	State-wide Office Candidates
Individual's contribution to a candidate	\$ 280	\$ 720
Political committee's contribution to a candidate	280	720
Political committees certified by the Secretary of State to give at upper limit	1,440	3,600
Candidate's total from political party and all political organizations	7,192	71,888
Total contributed by an individual to candidates and committees who give to candidates (based on calendar year)	3,360	3,360

Source: Citizens Clean Elections Commission 2004 Nonparticipating Candidate Guide.

FINDING 1

The Commission should perform detailed reviews of participating candidates' campaign finance reports

The Commission is responsible for enforcing the campaign finance laws that the Act established. The Act requires that candidates accept contributions only within prescribed limits and return unspent monies received from the Commission. Commission staff review campaign finance reports filed by participating candidates to determine whether candidates have complied with contribution limits and returned unspent monies. However, during the 2004 elections, the Commission staff performed only limited reviews of reports submitted by the 109 participating candidates. The reviews focused on identifying cash on-hand reported by candidates and did not evaluate whether the contributions and campaign expenditures were properly reported or evaluate candidate compliance with contribution limits.

To evaluate the impact of this problem, auditors reviewed 15 participating candidates' campaign finance reports to determine whether noncompliance occurred that the Commission did not investigate further. The reviews were limited to the campaign finance reports filed by the candidate with the Secretary of State's Office and did not include a review of any other records the candidate maintained. Based on the review, auditors identified possible instances of inaccurate expenditure reporting and apparent violations of contribution limits. Examples included the following:

- One candidate classified \$1,100 of qualifying campaign contributions as a campaign expense. As a result, it appears that expenses were overstated and the candidate had \$1,100 of unspent monies that should have been returned to the Commission.
- One candidate appeared to have violated the aggregate limit on early contributions by \$545.
- Three candidates appeared to have violated rules on contributions that resulted in total unallowable contributions of \$579. One candidate accepted a

contribution of \$280 from a political action committee and two candidates accepted in-kind contributions totaling \$299 after the qualifying period.

The Commission should perform a detailed review of campaign finance reports filed by participating candidates to determine whether the reports are accurately completed and whether candidates complied with contribution limits. When reporting errors and potential instances of noncompliance are noted, the Commission should contact candidates to resolve the problems. If necessary, the Commission should enforce the Act's campaign finance laws and assess appropriate penalties.

FINDING 2

The Commission should require candidates to submit reports in sufficient detail to determine compliance

The Citizens Clean Elections Act requires participating candidates to follow strict spending limits for the qualifying period, the primary election, and the general election and return unspent monies received from the Commission. In addition, campaign committees may not establish petty cash accounts in excess of \$1,100, and individual petty cash expenditures from an account may not exceed \$110. Campaign finance reports filed by participating candidates are the Commission's primary means to monitor compliance with these requirements. However, the campaign finance reports required for the 2004 elections did not contain sufficient detail for the Commission to evaluate compliance.

Commission rules require participating candidates to submit campaign finance reports for the qualifying period, the primary election, and the general election. The Commission is responsible for reviewing these reports to determine whether the candidates followed the Act's spending limitations. The Act's spending limitations apply separately to the qualifying period, the primary election, and the general election. For the 2004 elections, the Commission did not enforce the rules requiring the reports, and instead used campaign finance reports candidates' submitted to the Secretary of State's Office to evaluate compliance with the Act's spending limits. The Secretary of State's Office requires participating candidates to submit six campaign finance reports at statutorily designated times. However, these reports did not separately report campaign finance expenditures for the qualifying period, the primary election, and the general election. As a result, the Commission was unable to determine if the candidates complied with the Act's spending limitations and evaluate whether the candidates' unspent monies for each reporting period were accurately calculated and returned to the Commission.

In addition, for the 2004 elections, the Commission did not require participating candidates to include a detailed listing of petty cash accounts and petty cash expenditures on their campaign finance reports. Instead, the Commission instructed candidates to make only memorandum entries of the date and amount of petty cash

expenditures on their reports. As a result, the Commission could not determine compliance with petty cash limits by reviewing candidates' reports.

For the Commission to evaluate whether participating candidates complied with spending limits, returned unspent monies, and complied with limits on petty cash, the Commission should:

1. Enforce commission rules and require candidates to submit separate campaign finance reports at the end of the qualifying period and after the primary election and the general election. Commission staff should review these reports to evaluate whether the candidates complied with spending limits and returned unspent monies.
2. Require candidates to submit a detailed listing of petty cash accounts and petty cash expenditures with their campaign finance reports. Commission staff should review the information presented to evaluate whether the candidates complied with limits on petty cash.

FINDING 3

Commission staff should review nonparticipating candidates' campaign finance reports

The Commission is responsible for monitoring whether nonparticipating candidates complied with the Act's contribution limits and for calculating the amount of equalization payments to participating candidates. Contribution limits and equalization payments help to achieve one of the Act's key objectives—"leveling the playing field"—between participating and nonparticipating candidates. However, during the 2004 elections, the Commission did not review nonparticipating candidates' campaign finance reports to evaluate compliance with contribution limits and ensure that accurate amounts were used to calculate equalization payments.

To determine the impact of this problem, auditors reviewed six nonparticipating candidates' campaign finance reports to determine compliance with contribution limits. Auditors identified one candidate who appeared to exceed contribution limits by \$5,000, yet the Commission did not identify or report this violation.

Equalization payments are based, in part, on the contribution amounts received by nonparticipating candidates within the limits established by the Act. Therefore, it is important for the Commission to ensure contributions received by nonparticipating candidates comply with contribution limits and adjust the amount of equalization payments when they do not. However, the Commission did not perform a detailed review of campaign finance reports to ensure compliance with contribution limits. As a result, participating candidates may not have received the proper amount of equalization payments.

For the Commission to evaluate whether nonparticipating candidates complied with contribution limits and to accurately calculate equalization payments, the Commission should:

1. Perform a detailed review of the campaign finance reports submitted by nonparticipating candidates to determine whether the candidates complied with

the contribution limits. Violations should be reported to the Secretary of State's Office for enforcement.

2. Adjust the amount used in the calculation of equalization payments for all errors and contributions in excess of the limits found during their detailed review.

COMMISSION RESPONSE

Janet Napolitano
Governor

Todd Lang
Executive Director



Marcia J. Busching
Chair

Kathleen S. Detrick
Ermila Jolley
Tracey A. Bardorf
Gary Scaramazzo
Commissioners

State of Arizona
Citizens Clean Elections Commission

1616 W. Adams - Suite 110 - Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - www.ccec.state.az.us

October 5, 2005

Debbie Davenport, Auditor General
Office of the Auditor General
2910 N 44th Street, Suite 410
Phoenix, AZ 85018

Dear Ms. Davenport:

Transmitted herewith is the Commission response to each of the three recommendations formulated by the Auditor General and general comments to be considered by the readers of this report.

I want to compliment your staff for their thorough efforts to understand the complex provisions of the Act.

Sincerely,

Todd Lang
Executive Director
Citizen Clean Elections Commission

Citizens Clean Elections Commission Compliance and Internal Control Review

Recommendation 1: The Commission should perform detailed reviews of participating candidates' campaign finance reports.

- The finding of the Auditor General is agreed to and the recommendation will be implemented. For the 2004 election the Campaign Finance Analysis position was vacant, therefore, the Commission did not have the staff to conduct a detail review of all participating candidate campaign finance reports. In May 2005, the Commission hired a new Campaign Finance Manager to analyze reports and determine candidate compliance for the upcoming 2006 elections.

Recommendation 2: The Commission should required candidates to submit reports in sufficient detail to determine compliance.

- The finding of the Auditor General is agreed to and the recommendation will be implemented. As indicated in recommendation number one, the Commission has hired a Campaign Finance Manager to analyze reports to ensure candidate compliance with filing all the required reports.
- The Commission is working closely with the Secretary of State's Office to make changes to the campaign finance software in order for candidate to have the ability to provide detail information for certain types of expenditures.

Recommendation 3: Commission staff should review nonparticipating candidates' campaign finance reports.

- Although Article 1 enforcement is performed by the Office of the Secretary of State, the finding of the Auditor General is agreed to and the recommendation will be implemented. As indicated in recommendation number one, the Commission has hired a Campaign Finance Manager to analyze reports and determine candidate compliance. When a possible Article 1 violation arises, the Commission will refer the matter to the Office of the Secretary of State for further review.