

Citizens Clean Elections Commission
Special Review
As of June 30, 2001



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AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

WILLIAM THOMSON
DEPUTY AUDITOR GENERAL

January 10, 2002

Members of the Arizona Legislature

The Honorable Jane Dee Hull, Governor

L. Gene Lemon, Chairman
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 A.R.S. §§ 16-949(d) and 41-1279.03. I am also transmitting with this report a copy of the Report Highlights for this review to provide a quick summary for your convenience.

As outlined in its response, the Commission plans to implement 8 of the 9 recommendations and disagrees with and will not implement 1 recommendation.

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

This report will be released to the public on January 11, 2002.

Sincerely,

Debra K. Davenport
Auditor General

Enclosure

Summary

The Office of the Auditor General has conducted a compliance and internal control review of the Citizens Clean Elections 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 no less often than every 4 years. In addition, the Auditor General is authorized to review and evaluate administrative and accounting internal controls established by state agencies.

Voters passed the Citizens Clean Elections Act in November 1998. The Act established a campaign financing system to provide public funding to qualified candidates running for legislative and statewide offices and created the Citizens Clean Elections Commission to enforce the Act's provisions. To be certified as a clean elections candidate, individuals must obtain a predetermined number of \$5 qualifying contributions from constituents. Once qualified, clean elections candidates must follow strict contribution and spending limits, as well as reporting requirements, and participate in required debates. Fifty-eight candidates ran as clean elections candidates during the 2000 election. These candidates received approximately \$1.9 million from the Commission to conduct their campaigns. The Citizens Clean Elections Fund monies come from surcharges imposed on civil and criminal fines and penalties, voluntary donations and contributions from taxpayers, contributions collected by clean elections candidates, and fees imposed on lobbyists.

Nonparticipating candidates
elect to fund their campaigns with private donations and, therefore, do not receive public funding.

The Act also impacts candidates who elect not to receive public funding to conduct their campaigns. Specifically, it establishes additional reporting requirements and reduces previously established campaign contribution limits by 20 percent. The Commission is responsible for ensuring that nonparticipating candidates comply with these requirements.

The Commission Should Properly Calculate Equalization Payments (See pages 11 through 13)

Nearly half of the 25 clean elections candidates sampled received incorrect equalization payments.

The Commission is responsible for ensuring that clean elections candidates receive the amount of equalization monies they are due. However, the Commission did not properly calculate equalization payments made to candidates for the 2000 primary and general elections. The Commission's miscalculations were due to the following:

- The Commission misinterpreted a statutory provision requiring general election equalization calculations to be based on contributions to nonparticipating candidates received *only* during a current election cycle. Instead, the Commission included transfers of surplus monies from previous campaigns to the 2000 campaign in its calculations.
- Equalization**—Additional monies awarded to clean elections candidates to allow them to better compete with their nonparticipating opponents.
- The Commission’s process for calculating equalization monies due to clean elections candidates was inadequate.

The Commission must follow statutory definitions of current campaign contributions when calculating general election equalization payments. Furthermore, to help ensure equalization payments are calculated in an accurate and consistent manner, the Commission should develop a written model for guiding calculations and have original calculations reviewed by a second employee.

The Commission Should Enforce Spending Limits and Collect Unspent Monies (See pages 14 through 17)

Reports filed by 21 of 25 clean elections candidates failed to demonstrate compliance with spending limits and refund requirements.

The Commission is responsible for ensuring that clean elections candidates properly spend the public monies they receive and for recovering unspent public monies. It relies on the candidates’ campaign finance reports to fulfill this responsibility. Auditors examined reports filed by candidates for the primary and general elections and determined the Commission did not take enforcement action against candidates who failed to demonstrate compliance with spending limits and requirements to return unspent monies. The Commission’s lack of enforcement was caused by the following:

- The Commission had not adopted administrative rules detailing enforcement procedures when clean elections candidates failed to return unspent monies.
 - The Commission lacked a process for separating information related to the qualifying period from information related to the primary election 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 the Legislature, and ends 75 days before general election day. During this period candidates collect \$5 qualifying contributions and apply with the Commission to run as clean elections candidate.

Primary Election Period—The 9-week period ending on primary election day.

- The Commission’s process for analyzing campaign finance reports from clean elections candidates then identifying violations of spending limits and requiring refunds was inadequate.

The Commission should adopt administrative rules detailing enforcement procedures when candidates fail to return unspent money and use this enforcement power when necessary. Further, the Commission should develop a report for candidates to file for the qualifying period and establish written procedures for employees to follow when analyzing campaign finance reports. Employees should be able to determine whether clean elections candidates have complied with spending limits, spent monies for valid campaign purposes, and returned unspent monies.

The Commission Should Enforce Contribution Limits and Debate Requirements (See pages 18 through 20)

In return for accepting public monies to conduct their campaigns, clean elections candidates agree to limit the amount of early contributions accepted and to participate in candidate debates. The Commission is responsible for ensuring that the candidates honor this agreement; however, it failed to enforce clean election candidate compliance with contribution limits and debate requirements. The Commission’s lack of enforcement was caused by the following:

Over half of the 25 clean elections candidates sampled failed to demonstrate compliance with early contribution limits. Furthermore, 2 of 58 clean elections candidates did not participate in required debates.

- The Commission’s process for analyzing campaign finance reports received from clean elections candidates and identifying violations of contribution limits was inadequate.
- The Commission failed to establish penalties for nonparticipation in the required debates.

The Commission should establish written procedures for employees to follow when analyzing campaign finance reports. Employees should be able to determine whether clean elections candidates have exceeded early campaign contribution limits and recommend any penalties consistent with statutory provisions. Finally, penalties should be established for candidates who do not participate in required debates.

The Commission Should Ensure Nonparticipating Candidate Compliance (See pages 21 through 22)

Of five nonparticipating candidates sampled, three did not comply with reporting deadlines and two did not comply with contribution limits.

The Act makes the Commission responsible for ensuring that nonparticipating candidates comply with reporting deadlines and contribution limits. Auditors reviewed reports filed by five nonparticipating candidates and determined the Commission's process for evaluating compliance was not sufficient. As a result, the Commission did not detect violations and statutorily designated penalties were not assessed.

The Commission should implement procedures to ensure nonparticipating candidates' reports are submitted by the deadlines established in the Act and assess penalties when necessary. Furthermore, the Commission should review reports submitted by nonparticipating candidates to ensure they comply with contribution limits and report violations to the Secretary of State's office.

Other Pertinent Information (See pages 23 through 24)

During the 45th legislative session, the Commission proposed 39 amendments to the Act. The proposed amendments focused on making reporting requirements less onerous, synchronizing clean elections deadlines with those for filing nomination papers, and strengthening the Commission's enforcement powers. These amendments were included in a senate bill that did not receive the required three-fourths vote needed for passage.

At the Commission's October 2001 meeting, a projection was presented that showed the Citizens Clean Elections Fund would have sufficient monies for the 2002 election cycle. However, in the event the projection is not correct, the Act prescribes the process the Commission must follow when the monies available are not sufficient to fully fund all clean elections candidates. First, the Commission must decrease the spending limits for clean elections candidates. This reduces the amount of public funding they are eligible to receive. Then, if the monies in the Fund are not sufficient to meet the decreased spending limits clean elections candidates may accept a limited amount of private contributions for their campaigns.

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Introduction and Background

The Office of the Auditor General has conducted a compliance and internal control review of the Citizens Clean Elections 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 no less often than every 4 years. In addition, the Auditor General is authorized to review and evaluate administrative and accounting internal controls established by state agencies.

History of the Citizens Clean Elections Commission

The Citizens Clean Elections 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 statewide offices and created the Citizens Clean Elections Commission to enforce the Act's provisions. Five commissioners were appointed in June 1999 and an executive director was hired in January 2000. In February 2000, a Superior Court Judge ruled the Act to be unconstitutional. The Arizona Supreme Court reversed this ruling in June 2000. The Commission obtained office space, purchased equipment, and hired a full compliment of staff by July 2000. Lawsuits are still pending that challenge the constitutionality of fees imposed on lobbyists and surcharges imposed on certain civil and criminal fines and penalties. The surcharges provide a significant amount of the money that is available for distribution to clean elections candidates.

Clean elections candidates fulfill statutory requirements to receive public funding to run their campaigns.

The 2000 election was the first in which legislative and statewide office candidates were eligible to run under the Act. To be certified as a clean elections candidate, individuals must obtain a predetermined number of \$5 qualifying contributions from constituents. Once qualified, clean elections candidates must follow strict contribution and spending limits and participate in required debates. For the 2000 election, 65 candidates collected the required number of qualifying contributions to run as clean elections candidates. However, only 58 candidates ran in the primary. Table 1 (see page 2) details the number of clean elections candidates who ran during the elections and the amount of money they received from the Citizens Clean Elections Fund.

Table 1
Citizens Clean Elections Commission
Clean Elections Candidates
2000 Election Cycle

	Primary Election	General Election	Elected to Office
Number of candidates	58	45	16
Total monies paid	\$923,000	\$1,000,000	-

Source: Auditor General staff analysis of Commission data.

The Commission is responsible for adopting rules to carry out the provisions of the Act and to govern its procedures. However, prior to the 2000 election, the Commission had not adopted a complete set of administrative rules and had not established basic procedures to adequately administer the Act's provisions.

The Commission staff submitted enforcement rules and procedures to the Commissioners on November 28, 2000, which was 21 days after the 2000 general election. These procedures were publicly announced on March 13, 2001, and, following a 60-day comment period, were approved by the Commission on May 14, 2001. After a 60-day pre-clearance period by the U.S. Department of Justice, the rules were formally adopted on July 30, 2001.

Sources of Revenue

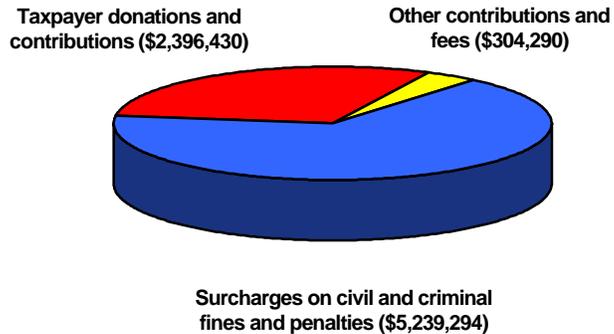
The Citizens Clean Elections Fund monies come from the following public funding sources:

1. A 10 percent surcharge imposed on certain civil and criminal fines and penalties.
2. Donations from taxpayers who receive a dollar-for-dollar tax credit of 20 percent of their tax liability or \$500 per taxpayer, whichever is greater, and \$5 voluntary contributions from taxpayers who mark an optional check-off box on their state income tax returns.
3. Other contributions and fees which include the following:
 - Qualifying contributions collected by clean elections candidates.
 - A \$100 annual fee imposed on certain registered lobbyists.

Figure 1 shows the monies collected by the Commission from July 1, 2000 through June 30, 2001, by source.

Figure 1

**Clean Elections Commission
Revenue Sources
Year Ended June 30, 2001**



Source: Auditor General staff analysis of data obtained from the Arizona Financial Information System.

**Organization
and Staffing**

The Citizens Clean Elections Commission consists of five members, each serving a 5 year term. No more than two members of the Commission may be from the same political party. When a vacancy occurs, the governor and the highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall alternate in selecting a new commissioner. The Commission employs eight full-time staff who are responsible for administering daily operations.

**Commission's Roles
and Responsibilities**

The Commission is responsible for enforcing the campaign finance laws established by the Citizens Clean Elections Act. The Act establishes campaign contribution limits, spending limits, reporting requirements, and debate requirements for clean elections candidates. It also establishes campaign contribution limits and reporting requirements for candidates who elect not to receive public funding to conduct their campaigns. These candidates are referred to as nonparticipating candidates.

Nonparticipating candidates
elect to fund their campaigns with private donations and, therefore, do not receive public funding.

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. In addition, 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. For specified violations, the Act also requires the Commission to make public findings and assess civil penalties. These penalties may be reduced or excused only for cause.

Impact on Clean Elections Candidates

The Act establishes campaign contribution limits, spending limits, reporting requirements, and debate requirements for clean elections 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 clean elections candidate may accept. Candidates may accept early contributions from individuals and the amount is limited to \$100 per person 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 \$500 for legislative candidates and \$1,000 for statewide office candidates. All of this money 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 deposited to the Citizens Clean Elections Fund.

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 expend early contributions during this period.

Qualifying Period—Begins the first day of August in a year preceding an election for a statewide office, or the first day of January of an election year for the Legislature, 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 clean elections candidate.

All candidates are required to file reports with the Secretary of State's office that detail individual campaign contributions. The Commission uses these reports to evaluate a candidate's compliance with contribution limits. A candidate who violates contribution limits is subject to a civil penalty equal to ten times the amount the contribution exceeds

the applicable limit. These penalties may be excused for cause. Table 2 shows the contribution limits in effect during the 2000 election cycle by office.

Table 2

**Citizens Clean Elections Commission
Clean Elections Candidate Contribution Limits
2000 Election Cycle**

Office	Early Contributions	Personal Monies	Total Limit
Governor	\$40,000	\$1,000	\$41,000
Attorney General	20,000	1,000	21,000
Secretary of State	20,000	1,000	21,000
Corporation Commissioner	10,000	1,000	11,000
Superintendent of Public Instruction	10,000	1,000	11,000
Treasurer	10,000	1,000	11,000
Mine Inspector	5,000	1,000	6,000
Legislator	2,500	500	3,000

Source: Auditor General staff summary of Arizona Revised Statutes §§16-941(A)(2) and 16-945(A)(2).

- **Spending Limits**—Clean elections funding is intended to provide clean elections candidates with a base spending amount for conducting an election campaign. The amount varies by office and type of election. For example, the base spending amount for legislative office is \$10,000 in the primary election and \$15,000 in the general election. That base amount can be increased by equalization payments if an opposing nonparticipating candidate spends more than the base in the primary election or generates more in contributions, less primary expenditures, than the base in the general election. These equalization payments increase a clean elections candidate's spending limit. Equalization amounts are limited and vary by office. Table 3 (see page 6) shows the base amounts and equalization limits in effect for the 2000 election cycle by office.

Table 3

**Citizens Clean Elections Commission
Primary and General Election
Base Amounts and Equalization Limits
2000 Election Cycle**

Office	Primary		General	
	Base Amount	Equalization Limit	Base Amount	Equalization Limit
Governor	\$380,000	\$1,140,000	\$570,000	\$1,710,000
Attorney General	80,000	240,000	120,000	360,000
Secretary of State	80,000	240,000	120,000	360,000
Corporation				
Commissioner	40,000	120,000	60,000	180,000
Superintendent of				
Public Instruction	40,000	120,000	60,000	180,000
Treasurer	40,000	120,000	60,000	180,000
Mine Inspector	20,000	60,000	30,000	90,000
Legislator	10,000	30,000	15,000	45,000

Source: Auditor General staff summary of Arizona Revised Statutes §§16-961(G-H) and 16-952(E).

The Commission calculates equalization payments based on the non-participating candidate with the highest amount of expenditures in the primary election and net contributions in the general election. Equalization payment calculations are based on information contained in campaign finance reports that nonparticipating candidates are required to file with the Secretary of State's office. Determining the amount of funding a clean elections candidate is eligible to receive is complicated by a number of factors, such as whether the clean elections candidate is running unopposed or is in a district dominated by one political party. A candidate who violates a spending limit is subject to a civil penalty equal to ten times the amount the expenditures exceed the applicable limit. These penalties may be excused for cause.

- **Reporting Requirements**—Clean elections candidates are required to file reports with the Commission that detail the amount of clean elections money spent for an election period and the amount of money that remains unspent. These reports are the primary means the Commission has for determining whether a candidate has complied with spending limits and returned unspent money to the Clean Elections Fund. In addition to the reports required by the Act, candidates are also required to file reports with the Secretary of State's office.

Primary election period—The 9-week period ending on primary election day.

General election period—The period beginning on the day after primary election day and ending on general election day.

Clean elections reporting—At the end of the primary and general election periods, the Commission sends each clean elections candidate a summary that includes the candidate's name, filing identifier, and the total amount of clean elections money provided. The clean elections candidate must complete the summary by stating the total amount spent on the campaign for the period and the amount of any clean elections money remaining. Clean elections candidates must also prepare a detailed report to support the summary. The detailed report should itemize individual expenditures and the unpaid bills for the period. Failure to file or filing incomplete reports to the Commission subjects the candidate to civil penalties of \$100 per day for legislative candidates and \$300 per day for statewide office candidates. The penalty can be doubled if the unreported amount exceeds ten percent of the adjusted primary or general election spending limit. These penalties may be excused for cause.

Secretary of State reporting—All clean elections candidates must file six reports at statutorily designated times during the election cycle. These reports detail the candidate's campaign receipts and disbursements.

- **Debate Requirements**—The Act requires the Commission to sponsor debates among candidates, and the Commission contracted with The League of Women Voters of Arizona to coordinate the debates. Clean elections candidates are required to participate in these debates and the Commission is authorized to establish penalties for nonparticipation. The Commission had not adopted rules establishing penalties prior to the 2000 election.

Impact on Nonparticipating Candidates

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

- **Reporting Requirements**—All nonparticipating candidates must file the same six reports with the Secretary of State's office that clean elections candidates file. In addition, the Act requires nonparticipating candidates to file reports with the Secretary of State's office during the primary election when their spending exceeds statutorily defined

limits. Additional reports must also be filed during the general election when contributions less primary expenditures exceed statutorily defined limits. The Commission uses these reports to determine increases in a clean elections candidate's spending limit. Clean elections candidates are awarded additional equalization monies when their nonparticipating opponents exceed specified limits. The filing of timely and accurate reports by nonparticipating candidates ensures that clean elections candidates receive appropriate funding in a timely manner to conduct their campaign. Failure to file accurate and timely reports subjects nonparticipating candidates to the same civil penalties as clean elections candidates.

- **Contribution Limits**—The Act has reduced statutory limits on campaign contributions for all nonparticipating candidates. These reductions were 20 percent lower than previous limits. For example, the contribution limit from individuals for legislative candidates is reduced from \$320 to \$256. The campaign contribution limitation is important because it addresses one of the Act's core concepts, that of leveling the playing field. Table 4 details the campaign contribution limits for nonparticipating candidates that were imposed for the 2000 election cycle. The Secretary of State's office is authorized to impose a civil penalty

Table 4

**Citizens Clean Elections Commission
Nonparticipating Candidate Contribution Limits
2000 Election Cycle**

	Legislative Candidates	Statewide Office Candidates
Individual's contribution to a candidate	\$256	\$656
Political committee's contribution to a candidate ¹	256	656
Total for committees certified by the Secretary of State ²	1,304	3,264
Combined total from all political committees other than political parties	6,512	65,144
Candidate's total from political party and all political organizations ³	6,512	65,144
Total contributed by an individual to candidates and committees who give to candidates (based on calendar year)		3,040

¹ Political committees include political parties, political organizations, exploratory committees, and candidate campaign committees.
² To receive certification, a committee must receive monies from 500 or more individuals in amounts of \$10 or more and apply to the Secretary of State.
³ Political organizations are organizations formally affiliated with and recognized by a political party.

Source: Auditor General staff summary of Arizona Revised Statutes §§16-905 and 16-941(B).

equal to three times the amount that contributions exceed the applicable limit.

Audit Scope and Methodology

Auditors used a variety of methods to study the issues addressed in this report, including interviewing personnel of the Clean Elections Commission, reviewing the Citizens Clean Elections Act and clean elections legislation from the State of Maine and New York City, and reviewing the Commission's administrative rules and general operating policies and procedures. The following methods were also used:

- To assess the Commission's procedures for calculating equalization payments made to clean elections candidates, auditors randomly selected 25 of the 58 clean elections candidates for the 2000 election and recalculated the equalization they were eligible to receive. Auditors obtained copies of all reports filed by opposing nonparticipating candidates with the Secretary of State's office to perform these calculations.
- To assess the Commission's procedures to ensure clean elections candidates complied with campaign contribution limits, auditors used the same 25 candidates selected for equalization calculations and reviewed the reports detailing campaign contributions they filed with the Secretary of State's office.
- To assess the Commission's procedures for ensuring clean elections candidates complied with spending limits and returned unspent monies, auditors used the same 25 candidates selected for equalization calculations and reviewed the reports they filed with the Commission for the primary and general elections. Auditors evaluated the sufficiency of information reported and whether candidates complied with spending limits, spent money for valid campaign purposes, and returned unspent monies.
- To assess the Commission's procedures for enforcing debate requirements, auditors selected all 58 clean elections candidates and determined whether they participated in required debates. Auditors also assessed the actions taken by the Commission against the candidates who did not participate.
- To assess the Commission's procedures for ensuring nonparticipating candidates filed reports in a timely manner, auditors randomly selected five nonparticipating candidates opposed by clean elections candidates and obtained the reports they filed with the Secretary of State's office.

Auditors reviewed these reports to determine if they were filed within the deadlines established by the Act.

- To assess the Commission's procedures for ensuring nonparticipating candidates complied with contribution limits, auditors used the same five candidates selected for timely reporting and examined the reports they filed with the Secretary of State's office to evaluate compliance.

FINDING I

THE COMMISSION SHOULD PROPERLY CALCULATE EQUALIZATION PAYMENTS

The Commission is responsible for ensuring that clean elections candidates receive the amount of equalization monies they are due. However, the Commission did not properly calculate equalization payments made to these candidates for the 2000 primary and general elections. Auditors recalculated primary and general election equalization payments for the sample of 25 clean elections candidates and determined that 11 received incorrect amounts. The Commission's miscalculations were due to the following:

Nearly half of the 25 clean elections candidates sampled received incorrect equalization payments.

- The Commission misinterpreted a statutory provision requiring general election equalization calculations to be based on contributions nonparticipating candidates received *only* during a current election cycle. Instead, the Commission included in its calculations transfers of surplus monies from previous campaigns to the 2000 campaign.
- The Commission's process for analyzing campaign finance reports from nonparticipating candidates and then calculating equalization payments was inadequate.

The Commission Should Follow Statute When Calculating Equalization

The Commission should follow statute when calculating equalization payments for clean elections candidates. Failure to do so resulted in overpayments to seven candidates during the 2000 election cycle.

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

Statute specifies that equalization calculations for the general election will be based on campaign contributions received by nonparticipating candidates during the election cycle to date, which would not include contributions received during past election cycles. According to statute, nonparticipating candidates with surplus monies carried over from prior election cycles would have monies available to conduct their campaigns that would not be subject to equalization because the monies were not received in the current election cycle.

The Commission believes that the statute is not consistent with the original intent of the Citizens Clean Elections Act of "leveling the playing field" between clean elections and nonparticipating candidates. Consequently, the Commission has taken the position that it should award equalization money based on all contributions the nonparticipat-

ing candidate has available in the current election cycle, even if the contributions were received in past election cycles and, presumably, have previously been the basis for past equalization.

When the Commission calculated equalization payments, it classified nonparticipating candidates' transfers of surplus monies from the 1998 campaign as contributions to the 2000 campaign. Doing so overstated the contributions received during the 2000 election cycle by the amount of the 1998 surplus. As a result, the Commission awarded too much equalization money to seven of the clean elections candidates in the sample. In fact, as shown in Table 5, five clean elections candidates should not have received any equalization payments.

By not following statute, the Commission subjects itself to litigation by nonparticipating candidates who oppose the use of their surplus monies as the basis for awarding equalization money.

Table 5

**Citizens Clean Elections Commission
Equalization Monies Awarded
2000 Election Cycle**

Candidate	Total Awarded	Excess Awarded
1	\$19,378	\$19,378
2	10,965	10,965
3	10,965	10,965
4	3,294	3,294
5	2,688	2,688
6	7,953	1,745
7	<u>10,041</u>	<u>921</u>
	<u>\$65,284</u>	<u>\$49,956</u>

Source: Auditor General staff analysis of equalization monies awarded to the sample of 25 clean elections candidates.

**The Commission Needs
to Better Analyze Reports and
Accurately Calculate Payments**

Nonparticipating candidate campaign finance reports contain the information needed to calculate clean elections equalization payments. However, the Commission's method for analyzing these reports was not sufficient to ensure information was properly sorted, categorized, and summarized before calculations were made. This led to incorrect payments to four candidates.

Clean elections candidates are eligible to receive equalization payments up to the applicable spending limit.

The Commission has a duty to exercise due care when calculating equalization payments. To help ensure payments are calculated in an accurate

and consistent manner, it should develop a written model for guiding calculations and have original calculations reviewed by a second employee.

The Act establishes the basic process for calculating equalization payments. For example, the Act requires primary election equalization to be calculated based on primary election expenditures and excludes dividends and interest earned on campaign funds from the general election calculation. When recalculating equalization payments, auditors noted that the Commission did not always properly calculate primary election expenditures or campaign contributions, and did not exclude dividends and interest. As a result of these errors, four clean elections candidates received incorrect amounts of equalization. One candidate received \$311 of excess equalization and three received from \$5,713 to \$1,767 less in equalization that they were eligible to receive.

Recommendations

1. The Commission needs to calculate general election equalization payments using campaign contributions received in the current election cycle as required by statute.
2. The Commission should develop written instructions for calculating equalization payments and have calculations verified by a second employee.

FINDING II

THE COMMISSION SHOULD ENFORCE SPENDING LIMITS AND COLLECT UNSPENT MONIES

Reports filed by 21 of 25 clean elections candidates failed to demonstrate compliance with spending limits and refund requirements.

The Commission is responsible for ensuring that clean elections candidates properly spend the public monies they receive and for recovering unspent public monies. It relies on the candidates' campaign finance reports to fulfill this responsibility. Auditors examined reports submitted for the primary and general elections by the sample of 25 clean elections candidates and determined the Commission took no enforcement action against the 21 candidates who failed to demonstrate compliance with spending limits and requirements to return unspent monies. The Commission's lack of enforcement was caused by the following:

- As of our audit, the Commission had not adopted administrative rules detailing enforcement procedures when clean elections candidates failed to return unspent monies.
- The Commission lacked a process for separating information related to the qualifying period from information related to the primary period.
- The Commission's process for analyzing campaign finance reports from clean elections candidates then identifying instances of noncompliance and requiring refunds was inadequate.

The Commission Should Collect Unspent Monies

The Clean Elections Act requires candidates to file reports that detail individual campaign expenditures. The Commission uses these reports to determine if candidates have complied with spending limits and returned unspent monies. For the 2000 election, the Commission had not adopted administrative rules detailing enforcement procedures when candidates failed to return unspent monies. Two candidates in the sample filed reports indicating that they had not spent all of the monies they received from the Commission, but failed to return the unspent monies. No enforcement action was taken against these candidates to collect the monies due.

Table 6 compares the monies these candidates received from the Commission to the expenditures they reported to the Secretary of State. The difference represents the refund owed to the Citizens Clean Elections Fund.

Table 6
Citizens Clean Elections Commission
Comparison of Monies Received to Expenditures Reported
2000 Election Cycle

Candidate	Monies Received	Expenditures Reported	Difference
1	\$15,000	\$ 9,683	\$5,317
2	16,123	15,525	598

Source: Auditor General staff analysis of the sample of 25 clean elections candidates.

If the amounts reported are accurate, the Commission should recover the monies owed to the Citizens Clean Elections Fund. Furthermore, in the future, the Commission should adopt administrative rules that detail enforcement procedures when candidates fail to return unspent money and, if necessary, use its enforcement power to compel compliance.

The Commission Needs to Require Separate Reporting for the Qualifying Period

The qualifying and primary periods overlap and have separate spending limits. The Commission had not developed a report for candidates to file for the qualifying period. As a result, some candidates reported information for both periods on the primary election report filed with the Commission. Other candidates only reported information for the qualifying period on reports filed with the Secretary of State. Consequently, the Commission could not accurately determine candidates' compliance with spending limits for the qualifying and primary periods without examining reports filed with the Secretary of State. The Commission had no such procedure in place.

Determining compliance with spending limits and recovering unspent monies is a primary Commission responsibility. Therefore, the Commission should develop a report for candidates to file for the qualifying period. Further, reporting instructions should explicitly state that qualifying period activity should be excluded from primary period reporting.

Five candidates in the sample exceeded spending limits or owed refunds.

Eight candidates in the sample appeared to have exceeded the primary spending limit. However, by examining the reports that candidates submitted to the Secretary of State's office, auditors determined that the "excess" expenditures for three candidates were actually attributable to the qualifying period. Auditors also determined that the other five candidates either exceeded the applicable spending limit or owed a refund. The largest amount of excess spending was \$500 and the largest refund owed was \$1,200.

The Commission Needs to Better Analyze Reports and Determine Candidate Compliance

Reports filed by 11 of 25 candidates contained discrepancies.

Clean elections candidate campaign finance reports contain information the Commission needs to determine whether candidates complied with spending limits, spent monies for valid campaign purposes, and returned unspent monies. However, that information needs to be thoroughly reviewed and analyzed before the Commission can make its determination. The Commission cannot fulfill its responsibility unless it performs a careful analysis and requires all information necessary to evaluate compliance. At a minimum, the Commission should have compared amounts shown on a candidate's summary report with the attached detailed reports itemizing individual expenditures and unpaid bills. Any discrepancies should have been investigated and resolved. Further, itemized expenditures should have been evaluated for propriety. However, no such procedures were in effect. In fact, auditors noted that reports from 11 candidates in the sample lacked agreement between amounts shown on the summary and in the detailed support. Table 7 shows an example of two candidates whose summary and detail reports did not agree.

Table 7

**Citizens Clean Elections Commission
Candidates' Report Discrepancies
2000 Election Cycle**

Candidate	Expenditures Reported		Difference
	Summary	Detailed	
1	\$56,167	\$21,736	\$34,431
2	39,980	54,480	(10,500)

Source: Auditor General staff analysis of reports filed by 2 clean elections candidates from the sample of 25.

For candidate one, there was no itemization of the remaining \$34,431; therefore, it was impossible to determine whether those monies were spent for valid campaign purposes or whether the candidate should refund that

amount. Auditors determined the difference for candidate two was attributable to the candidate including qualifying period expenditures on the detail report but excluding those expenditures on the summary report. Discrepancies in amounts reported for the remaining 9 candidates ranged from \$45 to \$1,897.

Recommendations

1. The Commission should adopt administrative rules detailing enforcement procedures when candidates fail to return unspent money and use this enforcement power when necessary.
2. The Commission needs to develop a separate form that candidates must use to report qualifying period activities.
3. The Commission needs to establish policies and procedures to ensure that employees know how to analyze campaign finance reports. Employees should be able to determine whether clean elections candidates have complied with spending limits, spent monies for valid campaign purposes, and returned unspent monies.

FINDING III

THE COMMISSION SHOULD ENFORCE CONTRIBUTION LIMITS AND DEBATE REQUIREMENTS

Over half of the 25 clean elections candidates sampled failed to demonstrate compliance with early contribution limits.

In return for accepting public monies to conduct their campaigns, clean elections candidates agree to limit the amount of early contributions they accept and to participate in candidate debates. The Commission is responsible for ensuring that candidates honor this agreement; however, it failed to enforce clean elections candidate compliance with contribution limits and debate requirements. Auditors examined reports for the primary and general elections submitted by the sample of 25 clean elections candidates and determined that 14 did not demonstrate compliance with contribution limits. Auditors then evaluated all 58 clean elections candidates to determine their participation in the required debates and determined that four candidates did not participate. The Commission's lack of enforcement was caused by the following:

- The Commission's process for analyzing campaign finance reports from clean elections candidates, then identifying candidates who exceeded early campaign contribution limits, was inadequate. Therefore, the Commission was unable to impose statutory penalties on violators or explain reasons for not imposing the penalty.
- The Commission failed to establish penalties for nonparticipation in the required debates.

The Commission Needs to Enforce Compliance with Early Contribution Limits and Assess Penalties for Noncompliance

The Act limits early contributions from individuals and limits a candidate's use of personal monies.

Campaign finance reports filed periodically with the Secretary of State's office by clean elections candidates contain the information needed to determine compliance with early contribution limits. The Commission's method for analyzing these reports was not sufficient to classify and total contributions by source in order to evaluate candidate compliance. The Commission needs to establish policies and procedures to ensure that employees know how to analyze campaign finance reports. Employees should be able to determine whether clean elections candidates have exceeded early campaign contribution limits and recommend any penalties consistent with statutory provisions. Deficiencies in the process, described as follows, prevented the Commission from fulfilling its responsibilities.

Some reports lacked sufficient detail—Eight of the reports reviewed by the auditors did not contain enough detail to determine whether a candidate complied with early contribution limits. In one instance, a candidate for statewide office reported a single contribution of \$10,499, and the Commission did not request additional information that would have allowed it to determine the individual components and sources of the amount reported. Therefore, the Commission could not determine whether the candidate could have accepted personal contributions of more than \$1,000; accepted more than \$100 from one individual; or accepted contributions from corporations, political action committees, or political parties.

If reports filed with the Secretary of State’s office routinely lack sufficient detail for Commission analysis of compliance with early contribution limits, the Commission should consider the following possible remedies:

- Require additional separate reports to be completed by clean elections candidates.
- Coordinate with the Secretary of State’s office to issue additional filing instructions to clean elections candidates, but allow them to continue to file just one report.
- Follow up immediately with requests for additional information when filed reports lack sufficient detail for adequate analysis.

Some candidates exceeded early contribution limits—Six candidates whose reports were reviewed by the auditors exceeded contribution limits. These were all legislative candidates whose contributions were limited as follows:

- Individual contributions limited to \$100 per person
- Personal monies limited to \$500
- Total contributions limited to \$2,500

Table 8 (see page 20) shows the violations noted by candidate.

The Act requires that civil penalties be assessed at ten times the amount by which the contributions exceed the applicable limit. For the candidates in the sample, \$15,550 in penalties should have been assessed.

Table 8

**Citizens Clean Elections Commission
Contribution Limits Exceeded
2000 Election Cycle**

Candidates	Contribution Limits		
	\$100 Individual	\$500 Personal	\$2,500 Total
1			✓
2	✓		✓
3		✓	
4	✓		
5		✓	
6	✓		✓

Source: Auditor General staff analysis of the sample of 25 clean elections candidates.

The largest violation exceeded the total contribution limit by \$660. The candidate should have been assessed a penalty of \$6,600 or the Commission should have explained reasons for not assessing a penalty. However, the Commission did not address violations because it had not determined that they occurred.

The Commission Should Enforce Debate Requirements

The Act requires the Commission to establish penalties for nonparticipation in required debates.

The Commission had not established penalties for candidates who failed to participate in required debates. Auditors reviewed all 58 clean elections candidates to determine whether they participated in required debates. One candidate in the primary election and two in the general election did not participate. One additional candidate did not participate in both primary and general election debates. The Commission excused two of the candidates from participation but could not assess penalties against the other two candidates. The Commission should establish penalties for candidates who do not participate in required debates and assess those penalties when necessary. As a result of not enforcing compliance, open debate required by the Citizens Clean Elections Act was diminished.

Recommendations

1. The Commission needs to establish procedures to ensure that reports filed by clean elections candidates are sufficiently analyzed for compliance with contribution limits. In addition, the Commission should assess applicable penalties for violations of limits.
2. Penalties should be established and assessed against clean elections candidates who do not participate in required debates.

FINDING IV

THE COMMISSION SHOULD ENSURE NONPARTICIPATING CANDIDATE COMPLIANCE

The Clean Elections Act makes the Commission responsible for ensuring that nonparticipating candidates comply with reporting deadlines and contribution limits. Auditors reviewed reports filed by five nonparticipating candidates and determined the Commission's process for evaluating compliance was not sufficient.

Nonparticipating candidates must also comply with the Clean Elections Act.

Nonparticipating candidates are subject to additional reporting requirements when they exceed spending or contribution limits specified in the Clean Elections Act. The Commission uses these reports to calculate equalization monies due to clean elections candidates. Candidates need to receive equalization monies in time to use them in their campaigns. Therefore, timely reporting by nonparticipating candidates is essential.

The Act also reduced the amount of campaign contributions all nonparticipating candidates may accept by 20 percent from previous levels. Reducing contribution limits helps achieve one of the Act's key objectives of "leveling the playing field" between clean elections and nonparticipating candidates.

The Commission Needs to Ensure that Reports are Submitted When Required

Nonparticipating candidates' reports must be filed by the deadlines established in the Act. The Commission's process for ensuring compliance with reporting deadlines was not sufficient. Statute allows the Commission to impose civil penalties of \$100 per day for legislative and \$300 per day for statewide office candidates who violate this reporting requirement. The Commission should implement procedures to ensure nonparticipating candidates' reports are submitted by the deadlines established in the Act and assess penalties when necessary. Auditors reviewed reports filed by five nonparticipating candidates who had clean elections opponents and determined that three candidates filed reports from 2 days to 4 weeks late, yet the Commission failed to impose any penalties.

As a result of the Commission's lack of monitoring compliance, opposing clean elections candidates may not have received equalization monies in time to fully benefit their campaigns. For example, a nonparticipating candidate could delay filing until near the end of an election period to prevent a clean elections opponent from receiving timely equalization monies.

The Commission Needs to Ensure that Candidates Comply with Contribution Limits

The Commission should monitor campaign finance reports filed by nonparticipating candidates to ensure compliance with campaign contribution limits. Campaign finance reports filed periodically with the Secretary of State's office by nonparticipating candidates contain the information needed to determine compliance with contribution limits. The Commission did not monitor these reports to ensure candidate compliance. Although the Commission has no direct enforcement power to compel nonparticipating candidate compliance with contribution limits, it should report violations to the Secretary of State, who does have that power. By statute, the Secretary of State is authorized to impose a civil penalty equal to three times the amount that the contribution exceeds the candidate's limit.

Auditors reviewed reports filed with the Secretary of State's office by five nonparticipating candidates and determined that two exceeded contribution limits. For example, one candidate received two individual contributions that exceeded the \$256 limit by \$194 each, yet the Commission failed to call the Secretary of State's attention to the violations. As a result, this nonparticipating candidate had more money to conduct a campaign than candidates were entitled to and no penalties were assessed. The candidate's clean elections opponent may have been at a disadvantage.

Recommendations

1. The Commission should ensure that reports filed by nonparticipating candidates are submitted by the deadlines established in the Act and assess penalties for noncompliance.
2. The Commission should review reports submitted by nonparticipating candidates to ensure they comply with contribution limits and report violations to the Secretary of State's office.

Other Pertinent Information

During the audit, other pertinent information was gathered regarding the Commission's efforts to amend the Citizens Clean Elections Act. Information was also obtained concerning the Commission's projection of monies available in the Citizens Clean Elections Fund for the 2002 election.

The Commission's Efforts to Amend the Act

During the 45th legislative session the Commission proposed 39 amendments to the Act. The proposed amendments focused on making reporting requirements less onerous, synchronizing clean elections deadlines with those for filing nomination papers, and strengthening the Commission's enforcement powers. For example, the Commission proposed amendments allowing them to decertify clean elections candidates for violations of the Act, and to seek injunctive relief if the actions of one candidate would cause irreparable harm to the campaign of another candidate. They also proposed an amendment to prohibit the use of clean elections money for personal purposes.

Auditors reviewed clean elections statutes from the State of Maine and New York City to determine if they addressed these issues. Both Maine and New York City provide for candidates being decertified or disqualified. Furthermore, statutes in the State of Maine specifically prohibit the use of clean elections monies for personal use, and New York City statutes prohibit expenditures to family members or to a business in which a candidate has a 10 percent or greater ownership interest.

These amendments were included in a senate bill that did not receive the required three-fourths vote needed for passage. Because the voters of the State passed the Act, any legislative changes must further the purpose of the Act and receive approval of three-fourths of the members of each house of the Legislature.

Commission Projects Fund will have Sufficient Monies

At the Commission's October 2001 meeting, a projection was presented that showed the Citizens Clean Elections Fund should have sufficient monies for the 2002 election cycle. Once each year, the Commission is required to project the amount of monies the Fund will collect over the next four years and the time such monies will become available.

The Citizens Clean Elections Act prescribes actions that the Commission can adopt to deal with projected deficits. Once each year, the Commission is required to project the amount of money that clean elections candidates will be awarded in the following calendar year. By the end of each year, the Commission is required to announce whether the amount needed in the following year will be more than the amount available. If there is not enough money available, the Commission may announce at the same time decreases in the spending limits for clean elections candidates. Contribution limits for nonparticipating candidates are not adjusted.

If, during the election year, the Commission has less money than previously announced, they must reduce payments proportionately among clean elections candidates and declare an emergency. When an emergency is declared, clean elections candidates may begin accepting private contributions for their campaigns. However, the amount of contributions plus monies received from the Fund may not exceed the adjusted spending limit announced the previous year.

Appendix

Pertinent Clean Elections Statutes

Definitions

A.R.S. §16-901(5) defines what constitutes a contribution.

A.R.S. §16-961 defines various terms used in the Citizens Clean Elections Act.

Contribution limitations; civil penalty; complaint

A.R.S. §16-905 describes the civil penalties for nonparticipating candidates violating contribution limits.

Limits on spending and contributions for political campaigns

A.R.S. §16-941 establishes contribution and spending limits for clean elections candidates and contribution limits and reporting requirements for nonparticipating candidates.

Civil penalties and forfeiture of office

A.R.S. §16-942 describes the civil penalties for violation of contribution or expenditure limits and reporting requirements.

Criminal violations and penalties

A.R.S. §16-943 defines the criminal violations and resulting penalties.

Limits on early contributions

A.R.S. §16-945 explains the dollar limits on early contributions, when the contributions may be spent, and the required disposition of unspent monies.

Certification as participating candidate

A.R.S. §16-947 describes the requirements to be certified as a clean elections candidate.

Controls on participating candidates' campaign accounts

A.R.S. §16-948 describes how clean elections candidates may make and document campaign expenditures.

Caps on spending from Citizens Clean Election Fund

A.R.S. §16-949 establishes a spending limit for the Citizens Clean Election Fund and authorizes the Auditor General to review “the monies in, payments into, and expenditures from” the Citizens Clean Election Fund.

Qualification for clean campaign funding

A.R.S. §16-950 describes the qualifications to receive clean campaign funding.

Clean campaign funding

A.R.S. §16-951 defines the amounts and timing of clean campaign funding available to participating candidates.

Equal funding of candidates

A.R.S. §16-952 explains how the Commission is to determine when clean elections candidates receive funding.

Return of monies to the Citizens Clean Election Fund

A.R.S. §16-953 defines when unspent monies are to be returned to the Citizens Clean Election Fund.

Voter education and enforcement duties

A.R.S. §16-956(A)(2) stipulates that clean elections candidates must participate in sponsored debates and that the Commission may specify by rule penalties for nonparticipation.

Jane Dee Hull
Governor

Colleen Connor
Executive Director



L. Gene Lemon
Chairman

Kathleen S. Detrick
Ruth S. Jones
Carl E. Lopez
David G. McKay
Commissioners

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Citizens Clean Elections Commission

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December 31, 2001

Debra Davenport, Auditor General
Office of the Auditor General
2910 North 44th Street, Suite 410
Phoenix, Arizona 85018

Dear Ms. Davenport:

Please accept my personal thanks, and a big thank you I extend on behalf of the members of the Citizens Clean Elections Commission, for the review of Commission affairs conducted this year by your office. I have read and reread the findings and recommendations recently furnished to the Commission office; it is most useful and most timely as we continue our efforts to implement the Citizens Clean Elections Act.

While the Act requires a review by the Auditor General within each four-year period, your action in scheduling an early review was most welcome and helpful in our early stages of designing and implementing policies, protocols and procedures for effective administration of the Act. I also want to heartily compliment your staff for their thorough efforts to understand the complex and, to some extent, confusing provisions of the Act; some of which appears susceptible to differing interpretations.

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

As written to the Governor in the transmittal of our 2000 Annual Report, the Commission is proud to have gotten through its first election cycle without any major problems and is pleased with its success in implementing this new law. The review you have furnished, thankfully, supports this view and recognizes, as we do, that this is a work in progress. We will proceed immediately to prepare additional rules (which as your review notes take more than six months from their beginning to their effective date) and procedures needed to respond to the recommendations.

Again, your assistance in our mission to fully, fairly and faithfully implement and administer the Citizens Clean Elections Act is much appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Gene Lemon". The signature is fluid and cursive.

L. Gene Lemon
Chairman

Citizens Clean Elections Commission Response

The Citizens Clean Elections Commission welcomes the Auditor General's review of the Commission's first year of operations. There are several items of information that the Commission would like to have noted for the report.

Although the Auditor General's Report is impressive in its grasp of the complexity of the Citizens Clean Elections Act and Arizona's other campaign finance laws, the report omits an adequate explanation to the cornerstone to the administration of the Act, the mandatory electronic filing of campaign finance reports. The Secretary of State was delegated with the duty to create campaign finance software and distribute the software to committees to commence electronic filing for the 2000 election pursuant to A.R.S. § 16-958(E). The Secretary of State rapidly completed and distributed the software prior to January 2000 to accommodate the electronic filing of the first report due under this new law. Out of necessity, the campaign finance software was developed by the Secretary of State's Office in 1999, before the Commission had the time to hire its staff. As a result, the Commission could not incorporate the end of qualifying period report, primary election period and general election period return of funds reports in to the software, but subsequently requested that participating candidates submit written reports in addition to the electronically filed reports. Since the 2000 election, the Commission has worked closely with the Secretary of State's Office to incorporate all necessary campaign finance reports into one comprehensive software system, but also to design 11 specialized reports from the data for the Commission to use in its enforcement of the Act.

The Auditor General's Report suggests that the Commission adopt more rules to govern the successful implementation of the Act, but omits the fact that Commission had only 65 business days to implement the law before the primary election on September 12, 2000. The Commission did not have time to adopt the rules for the 2000 election because length of time required for the Commission to adopt rules is at least six months. Although the Commission adopted a few rules prior to the 2000 election, a complete set of rules was not adopted until March 2001, to permit a 60-day public comment period, and the subsequent 60-day preclearance review by the U.S. Department of Justice.

Finding I: The Commission Should Properly Calculate Equalization.

The Auditor General found that surplus funds from a previous campaign cycle transferred to a current campaign cycle should not be included in the calculation of equalization payments to participating candidates during the general election period, and the Commission's process for analyzing the reports and calculating equalization payments was inadequate.

Auditor General Recommendations:

1. The Commission needs to calculate general election equalization payments using campaign contributions received in the current election cycle as required by statute.
2. The Commission should develop written instructions for calculating equalization payments and have calculations verified by a second employee.

Commission Response:

(1) The finding of the Auditor General is not agreed to and the recommendation will not be implemented.

The law states that “[w]henver during a general election period . . . a nonparticipating candidate who is not unopposed has received in contributions during the election cycle to date less the amount of expenditures the nonparticipating candidate made through the end of the primary election period exceeds the original general election spending limit” the participating candidate receives matching funds for the amount that exceeds the general election spending limit pursuant to A.R.S. § 16-952(B). Pursuant to the Commission's rulemaking authority, the Commission promulgated a rule to treat surplus monies transferred into a candidate's current campaign account as a “contribution during the election cycle to date” for purposes of the reporting requirements and for matching funds. A.A.C R2-20-109(E)(3). As a result of calculating surplus funds as a contribution, a participating candidate will not be disadvantaged by an incumbent using surplus funds from a previous campaign without the benefit of the Commission matching those surplus funds. Therefore, the Commission shall calculate equalization payments based upon statute and rule.

(2) The finding of the Auditor General is agreed to and the recommendation will be implemented.

Because the Commission did not have office space until May 2000 and a full staff until July 2000, the Commission did not have the time or resources to develop a written equalization procedure for the 2000 election. During the past year, the Commission has developed a written fund disbursement procedure, which includes disbursement for equalization funds, to be in place for the 2002 election. Further, the disbursement procedure provides written instructions for calculating equalization payments and have calculations verified by a second employee.

Finding II: The Commission Should Enforce Spending Limits and Collect Unspent Monies.

The Auditor General found that the Commission had not adopted administrative rules detailing enforcement procedures when participating candidates failed to return unspent monies. Additionally, there was no process for separating information related to the qualifying period from the information related to the primary period. The process for analyzing campaign finance reports from participating candidates then identifying refunds was inadequate.

Auditor General Recommendations:

3. The Commission should adopt administrative rules detailing enforcement procedures when candidates fail to return unspent money.
4. The Commission needs to develop a separate form that candidates must use to report qualifying period activities.
5. The Commission needs to establish policies and procedures to ensure that employees know how to analyze campaign finance reports. Employees should be able to determine whether [participating] candidates have complied with spending limits, spent monies for valid campaign purposes, and returned unspent monies.

Commission Response:

(3) The finding of the Auditor General is agreed to and the recommendation will be implemented. On May 14, 2001, the Commission adopted a comprehensive set of enforcement rules when candidates fail to return unspent money. In the event that candidates fail to return unspent money, the Commission will impose civil penalties authorized by statute.

(4) The finding of the Auditor General is agreed to and the recommendation will be implemented. Although the Commission attempted to require an end of qualifying period report through a statutory change, the Commission's proposed legislative change was not passed by the Legislature. Instead, the Commission has adopted a rule on May 14, 2001, A.A.C R2-20-109(A), that requires participating candidates to file a report at the end of the qualifying period to report, "all early contributions received, including personal monies and the expenditures of such monies. 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 that will refund all unspent early contributions to the Fund, pursuant to A.R.S. § 16-945(B)." Further, the Secretary of State's Office has modified its campaign finance software to include such a report to be filed electronically.

(5) The finding of the Auditor General is agreed to and the recommendation will be implemented. During the past year, the Commission has developed written enforcement rules and procedures, has created 11 specialized reports to generate information regarding spending or contribution limits from reports filed electronically with the Secretary of State's Office, and has hired one full-time Campaign Finance Analyst to analyze reports and determine candidate compliance. For determining whether monies are spent for "valid campaign purposes," the Commission proposed a legislative change last legislative session and has proposed a legislative change this legislative session to statutorily authorize the Commission to ensure that clean elections funds are used for reasonable and necessary campaign expenses.

Finding III: The Commission Should Enforce Contribution Limits and Debate Requirements.

The Commission's procedure for identifying candidates who exceeded early contribution limits was inadequate and the Commission failed to establish penalties for nonparticipation in the debates.

Auditor General Recommendations:

6. The Commission needs to establish procedures to ensure that reports filed by [participating] candidates are sufficiently analyzed for compliance with contribution limits. In addition, the Commission should assess applicable penalties for violations of limits.

7. Penalties should be established and assessed against [participating] candidates who do not participate in required debates.

Commission Response:

(6) The finding of the Auditor General is agreed to and the recommendation will be implemented. As indicated in response to recommendation number 4, the Commission has adopted a rule, A.A.C R2-20-109(A), that requires participating candidates to file a report at the end of the qualifying period to report "all early contributions received, including personal monies and the expenditures of such monies. 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 that will refund all unspent early contributions to the Fund, pursuant to A.R.S. § 16-945(B)." With that report, the Secretary of State's Office will compile data into a summary report to identify any violation of early contribution limits or limits on spending of personal monies. The Commission has hired one full-time Campaign Finance Analyst to analyze those reports and determine candidate compliance.

(7) The finding of the Auditor General is agreed to and the recommendation will be implemented. For the 2000 election, the Commission did not have the time or resources to develop penalties against participating candidates who did not participate in required debates. On March 13, 2001 the Commission proposed rules on general provisions and the enforcement procedures after numerous public meetings discussing the rules. Then, on May 14, 2001, after a 60-day public comment period, the Commission adopted rules A.A.C R2-20-229 through -231 to assess penalties for candidates who do not participate in required debates. The rules were then sent to the United States Department of Justice for preclearance under Section 5 of the Voting Rights Act, which is another 60-day review period by the Department of Justice. The rules were precleared by the Department of Justice in October 2001 and will be enforceable for the 2002 election.

Finding IV: The Commission Should Ensure Nonparticipating Candidate Compliance.

The Auditor General found cases in which nonparticipating candidates did not file reports on time or did not comply with contribution limits.

Auditor General Recommendations:

8. The Commission should ensure that reports filed by nonparticipating candidates are submitted by the deadlines established by the Act and assess penalties for noncompliance.

9. The Commission should review reports filed by nonparticipating candidates to ensure that they comply with contribution limits and report violations to the Secretary of State's Office.

Commission Response:

(8) The finding of the Auditor General is agreed to and the recommendation will be implemented. The Commission has hired one full-time Campaign Finance Analyst to analyze reports and determine candidate compliance. Additionally, the Commission is working very closely with the Secretary of State's Office to improve information systems so better analysis and compliance can be determined.

(9) The finding of the Auditor General is agreed to and will be implemented. The Secretary of State's Office has created specialized reports from the campaign finance report data to alert the Commission to instances where nonparticipating candidates exceed contribution limits. Through the Commission's enforcement rules and procedures, the Commission will refer all internally generated complaints over which the Secretary of State has jurisdiction.