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Commissioners

910 West Second Street, Suite 100
Post Office Box 1917
Little Rock, Arkansas 72203-1917
(501) 324-9600 Fax (501) 324-9606
Toll Free (800) 422-7773

Graham F. Sloan
Director

Rita S. Looney
Chief Counsel

Todd Elder
Staff Attorney

Teresa Keathley
Kit Acklin
Directors of Compliance



ADVISORY OPINION NO. 2012-EC-003

Issued April 20, 2012

The Arkansas Ethics Commission has received a written advisory opinion request from Honorable Jim Crotty, Mayor of Norphlet, Arkansas. The question asked is whether or not it is a violation of Ark. Code Ann. § 21-8-801 for Union County Sheriff's Department Deputies to work part-time as police officers for the City of Norphlet.

According to Mayor Crotty, three Union County Sheriff's Deputies work part time for the City of Norphlet as police officers "on their off days from their regular job." He stated that these part-time employees have Norphlet Police uniforms and use a Norphlet Police vehicle. Mayor Crotty also included with his opinion request a copy of "Other Discussion Points" from an audit report prepared by the Arkansas Division of Legislative Audit in conjunction with an audit of the City's records. One of the discussion points questioned whether the referenced employment arrangement is in conflict with Ark. Code Ann. § 21-8-801 and recommended that the City seek the advice of the Ethics Commission concerning this arrangement.

Ark. Code Ann. § 21-8-801 prohibits a public servant from receiving a gift or compensation, other than income and benefits from the governmental body to which he or she is duly entitled, for the performance of the duties and responsibilities of his or her office or position. Whether or not it would violate Ark. Code Ann. § 21-8-801 for a county employee to receive compensation for part-time work performed for a city (located within that county) is essentially the question to be resolved. Stated another way, is the City of Norphlet compensating these three deputies for performing "the duties and responsibilities" of their positions as Union County Sheriff's Deputies in violation of Ark. Code Ann. § 21-8-801? Or, is the City of Norphlet compensating these officers solely for performing the duties and responsibilities of a police officer within the City of Norphlet?

As stated above, three Union County Sheriff's Deputies currently work part time as police officers for the City of Norphlet during their days off work from the Union County Sheriff's Department. The Union County Sheriff Personnel Policy Handbook clearly contemplates that employees may be otherwise employed during their days off from their county position. Specifically, Section 010, states that deputies may engage in two types of off duty employment ("Security" and "General Public") and such employment should "not conflict with regular duty hours" and should be "scheduled in a

manner that does not conflict or interfere with the deputies/employees performance of duty." The policy also states that the off-duty employee is subject to "call-out in case of an emergency and may be expected to leave his off-duty employment in such situations."

Pursuant to this policy, it is clearly permissible for the deputies to engage in off-duty employment. In addition, a comparison of the duties and responsibilities of the two types of law enforcement entities reveals that while Arkansas law states that the sheriff has the authority to enforce the "laws of this state," a chief of police and his or her assistants also have the authority to enforce the city ordinances. In other words, city ordinance violations are to be handled by the city authority (police) and not the county (sheriff.) See, Ark. Code Ann. § 14-15-501(a) and Ark. Code Ann. § 16-17-224(c). Accordingly, it appears that the powers of the two entities are not exactly the same. However, even if the powers were the same, the "duties and responsibilities" of a deputy sheriff are to enforce the law county-wide during the hours he or she has been hired to work for the county. It is not the "duty and responsibility" of a county sheriff deputy to provide law enforcement services solely for a municipality.

Ark. Code Ann. § 21-8-801 prohibits a public servant from receiving a "gift or compensation as defined in § 21-8-401 et seq., other than income and benefits from the governmental body to which he or she is duly entitled, *for the performance of the duties and responsibilities of his or her office or position...*" (Emphasis supplied.) As described herein, the deputies are providing law enforcement services to the City of Norphlet that are in addition to and/or different than the duties for which the county has employed the deputies.

This Commission addressed § 21-8-801 in 99-EC-007, opining that:

[A]s it pertains to the receipt of compensation by public servants, the Commission interprets Ark. Code Ann. § 21-8-801(1) to mean that, except as expressly provided by statute, a public servant can only be compensated for doing his or her job by the governmental body which he or she serves. In other words, a public servant cannot receive outside compensation for doing his or her job.

If a public servant were allowed to accept compensation from outside sources for performing the duties and responsibilities of his or her position, such practice could lead to divided loyalties. Even if corruption were not intended, the recipient might have a tendency to provide preferential treatment, albeit subconsciously, to those persons supplementing his or her salary.

Accordingly, the Commission has concluded that the purpose of the statutory prohibition against receiving outside compensation is to avoid divided loyalties. However, that concern does not arise when a sheriff's deputy takes a job as a city police officer because the two jobs are separate. There is no potential prejudice to the public or

to either governmental entity. Therefore, it is the Commission's opinion that the arrangement in question does not violate Ark. Code Ann. § 21-8-801.

This advisory opinion is issued by the Commission pursuant to Ark. Code Ann. § 7-6-217(g)(2).

ARKANSAS ETHICS COMMISSION

By: 
Rita S. Looney, Chief Counsel