

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2000-EC-009 Issued September 15, 2000

ISSUE:

Whether it would be permissible for a public official to perform municipal bond services for a school district.

BRIEF ANSWER:

Yes. Although Ark. Code Ann. § 21-8-304(a) prohibits a public official from using "his position to secure special privileges or exemptions for himself," there is no blanket prohibition against a public official seeking and being awarded a contract for professional services with a school district. Additionally, those parts of Ark. Code Ann. § 21-1-401 *et seq.* which address constitutional officers entering into contracts, leases or grants with state agencies do not extend to school districts.

DISCUSSION:

State Representative Jeremy Hutchinson has requested this advisory opinion. As one of the state's constitutional officers, he seeks clarification concerning the permissibility of accepting work on municipal bond projects for school districts.

Representative Hutchinson has been employed by Crews and Associates for almost four years. In connection with that employment, he has been involved in the underwriting of numerous bonds. Work on the underwriting of bonds has been awarded in the past based on competitive, sealed bids.

Crews and Associates was recently acquired by First Security Bank of Searcy. The new management has chosen to direct the firm's work away from the underwriting of bonds. Instead, they will be bidding on jobs to be the financial advisors for the entities seeking bonds. The financial advisors would help guide the entities through the underwriting process.

The method by which financial advisors are chosen is through negotiated bids. This process is slightly different than that of purely competitive bids. The firms will compete by virtue of a presentation to the school board. The information considered in awarding the job will be the firm's rates, experience, and locality and the overall quality of the presentation. Representative Hutchinson stated that normally at least three or four other firms are involved in such a bidding process.

The question presented in this advisory opinion request requires analysis under both Ark. Code Ann. § 21-8-304(a) and Ark. Code Ann. § 21-1-401 *et seq.* The first of these statutory provisions serves to prohibit a public official from using his or her position to secure special privileges which are not available to others. In this instance, Representative Hutchinson has been employed for four years by a firm which regularly and customarily works with bonds. Although not sealed, the procedure by which jobs are awarded is competitive in nature. The Commission concludes that the awarding of a contract under these circumstances would not be prohibited by Ark. Code Ann. § 21-8-304(a).

The second area of law under which this matter must be analyzed is Ark. Code Ann. § 21-1-401 *et seq.* That group of statutes applies specifically to constitutional officers and governs their ability to be employed by and to do business with the state. It is important to note that this fact pattern is not being analyzed under Ark. Code Ann. § 21-1-402, which deals with a constitutional officer's ability to be employed by the state and certain educational facilities, including school districts. Instead, it is being analyzed under Ark. Code Ann. § 21-1-403(a) which provides, in pertinent part, "no constitutional officer may enter into any lease agreement, contract, or grant with any state agency."¹ This provision regulates the permissibility of forming contracts only with state agencies.

When the definition of "state agency" is examined under Ark. Code Ann. § 21-1-401(2), it becomes clear that a local school board does not fall within the meaning of "state agency." The above referenced section sets forth the following designation:

every board, commission, department, division, institution, and other office of state government whether located within the legislative, executive or judicial branch of government and including state-supported colleges and universities.

Because local school districts do not appear in the enumerated list, it follows that school districts are not included in the prohibition against entering into grants, contracts or leases with the state. Accordingly, the statues in question would not apply to the fact pattern presented by Representative Hutchinson.

¹ This section does not seek to prohibit all leases, contracts and grants between the state and constitutional officers. It further provides criteria for exceptions to the general provision.

It is the Commission's opinion that, on the facts presented, Representative Hutchinson would not be prohibited from bidding and being awarded a job for either underwriting a municipal bond for a school district or acting as financial advisor during such a process. This advisory opinion is issued by the Commission pursuant to Ark. Code Ann. § 7-6-217(g)(2).

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