

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2003-EC-001

Issued January 17, 2003

The Ethics Commission has received a written request for an advisory opinion from Mr. Bert Mullens who is a member of the River Valley Intermodal Facilities Authority Board (the "RVIFAB"). In his advisory opinion request, Mr. Mullens asks whether or not the board members of the RVIFAB are required to file a Statement of Financial Interest ("SFI") on an annual basis.

It is the Commission's understanding that the RVIFAB was created in accordance with the Regional Intermodal Facilities Act (Ark. Code Ann. § 14-143-101 *et seq.*). Said Act authorized municipalities and counties to create and establish an authority (i.e., public corporation) for the purpose of acquiring, equipping, constructing, maintaining, and operating regional intermodal facilities.¹

The question of whether or not the board members of the RVIFAB are required to file a SFI depends upon whether such members fall within one of the categories listed in of Ark. Code Ann. § 21-8-701(a). Pursuant thereto, the following types of persons are required to file a SFI:

- (1) A public official, as defined in § 21-8-402(17);
- (2) A candidate for elective office;
- (3) A municipal judge or city attorney, whether elected or appointed;
- (4) Any agency head, department director, or division director of state government;

¹ Examples of such facilities include: railway-highway terminals, highway-railway terminals, shipping facilities, railroad sidings, turnouts, spur branches, switches, yards tracks, bridges and trestles, parks for industrial facilities, buildings, warehouses, utilities, highways, roads, streets, roadways and approaches, bulk loading and unloading facilities, elevators, tipples, compresses, refrigeration storage plants, transfer equipment, and related improvements and facilities for the handling of freight, commerce, and passengers.

- (5) Any public appointee to any state board or commission who is authorized or charged by law with the exercise of regulatory authority or is authorized to receive or disburse state or federal funds;
- (6) All persons who are elected members of a school board or who are candidates for a position on a school board;
- (7) All public and charter school superintendents;
- (8) Directors of educational cooperatives; and
- (9) Any person appointed to one (1) of the following types of regional, municipal, or county boards or commissions:
 - (A) A planning board or commission;
 - (B) An airport board or commission;
 - (C) A water or sewer board or commission;
 - (D) A utility board or commission; or
 - (E) A civil service commission.

It seems clear that being a member of the board of an authority created in accordance with the Regional Intermodal Facilities Act would not cause a person to fit into the categories listed in subdivisions (a)(2)-(8) of § 21-8-701. Thus, the question becomes whether a person who holds a position on the board of such an authority is required to file a SFI by either subdivision (a)(1) or (9).

The first such subdivision, Ark. Code Ann. § 21-8-701(a)(1), requires that a SFI be filed by a “public official.” That term is defined in Ark. Code Ann. § 21-8-402(17) to mean the following:

a legislator or any other person holding an elective office of any governmental body, whether elected or appointed to the office, and shall include such persons during the time period between the date they were elected and the date they took office.

A review of the Regional Intermodal Facilities Act shows that management and control of an authority created in accordance with said Act is lodged in a board of not less than six (6) nor more than twenty-four (24) persons who are appointed for terms of six (6) years. Ark. Code Ann. § 14-143-105(a). Appointments are made by the mayor of each participating municipality and the county judge of each participating county. Ark. Code Ann. § 14-143-105(b). Vacancies on the board are filled by appointment of the mayor or county judge. Ark. Code Ann. § 14-143-106(a).


In accordance with the foregoing, positions on the board on the RVIFAB are appointive not elective. Accordingly, the fact that a person serves on that board would not cause such a person to meet the definition of a public official and thus be required to file a SFI.

The second provision to be addressed is Ark. Code Ann. § 21-8-701(a)(9). Pursuant thereto, a person is required to file a SFI if he or she is appointed to certain types of regional, municipal, or county boards or commissions. Those types of boards or commissions are (i) planning boards or commissions, (ii) airport boards or commissions, (iii) water or sewer boards or commissions, (iv) utility boards or commissions, or (v) civil service commissions.

Although the RVIFAB is a regional board, it is not one of the specific types of regional, municipal, or county boards or commissions enumerated in § 21-8-701(a)(9). Accordingly, the Commission concludes that a board member of the RVIFAB is not required to file a SFI by virtue of his or her status as a member of that board.

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

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By: 
Graham F. Sloan, Director