

# ARKANSAS ETHICS COMMISSION

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

**Joe Ball**  
Chairman

**Larry Ross**  
Vice Chairman

**Stuart Vess**  
**Elaine Black**  
**Catherine Johnson**  
Commissioners



**Graham F. Sloan**  
Director

**Rita S. Looney**  
Chief Counsel

**Robert L. Roddey**  
Staff Attorney

**Todd Elder**  
**Teresa Keathley**  
Directors of Compliance

## ADVISORY OPINION NO. 2007-EC-007 Issued November 16, 2007

The Arkansas Ethics Commission has received a written advisory opinion request from Ray Cooper, of Concord, Arkansas. In his opinion request, Mr. Cooper describes a situation in which the Cleburne County Quorum court recently approved, by a unanimous vote, the giving of longevity bonuses to full time county employees, including elected county officials. He has asked whether or not it was permissible for members of the quorum court to have voted on this particular matter.

The first statute of potential applicability is Ark. Code Ann. § 21-8-304(a) which contains a general prohibition against a public official using or attempting to use his or her official position to secure special privileges or exemption for himself or herself or his or her spouse, child, parent, or other person standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that is not available to others except as may be otherwise provided by law. The term "special privileges or exemption" is defined in § 400(p) of the Commission's Rules on Conflicts to mean a "particular benefit or advantage unfairly extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others."

Because the quorum court herein voted to provide longevity bonuses to all county employees and elected officials, it does not appear that any special privilege or exemption was extended in violation of Ark. Code Ann. § 21-8-304. However, analysis under Ark. Code Ann. § 21-8-801 is also required. Said statute provides, in pertinent part, as follows:

[n]o public servant shall...[r]eceive 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.

The Commission recently reviewed this provision in Advisory Opinion 2007-EC-005. In that opinion, the "bonus" compensation was provided to a quorum court from an anonymous donor. While the quorum court therein apparently appropriated these funds to the budgets of two identified county departments, no employee was "duly entitled" to

any of the funds. Compensation to public servants must be *from* the governmental body he or she serves and the public servant must be *entitled* to the compensation, i.e., it must be legally owed to the public servant.

Whether the quorum court members herein are “duly entitled” to the longevity bonus depends upon whether these bonuses were legally owed to them. In that regard, the Commission notes that Ark. Code Ann. § 14-14-1205 specifically regulates and limits compensation to quorum court members. If the longevity bonus causes the quorum court compensation to exceed the limit allowed by law, the quorum court members would not be “duly entitled” to this additional compensation. If, on the other hand, the bonus was within the compensation limit allowed by law, it would appear that the vote entitled them to the compensation and, therefore, Ark. Code Ann. § 21-8-801 would not come into play.


It also bears mentioning that a quorum court is a legislative body, and as such, is regulated by Ark. Code Ann. § 21-8-803(a) and (c). When a member of a legislative body is required to take an action in the discharge of his or her official duties that may affect his or her financial interest, the legislator is permitted to take such action so long as the Statement of Financial Interest (“SFI”) filed by the legislator makes the conflict readily apparent. Otherwise, the legislator is required to prepare a written statement describing the matter requiring action stating the potential conflict, and deliver a copy of such statement to the appropriate official to be filed with the SFI. Thus, a legislator is permitted to participate in matters which may affect his or her financial interest provided the disclosure of the potential conflict has been made.

Because members of the quorum court are legislators, the “conflict” in granting themselves bonuses should be apparent in Section 2 “Reason for Filing” on their SFI’s and therefore no additional disclosure would be required. While such vote may be viewed with disfavor by the citizens who elected them, it is the opinion of the Commission that such a vote for longevity bonuses by members of the quorum court is permissible pursuant to the laws over which the Commission has jurisdiction.

Finally, the Commission seeks to clarify that the advisory opinion process is not a vehicle designed to make factual findings regarding events which have already occurred. An advisory opinion, by its very nature, is intended to provide guidance related to future conduct—not past events—and is prospective in its application. Accordingly, the Commission will refrain from opining about the permissibility of a specific past event.

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

**ARKANSAS ETHICS COMMISSION**

By:   
Rita S. Looney, Chief Counsel