

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2008-EC-001 Issued January 18, 2008

The Arkansas Ethics Commission has received a written advisory opinion request from Jonathan Greer, Saline County Attorney. The question asked is whether a conflict of interest would exist if Saline County awards a bid to a company which employs a member of the Saline County Quorum Court.

According to the opinion request, the employer of a Saline County Justice of the Peace is a potential bidder on a contract for equipment to be installed in the patrol cars of the county Sheriff's Department. Mr. Greer has advised the Commission staff that, as an employee of the bidding company, the Justice of the Peace does not work on a commission basis and has no ownership interest in the company.

In reviewing the statutes under the Ethics Commission's jurisdiction, it is noted that there is no statute which expressly prohibits a quorum court member from voting on matters, or otherwise participating in the legislative process, which may relate to an interest of his or her employer. (See also Advisory Opinion No. 2005-EC-002). Ark. Code Ann. § 21-8-1001 prohibits board members of entities receiving state funds from voting on or attempting to influence an official decision if the member has a "pecuniary interest in the matter under consideration" or if the rule or regulation "exclusively benefits the member." This statute is not applicable, however, because a county quorum court is not a "board."

It bears mentioning that Ark. Code Ann. § 21-8-803 sets forth reporting requirements applicable to a legislator, i.e., a justice of the peace, who is required to take an action in the discharge of his or her official duties that may affect his or her financial interest. This statute requires the reporting of potential conflicts in the event action may affect the legislator's "financial interest or cause financial benefit or detriment to him, or a business in which he or she is an officer, director, stockholder owning more than ten percent (10%) of the stock of the company, owner, trustee, partner, or employee, which is distinguishable from the effects of the action on the public generally or a broad segment of the public."

In such situations, the legislator is required to:

- (1) Prepare a written statement describing the matter requiring action and stating the potential conflict; and
- (2) (A) Deliver a copy of the statement to the appropriate official to be filed with the statement of financial interest;
(B) The copy of the statement may be delivered in person by the public official, by mail, or by a person authorized by the public official to deliver the copy.

The obligation to report a potential conflict of interest under this section arises as soon as the legislator becomes aware of the conflict. If the statement of financial interest filed by the legislator makes the conflict readily apparent (the employer is identified on the statement of financial interest), then no report need be filed.

Another statute of potential applicability is Ark. Code Ann. § 21-8-304, 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.

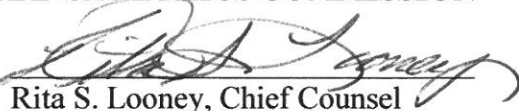
Whether or not it would violate Ark. Code Ann § 21-8-304 for a quorum court member to participate in the decision-making process regarding a bid submitted by his employer depends upon the facts of the particular situation. Factors to be considered include the pecuniary interest the legislator may have in the employer's business and whether or not his vote was determinative on the matter under consideration. To avoid any potential problems, it would be advisable for the quorum court member to simply refrain from participating in the decision-making process in regard to this matter.

Based on the facts presented in the opinion request and the applicable statutes referenced herein, it is the Commission's opinion that Saline County may proceed with the bidding process surrounding the subject bid, provided the potential conflict of interest of the quorum court member is readily apparent on his statement of financial interest or he has filed a statement reporting the potential conflict pursuant to Ark. Code Ann. § 21-8-803. It should be noted, however, that this opinion is subject to any applicable county bidding process regulations and/or policies.

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

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By:


Rita S. Looney, Chief Counsel