

# 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

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## ADVISORY OPINION NO. 2004-EC-003 Issued April 16, 2004

The Arkansas Ethics Commission has received a written advisory opinion request from David Harris of Ft. Smith, Arkansas. The question asked is whether or not a city director may vote on an ordinance, the subject of which would benefit the employer of that city director.

In reviewing the statutes under the Ethics Commission's jurisdiction, it is noted that there is no statute which expressly prohibits a person sitting on a municipal board from voting on matters which may relate to an interest of his or her employer. While Ark. Code Ann. § 21-8-1001 prevents members of state boards or commissions 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," such statutory prohibition does not apply to municipal boards.

The only 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.

The term "special privileges" was discussed in the Advisory Opinion No. 2004-EC-001. That opinion cited Black's Law Dictionary, Seventh Edition, which defined special privilege as "a privilege granted to a person or class of persons to the exclusion of others and in derogation of the common right."

Whether or not it would violate Ark. Code Ann § 21-8-304 for a city director to vote on an ordinance which would directly benefit his employer depends upon the facts of the particular situation. Factors to be considered include the pecuniary interest the director may have in the employer's business and whether or not his vote was determinative on the matter under consideration.

This advisory opinion is issued by the Commission pursuant to Ark. Code Ann. § 7-6-217(g)(2) and is not intended to provide the basis for a complaint nor a defense thereto. An advisory opinion, by its very nature, is intended to provide guidance related to future conduct and is prospective in its application.

**ARKANSAS ETHICS COMMISSION**

By:   
Rita S. Looney, Chief Counsel