

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 2004-EC-006 Issued December 17, 2004

The Arkansas Ethics Commission has received a written advisory opinion request from Willie Price of West Helena, Arkansas. The question asked is whether or not it is permissible for the president of a school board to participate in a 4-3 decision to hire his brother as superintendent of the school district.

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 school board from voting on matters which relate to the hiring of a family member by the board. Ark. Code Ann. § 21-8-1001(a)(1) does provide that no board member of an entity receiving state funds shall participate in, vote on, influence, or attempt to influence an official decision if the member has a pecuniary interest in the matter under consideration.

Another 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." Prior to the adoption of the Rules on Conflicts, the Commission had discussed "special privileges or exemption" in Advisory Opinion Nos. 2001-EC-003 and 2004-EC-001<sup>1</sup>.

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<sup>1</sup> Commissioners Dickey and Ball dissented on the basis that if the Legislature has chosen not to define "special privilege" as to employment, and has left that responsibility to the Commission, then employment equals special privilege.

In Advisory Opinion No. 2001-EC-003, it was noted that Ark. Code Ann. § 21-8-304(a) does not constitute a blanket prohibition against a public official hiring a family member. Advisory Opinion No. 2004-EC-001 went on to recognize that:

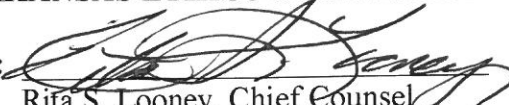
“[a]mong the factors to be considered in deciding whether the public official hiring of a relative constitutes a special privilege are whether required procedures such as advertising or posting the position were followed, the qualifications of the relative compared to others who applied for the position or previously held the same position, and the amount of salary offered to the relative in comparison to the amount paid to other employees not related to the public official.”

Other factors which would merit consideration include the pecuniary interest the president may have in the brother’s hiring and whether or not his vote was determinative on the matter under consideration. While the factors referenced herein provide guidance for the Commission’s consideration of such matter, the facts of each situation must be evaluated on a case-by-case basis.

The advisory opinion process, however, 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 cannot opine regarding the permissibility of a specific past event.

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.

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By:   
Rifa S. Looney, Chief Counsel