

ARKANSAS ETHICS COMMISSION
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Opinion No. 91-EC-007

August 22, 1991

Honorable Tammy Brasuell Gattis
Staff Attorney
Office of the Prosecutor Coordinator
Tower Building, Suite 750
323 Center Street
Little Rock, AR 72201

Dear Ms. Gattis:

On July 18, 1991, this office received your request for an official opinion, under authority of Initiated Act 1 of 1988 (as amended) and Initiated Act 1 of 1990. Your request, paraphrased, is as follows:

How does the Ethics Commission resolve the apparent conflict in language in ACA § 21-8-403 which states:

"Any person who violates any provision of subchapters 4-8 of this chapter [The Disclosure Act for Lobbyists and State and Local Officials] shall be guilty of a Class A misdemeanor. The culpable mental state required shall be a purposeful violation" (language added)

and the language of A.C.A. § 21-8-702 which states

"Forms used by the persons in filing statements as required in this subchapter (The same act cited above) shall provide for the signature of the person, under

penalty of perjury. (A Class C Felony),
with respect to the truth and accuracy
of the statements made on the form"?
(language added)

When is it appropriate to charge a person with a
Class A misdemeanor and when is it appropriate to
charge a person with perjury?"

We believe the option of what criminal statutes to charge a
person with or what criminal aspects of civil statute to apply to
particular actions of individual's behavior is exclusively within
the province of the several duly elected prosecuting attorneys
within the state of Arkansas. The determination of whether there
is proper application of statutory criminal authority to particular
actions, of course, rests within the purview of the courts.

However, we view the following as the standards upon which the
Ethics Commission and its staff will proceed when and if such a
circumstance arises:

If any person or group of persons (public official, lobbyist,
candidate, Political Action Committee) who, having a duty imposed
upon them by Act 1 of 1988 or Act 1 of 1990, fails to take the
action imposed upon them by law, or if that same person or group of
persons have been specifically prohibited from certain acts by the
language and intent of the acts but knowingly commits those acts,
he, she, or they will be considered to have committed a Class A
misdemeanor criminal act.

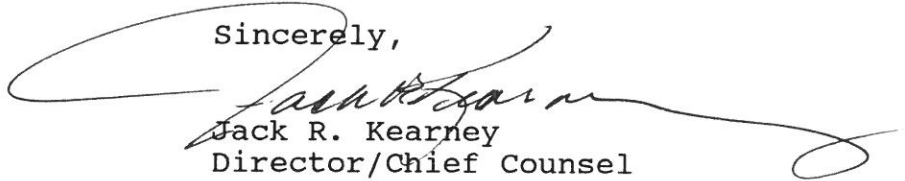
For example, if a candidate for public office accepts more
than one thousand dollars (\$1000) from an individual for his
campaign, while the law forbids him to do, he or she will be
considered to have committed a Class A misdemeanor. The same
would apply if a registered lobbyist spent five hundred dollars
(\$500) lobbying a government agency, but failed to properly
register as a lobbyist in Arkansas.

However, any person or group of persons who knowingly attempts
to mislead any public official who has the responsibility or
authority to enforce the dictates of the ethics and disclosure
acts; or who in any other fashion purposefully files false
information on forms or statements required to comply with these
acts, shall be considered as having committed perjury which is a
felony.

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We would view any purposeful effort to mislead as very serious undermining this agency's ability to administer the ethics laws. We would seek to have such an action prosecuted vigorously.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack R. Kearney", with a large, sweeping flourish extending to the right.

Jack R. Kearney
Director/Chief Counsel

JRK/at