

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 2025-EC-001

Issued May 16, 2025

The Arkansas Ethics Commission (the "Commission") has received a written advisory opinion request from Tim Shepard, a current employee of the City of Fayetteville, Arkansas. Mr. Shepard inquired about the permissibility of using certain photographs in his campaign as a candidate for county judge. Specifically, he asked whether he may use photographs that appear on the City of Fayetteville's website or social media—taken during the normal course of his official duties—for campaign purposes, provided he includes a clear disclaimer stating the photo is for identification purposes only and does not imply endorsement by the City or Police Department. Mr. Shepard also seeks guidance on whether he may use older photographs taken by third parties (e.g., friends, members of the public) or by other entities such as Washington County, even if those photographs were taken during his prior public service or at official events.

It should be noted at the outset that the advisory opinion process is not a vehicle designed to make factual findings regarding events that have already occurred. By its very nature, an advisory opinion is intended to provide guidance related to future conduct—not past events—and is prospective in its application. Accordingly, the Commission refrains from opining about the permissibility of a specific past event.

### Questions Presented:

1. *Whether you may use a photo of yourself that appears on the City of Fayetteville's website or social media, which was taken during the normal course of your duties, provided you include a clear disclaimer stating that the photo is for identification only and does not imply endorsement by the City or Police Department.*

The statutory provision potentially applicable to the questions presented is as follows:

Ark. Code Ann. § 7-1-103(a)(3)(A):

It shall be unlawful for any public servant, as defined in § 21-8-402, to use any office or room furnished at public expense to distribute any letters, circulars, or other campaign materials unless such office or room is regularly used by members of the public for such purposes without regard to political affiliation. It shall further

be unlawful for any public servant to use for campaign purposes any item of personal property provided with public funds.<sup>1</sup>

The Commission notes that the aforementioned provision applies to public servants. Ark. Code Ann. § 21-8-402(18) states, in pertinent part, that “Public servant” means “all public officials, public employees, and public appointees.” Given the information provided with the request, an employee of the City of Fayetteville, a city of the first-class, would be considered a public servant within the meaning of the law, and as such, be subject to the prohibitions contained in Ark. Code Ann. § 7-1-103(a)(3)(A).

The prohibitions against the use of property provided by public funds, for campaign purposes, contained in Ark. Code Ann. § 7-1-103(a)(3)(A) are broad in scope. The first part of the statutory provision addresses using real property (e.g., offices or rooms) for distributing campaign material, while the second part of the statutory provision addresses using personal property (e.g., uniforms, office equipment, or electronic equipment) provided with public funds for campaign purposes. The inquiry does not allude to the use of “any office or room furnished at public expense to distribute any letters, circulars, or other campaign materials,” which is also generally prohibited, unless members of the public regularly use such office or room for such purposes without regard to political affiliation. As such, analysis turns upon the last prohibition of the statute, which states, “It shall further be unlawful for any public servant to use for campaign purposes any item of personal property provided with public funds.”

The personal property in question is described as photographs taken during events that occurred throughout the normal course of duty as a municipal employee and published on the City of Fayetteville’s website and/or social media platforms. If that description is accurate, such photographs would not be deemed taken for “campaign purposes” but rather taken by the City for commemorative or promotional purposes, given that they were placed on official City of Fayetteville websites and social media. Such photographs enter the public domain, and campaign use may be permissible.<sup>2</sup> This stands in contrast to a situation in which a candidate conducted a planned campaign photoshoot utilizing personal property provided by public funds, or the photoshoot was conducted in an area where the public is not normally allowed. This conduct would violate Ark. Code Ann. § 7-1-103(a)(3)(A) as the photographs would be considered taken specifically for campaign purposes.<sup>3</sup> In addition to whether the photographs were taken for

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<sup>1</sup>Ark. Code Ann. § 7-1-103(a)(3)(B) states “As used in subdivision (a)(3)(A) of this section, campaign materials and campaign purposes” refer to “The campaign of a candidate for public office[.]”

<sup>2</sup> In **Case Number 2022-CO-044**, the Commission found that a commemorative photo of an FBI National Academy graduation released by a government entity via a press release had entered the public domain and would have been acceptable for campaign use had the Respondent, a public servant, not utilized publicly funded property to retrieve the image.

<sup>3</sup> In **Case Number 2023-CO-042**, the Commission found that probable cause existed for a violation of Ark. Code Ann. § 7-1-103(a)(3)(A) when a district judge posed for a campaign photo with his judge’s bench, the flags of the United States of America and the State of Arkansas, and the Arkansas State Seal as the background for the photograph, noting that the judge was in control of the location which was not open to the public. In contrast, in **Case Number 2024-CO-017**, the Commission did not find that probable cause existed for a violation of Ark. Code Ann. § 7-1-103(a)(3)(A) when a deputy prosecutor and candidate for district judge obtained permission to access a county

campaign purposes, the manner in which the photographs are retrieved and/or captured by the public servant must be examined.

As previously stated, photographs appearing on a governmental website or social media account, unless copyright protected, generally enter the public domain. Any citizen has access to the website through their personal electronic device and the ability to download, screenshot, copy, or otherwise capture the photographs contained therein to use for their own purposes. An individual acting as a candidate has no less right; however, when that candidate is also a public servant, the manner by which the photograph is captured must adhere to the prohibitions prescribed within Ark. Code Ann. § 7-1-103(a)(3)(A).

A public servant, who is also a candidate, may not utilize any device (electronic or otherwise) provided by public funds in order to download, screenshot, copy, or otherwise capture a photograph, even from a publicly available website, to use for campaign purposes. To do so would violate the prohibitions outlined in Ark. Code Ann. § 7-1-103(a)(3)(A), as the technology devoted to obtaining the photograph would be provided for by public funding. Additionally, while performing duties as a public servant, a candidate should not ask a fellow municipal employee to retrieve photographs for the candidate's campaign. Any such request by the candidate must occur while off-duty as a public servant, and the request for the photographs must be directed to the municipal employee who performs such tasks as part of their normal job duties. A request to a fellow municipal employee who would not normally process such requests, or that takes place during working hours, could place the fellow municipal employee in violation of Ark. Code Ann. § 7-1-103(a)(2)(A) which prohibits a public servant from devoting "any time or labor during usual office hours toward the campaign of any other candidate for office or for the nomination to any office."

Finally, the inquiry states that any potential use of the photographs would "include a clear disclaimer stating that the photo is for identification only and does not imply endorsement by the City or Police Department." While the laws within the Commission's jurisdiction do not require such a disclaimer, nothing would prohibit the inclusion of such. The Commission notes that the candidate would be required to include the relevant "Paid for by" disclaimer related to campaign materials pursuant to Ark. Code Ann. § 7-6-228 and Ark. Code Ann. § 7-1-103.

In conclusion, a candidate, who is also a public servant, may obtain a photograph from the public domain to use for campaign purposes, however, in so doing, the public servant must take care not to utilize any device (electronic or otherwise) that is provided by public funds to download, screenshot, copy, or otherwise capture the photograph from the public domain.

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courtroom to take campaign photographs which did contain personal property obtained with public funds, however, the courtroom was regularly used by members of the public for such purposes without regard to political affiliation.



2. *Whether you may use older photos taken by third parties (e.g., friends or members of the public), or by other entities such as Washington County, even if those photos were taken during your prior public service or at official events.*

The second inquiry first asks whether it is permissible for a candidate, who is also a public servant, to use “older photos taken by third parties (e.g., friends or members of the public).” Based upon the premise of the question, it would appear that such photographs would be the private property of the individual who took them. There are no laws within the Commission’s jurisdiction that would prohibit a private citizen from granting a candidate permission to utilize such photographs.<sup>4</sup>

The second inquiry additionally asks whether it is permissible to use photographs taken “by other entities such as Washington County, even if those photographs were taken during your prior public service or at official events.” Photographs taken by, or belonging to, a governmental body, such as Washington County, would be subject to the same analysis as described in the response to the first inquiry. Two considerations must be addressed: 1) whether the photographs were placed into the public domain, and 2) what method was used to obtain the photographs.

The requestor’s factual scenario does not make clear where such photographs currently exist, that is, whether they exist in the public domain or within the private possession of a governmental entity. As previously stated, photographs appearing on a governmental website or social media account generally enter the public domain, absent copyright protection. As such, the analytical framework utilized in the first inquiry would be applicable in this scenario as well. Any citizen has access to a website through their personal electronic device and the ability to download, screenshot, copy, or otherwise capture the photographs contained therein to use for their own purposes, absent any copyright protections. An individual acting as a candidate has no less right; however, when that candidate is also a public servant, the manner by which the photograph is captured or retrieved must adhere to the prohibitions outlined in Ark. Code Ann. § 7-1-103(a)(3)(A).

If these photographs are accessible via public domain, a public servant, who is also a candidate, may not utilize any device (electronic or otherwise) that is provided with public funds in order to download, screenshot, copy, or otherwise capture a photograph, even from a publicly available website, to use for campaign purposes. To do so would violate the prohibitions outlined in Ark. Code Ann. § 7-1-103(a)(3)(A), as the technology devoted to obtaining the photograph would be provided for through public funding.

If the photographs are not accessible via the public domain, an analysis would be conducted to determine who has control over the photographs and whether the photographs would be made accessible to the public upon request. If the photographs are generally accessible to the public via the Freedom of Information Act, county policy, or other practice or convention, there is no

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<sup>4</sup> The Commission notes that the donation of such could create a campaign contribution if the citizen who chooses to donate photographs to the campaign is a professional photographer. The definition of contribution, pursuant to Ark. Code Ann. §7-6-201(4)(A) includes “anything of value”, and as such, photographs taken and donated by a professional could carry a market value.

statutory provision within the Commission's jurisdiction that prevents their use in a campaign, as it is likely that the photographs were not taken for campaign purposes but rather taken by the County for commemorative purposes.<sup>5</sup> However, the Commission would reiterate that the public servant must take care not to utilize any device (electronic or otherwise) that is provided by public funds in order to obtain the photographs retained by the County.<sup>6</sup>

This response constitutes an advisory opinion concerning the laws under the Commission's jurisdiction and the specific transaction or activity set forth in the request. If there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for the proposed activity. Any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law, including, but not limited to, statutes, regulations, advisory opinions, and case law.

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

**ARKANSAS ETHICS COMMISSION**

By: .  
Jeremy L. Nixon

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<sup>5</sup> The Commission notes that if the photographs held by the county are not publicly accessible, additional facts would be required that might change the analysis.

<sup>6</sup> The Commission notes that failure to comply with these prohibitions could also subject a public servant to scrutiny pursuant to Ark. Code Ann. §21-8-304(a) for securing, or attempting to secure, special privileges or exemptions by virtue of their official position. In **Case Number 2015-CO-008**, the Commission found probable cause for a finding that a state employee of the Alcohol Beverage Control Board ("ABC") secured a special privilege for himself by using his position to remove (and then return) original sample driver's licenses from the ABC office and deliver them to a photographer in order to capture images of use in a smartphone application he was personally developing.