

# ARKANSAS ETHICS COMMISSION

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## Advisory Opinion 2019-EC-003 Issued August 16, 2019

The Arkansas Ethics Commission ("AEC") has received a written advisory opinion request from Mr. Richard Bell of North Little Rock, Arkansas. Therein, he asks for an advisory opinion concerning a potential conflict of interest relating to his appointment by Governor Hutchinson to the State Board of Public Accountancy ("SBPA").

As background, Mr. Bell states that he is currently, and has been for the past 30 plus years, a member of the Arkansas Society of CPAs. Additionally, his firm has contributed in past years to the Arkansas Society of CPAs Political Action Committee ("PAC"), and he recently volunteered to serve as a committee member of that PAC. In seeking this advisory opinion, he requests that the AEC determine whether or not there is a conflict of interest that would prohibit him from simultaneously serving as a member of the SBPA and a committee member of Arkansas Society of CPAs PAC.

The short answer is, no, the laws under the jurisdiction of the AEC do not specifically prohibit Mr. Bell from simultaneously serving as a member of the SBPA and as a committee member of Arkansas Society of CPAs PAC.

In his request, Mr. Bell states that he is a volunteer on the board of the Arkansas Society of CPAs PAC. The AEC enforces the campaign finance statutes in Arkansas, including regulating approved political action committees<sup>1</sup>. PACs make contributions to, among others, candidates for public office in the state. No money would be flowing from the PAC to the SBPA or its board members. The SBPA does not make administrative decisions about PAC activity in Arkansas, but instead administers the public accountancy statutes within the state. There would not be a situation where Mr. Bell would be called upon to vote on a decision involving the Arkansas Society of CPAs PAC in his role on the SBPA.

The SBPA's website reflects that its mission is to administer the public accountancy statutes with the highest degree of integrity, competence, and efficiency commensurate with the professional standards of certified public accountants and public accounts. Looking at Ark. Code Ann. § 17-12-201, the SBPA shall have seven (7) members and four (4) of those seven (7) must be certified public accountants, one (1) must be a resident public accountant, and two (2) must not be currently working as accountants. In his request, Mr. Bell references his long-time membership in the American Society of CPAs. Undoubtedly, most of the board's members are current or former

members of the American Society of CPAs, so his association does not appear to contravene the intent of the statute.


While Mr. Bell's service as a member of the SBPA while also serving as an American Society of CPAs PAC committee member would not be a conflict of interest in and of itself, there are several conflicts of interest statutes that he would be subject to during his appointment to the SBPA. As a public appointee<sup>ii</sup> to the SBPA, Mr. Bell would be a public servant<sup>iii</sup> subject to Ark. Code Ann. §21-8-304<sup>iv</sup>. For example, Mr. Bell would be prohibited from using his position on the SBPA to raise money for an organization for which he is on the board or in a leadership position, like the American Society of CPAs PAC. Likewise, as a member of a state board or commission, Mr. Bell would also be subject to Ark. Code Ann. §21-8-1001<sup>v</sup>, which would prohibit him from participating in, voting on, influencing, or attempting to influence an official decision if he has a pecuniary interest in the matter under consideration by the board, commission, or entity.

In summary, there does not appear to be a statutory bar against Mr. Bell simultaneously serving as a member of the SBPA and a committee member of Arkansas Society of CPAs PAC. There are, however, statutory provisions which would require him to refrain from engaging in certain activities.

The scope of this advisory opinion is limited to the laws under the AEC's jurisdiction. This advisory opinion is limited to the specific set of facts or activity set forth in the request. The AEC emphasizes that, 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 its proposed activity. Any person involved in any specific transaction or activity, which 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.

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

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By:   
**Jill Rogers Barham**  
Staff Attorney

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<sup>i</sup> Ark. Code Ann. § 7-6-201 (1) provides that "Approved political action committee" means any person that:

- (i) Receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees;
- (ii) Does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and
- (iii) Registers pursuant to § 7-6-215 prior to making contributions.

(B) "Approved political action committee" does not include an organized political party as defined in § 7-1-101, a county political party committee, the candidate's own campaign committee, an exploratory committee, or a ballot question committee or legislative question committee as defined in § 7-9-402[.]

<sup>ii</sup> Ark. Code Ann. § 21-8-301 (2) (A) provides that "Public appointee" means an individual who is appointed to a governmental body.

<sup>iii</sup> Ark. Code Ann. § 21-8-301 (5) provides that "Public servant" means a: (A) Public appointee; (B) Public employee; or (C) Public official.

<sup>iv</sup> Ark. Code Ann. §21-8-304. Provides

(a) No public servant shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or his or her spouse, child, parents, or other persons standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that are not available to others except as may be otherwise provided by law.

(b) No public servant shall accept employment or engage in any public or professional activity while serving as a public official which he or she might reasonably expect would require or induce him or her to disclose any information acquired by him or her by reason of his or her official position that is declared by law or regulation to be confidential.

(c) No public servant shall disclose any such information gained by reason of his or her position, nor shall he or she otherwise use such information for his or her personal gain or benefit.

<sup>v</sup> Ark. Code Ann. §21-8-1001 provides as follows:

(a) (1) No member of a state board or commission or 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 by the board, commission, or entity.

(2) A member of a state board or commission or board member of an entity receiving state funds may participate in, vote on, influence, or attempt to influence an official decision if the only pecuniary interest that may accrue to the member is incidental to his or her position or accrues to him or her as a member of a profession, occupation, or large class to no greater extent than the pecuniary interest could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

(b) No member of a state board or commission or board member of an entity receiving state funds shall participate in any discussion or vote on a rule or regulation that exclusively benefits the member.