

ARKANSAS ETHICS COMMISSION

RULES ON SPECIAL STATE EMPLOYEES – CONFLICTS OF INTEREST

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§ 100 Definitions

- (a) **Conflict of interest** – As used in these rules, the term “conflict of interest” means a special state employee’s direct or indirect pecuniary or other interest in a matter before a covered board. “Conflict of interest” includes without limitation the following: (i) an offer of employment from an entity that is involved in a procurement matter with the covered board or is involved in a discussion of a procurement matter with the covered board; (ii) being an officer or employee of a business, association, or nonprofit organization that is involved in a procurement matter with the covered board or is involved in a discussion of a procurement matter with the covered board; and (iii) receiving compensation from an entity that is involved in a procurement matter or is involved in a discussion of a procurement matter with the covered board.
- (b) **Covered board** – As used in these rules, the term “covered board” means: (i) a commission, board, bureau, office, or other state instrumentality created within the executive branch; and (ii) an entity that is created by regulation, statute, legislative direction, executive order, or other informal means if the entity has decision-making authority over procurement criteria, contracts, appointment of individuals to negotiate procurement directly or indirectly, or the approval of procurements. “Covered board” does not include the following: (i) the constitutional departments of the State of Arkansas; (ii) the elected constitutional offices of the State of Arkansas; (iii) the General Assembly, including the Legislative Council, the Legislative Joint Auditing Committee, and supporting agencies and bureaus of the General Assembly; (iv) the Supreme Court; (v) the Court of Appeals; (vi) the circuit courts; (vii) prosecuting attorneys; (viii) the Administrative Office of the Courts; (ix) an institution of higher education; (x) a municipal government; (xi) a county government; (xii) an interstate agency; or (xiii) a legislative task force or committee if the legislative task force or committee only advises the General Assembly.
- (c) **Special state employee** – As used in these rules, the term “special state employee” means a person appointed to a covered board, regardless of whether the person: (i) receives compensation for his or her services; (ii) receives reimbursement for travel expenses; (iii) receives per diem; or (iv) was appointed formally or informally. “Special state employee” does not include a constitutional officeholder or an ex officio or nonvoting member of a covered board.

§ 101 Required Disclosure

A special state employee shall disclose a conflict of interest in a procurement matter before the covered board: (i) either in writing to the head of the covered board, or orally or in writing at a public meeting of the covered board if the disclosure is included in the minutes of the public meeting; and (ii) by filing a conflict of interest disclosure report

with the Secretary of State within five (5) business days of the date the special state employee becomes aware of the conflict of interest.

§ 102 Decision Making

- (a) A special state employee shall not vote on, receive, or read confidential materials related to, participate in the discussion of, or attempt to influence the covered board's decision on a procurement matter if the special state employee has a conflict of interest in the procurement matter.
- (b) A special state employee who is a lobbyist registered under Ark. Code Ann. § 21-8-601 shall recuse himself or herself from a procurement matter before the covered board if: (i) the special state employee receives compensation as a lobbyist from an entity involved in the procurement matter; or (ii) the procurement matter involves a person or entity that is a competitor of a lobbying client of the special state employee.
- (c) A special state employee or former special state employee shall not: (i) represent an entity other than the State of Arkansas in a matter in which he or she participated in making a decision, rendering approval or disapproval, making a recommendation, or rendering advice on behalf of the covered board; or (ii) assist or represent a party for contingent compensation in a matter involving a covered board other than in a judicial, administrative, or quasi-judicial proceeding.
- (d) A former special state employee shall not lobby the members or staff of a covered board of which he or she is a former member for one (1) year after the cessation of the special state employee's membership on the covered board.
- (e) A contract entered into by a covered board, including a renewal, extension, or amendment of a contract entered into by a covered board, shall include a statement that no special state employee has been influenced by the vendor in the course of the procurement.

§ 103 Complaints

In accordance with Ark. Code Ann. § 7-6-218, a complaint alleging a violation of Ark. Code Ann. § 19-11-718 may be filed with the Arkansas Ethics Commission. The complaint process is the subject of Sections (V) – (X) of the Arkansas Ethics Commission's Rules of Practice and Procedure.

§ 104 Penalties and Removal

- (a) If the Arkansas Ethics Commission finds that a special state employee has committed a violation of Ark. Code Ann. § 19-11-718, then it may (i) impose a fine of not less than fifty dollars (\$50) and not more than two thousand dollars (\$2,000), (ii) issue a public letter of caution, warning, or reprimand, (iii) order the special state employee to file or amend a statutorily-required disclosure form, (iv) remove the special state employee from the covered board which he or she serves, and/or (v) report its findings, along with such information and documents as it deems appropriate, and make recommendations to the proper law enforcement authorities.
- (b) When exercising the authority set forth in subparagraph (a)(iv), the Arkansas Ethics Commission shall specifically state in its final order that the special state employee has been removed and that a vacancy exists. Notice of the removal shall be sent to the covered board.
- (c) When exercising the authority set forth in subparagraph (a)(v), the Arkansas Ethics Commission is not required to make a finding of a violation of Ark. Code Ann. § 19-11-718.