

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2000-EC-003 **Issued March 17, 2000**

The Arkansas Ethics Commission has received an advisory opinion request from Senator Doyle Webb concerning the issue of whether or not Ark. Code Ann. § 21-8-801 would prohibit a member of the General Assembly, who is an attorney, from participating in the passage or defeat of a bill which would enhance the business interest of a client from whom the member had received compensation for legal services.

The statute in question, Ark. Code Ann. § 21-8-801, provides, in pertinent part, as follows:

No public servant shall...[r]eceive a gift or compensation as defined in subchapter 4 of this chapter, other than income and benefits from the governmental body to which he or she is duly entitled, for the performance of the duties and responsibilities of his or her office or position.

The Commission recently promulgated a set of Rules on Gifts to implement and administer Ark. Code Ann. § 21-8-801 and other statutes under its jurisdiction. The receipt of compensation by public servants is addressed in § 305 of those Rules, which provides as follows:

(a) Except as expressly provided by statute, no public servant shall receive compensation, other than income and benefits from the governmental body which he or she serves, for the performance of the duties and responsibilities of his or her office or position.

(b) It is the intent of this rule that a public servant be prohibited from receiving outside compensation for doing his or her job.

As it pertains to the receipt of compensation by public servants, the Commission, interprets Ark. Code Ann. § 21-8-801 to mean that, except as provided by statute,¹ a public servant can only be compensated for doing his or her job by the governmental body which he or she serves. In other words, a public servant cannot receive outside compensation for performing the duties and responsibilities of his or her job.

The Commission is of the opinion that activities such as drafting, introducing, debating, and voting on bills fall within the duties and responsibilities of a member of the General Assembly. Accordingly, the Commission concludes that a member of the General Assembly, whether an attorney or not, is prohibited by Ark. Code Ann. § 21-8-801 from receiving outside compensation for performing those activities.

The Commission recognizes, however, that the General Assembly is a part-time body whose members are permitted to pursue and maintain outside employment. It is the Commission's opinion that the prohibition contained in Ark. Code Ann. § 21-8-801 does not extend to all outside compensation received by a member of the General Assembly, but rather to outside compensation received for performing the duties and responsibilities of his or her office.

In accordance with the foregoing, the Commission concludes that there is nothing in the language of Ark. Code Ann. § 21-8-801 which would prohibit a member of the General Assembly from participating in the passage or defeat of a bill which would have an effect on one of his or her clients. The statute in question would serve to prohibit a member of the General Assembly from receiving outside compensation for activities such as drafting, introducing, debating, and voting on bills.

The Commission cautions, however, that there is another statute with potential applicability. That statute, Ark. Code Ann. § 21-8-304, provides, in pertinent part, as follows:

- (a) No public official or state employee shall use his position to secure special privileges or exemption for...those with whom he has a substantial financial relationship that is not available to others except as may be otherwise provided by law.

Under the foregoing statute, a member of the General Assembly is generally prohibited from using his or her position to secure special privileges or exemptions (not available to others) for those with whom the member has a substantial financial relationship. What constitutes "special privileges or exemption" and "a substantial financial relationship" are matters dependant upon the facts of a particular case.

In his advisory opinion request, Senator Webb also asked a related question concerning Senate Rule 24.07 which provides, in pertinent part, as follows:

¹ Ark. Code Ann. § 6-62-103 is an example of such a statute. It allows private contributors to endow academic chairs at state-supported colleges and universities for attracting personnel with exceptional qualifications.

A Senator shall not participate in the discussion of a question in committee, or on the floor of the Senate, or vote in committee or on the floor of the Senate on any matter in which the Senator knows:

(b) Will specifically relate to a business which employs the Senator or in which he or she receives compensation as an attorney or consultant. This prohibition does not apply when the matter provides a benefit which accrues generally to other like businesses, professions, occupations, or other groups. The Senator shall have his or her abstention noted of record.

The answer to Senator Webb's second question calls for interpretation of a Senate Rule over which the Commission has no jurisdiction. Accordingly, that question will not be addressed by the Commission.

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

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By: 
Graham F. Sloan, Director