

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2000-EC-004 Issued April 21, 2000

The Ethics Commission has received an advisory opinion request from E. Lamar Pettus, who serves on the board of an improvement district named Off-Street Parking Development District Number I of the City of Fayetteville, Arkansas. In his request, Mr. Pettus seeks clarification concerning the filing of a Statement of Financial Interest ("SFI") by members of the board of an improvement district.

Although the Commission has addressed this topic in previous opinions,¹ uncertainty persists with respect to which improvement district board members are required to file a SFI. In that regard, the Commission received numerous inquiries this past January² from persons serving on the boards of improvement districts, attorneys representing improvement districts, and county clerks.

The persons required to file a SFI are listed in Ark. Code Ann. § 21-8-701(a), which provides as follows:

The following persons shall file a written Statement of Financial Interest:

- (1) A public official, as defined in § 21-8-402(16);
- (2) A candidate for elective office;
- (3) A municipal judge or city attorney, whether elected or appointed;
- (4) Any agency head, department director, or division director of state government;
- (5) Any public appointee to any state board or commission who is authorized or charged by law with the exercise of regulatory authority or is authorized to receive or disburse state or federal funds;
- (6) All persons who are elected members of a school board or who are candidates for a position on a school board; and

¹ See, e.g., Advisory Opinion Nos. 92-EC-022, 93-EC-005, and 99-EC-010.

² Pursuant to Ark. Code Ann. § 21-8-701(c)(1)(A), the SFI for calendar year 1999 was due by January 31, 2000.

(7) Any person appointed to one (1) of the following types of regional, municipal, or county boards or commissions:

- (A) A planning board or commission;
- (B) An airport board or commission;
- (C) A water or sewer board or commission;
- (D) A utility board or commission; or
- (E) A civil service commission.

Prior to the passage of Act 553 of 1999, the persons listed in subsection (a)(7) were required to file a "Code of Ethics" disclosure form pursuant to Ark. Code Ann. §§ 21-8-305 through 21-8-309. Those statutes were repealed by §§ 31-35 of Act 553 of 1999 and such persons are now required to file a SFI. Act 1172 of 1999 added the word "regional" to subsection (a)(7).

The question of whether or not a person who is a member of the board of an improvement district is required to file a SFI depends upon whether he or she falls within one of the seven (7) categories listed in subsection (a) of Ark. Code Ann. § 21-8-701. If so, then the person would be required to file a SFI.

It is clear to the Commission that being a board member of an improvement district would not cause a person to fit into the categories listed in subsections (a)(2)-(6). Thus, the question becomes whether a person who holds a position on the board of an improvement district is required to file a SFI by either subsection (a)(1) or (7).

Ark Code Ann. § 21-8-701(a)(1)

The first such provision, Ark. Code Ann. § 21-8-701(a)(1), requires that a SFI be filed by a "public official." That term is defined in Ark. Code Ann. § 21-8-402(16) to mean the following:

a legislator or any other person holding an elective office of any governmental body, whether elected or appointed to the office, and shall include such persons during the time period between the date they were elected and the date they took office.

The term "governmental body" is statutorily defined in Ark. Code Ann. § 21-8-402(6) to mean the following:

any office, department, commission, council, board, committee, legislative body, agency, or other establishment of the executive, judicial, or legislative branch of the state, municipality, county, school district, improvement district, or any political district or subdivision thereof. (emphasis added)

Based upon the foregoing, a person holding an elected position on the board of an improvement district meets the definition of public official.³ Accordingly, such a person is required to file a SFI.

Records on file in the Fayetteville City Clerk's office reflect that Off-Street Parking Development District Number I of the City of Fayetteville was established pursuant to Ordinance No. 2292, which was passed on December 7, 1976. Section 2 of that ordinance provides, in pertinent part, that "Pearl Clinehens, Frank W. Lewis, and Dr. C. Garland Melton, Jr. are hereby named Commissioners, who shall compose the Board of Improvement for said District."

The ordinance in question was passed in conformity with Ark. Stat. Ann. § 20-109 (now codified as Ark. Code Ann. § 14-88-301). A review of that statute shows that it provides, in pertinent part, as follows:

In the ordinance creating a municipal improvement district, the city or town council shall appoint three (3) owners of real property therein as commissioners, who shall compose a board of improvement for the district. (emphasis added)

Positions on the board of Off-Street Parking Development District Number I of the City of Fayetteville are appointive not elective. Accordingly, the fact that a person serves on that board would not cause such person to meet the definition of public official.

In Advisory Opinion No. 99-EC-010, the Commission addressed the question of whether or not members of the board of a suburban improvement district formed under Ark. Code Ann. § 14-92-201 et seq. were required to file a SFI. Because members of such boards are elected, see Ark. Code Ann. § 14-92-204(b), the Commission concluded that they met the definition of public official and were required to file a SFI.⁴

Ultimately, the question of whether or not a person who serves on the board of an improvement district meets the definition of public official depends on whether the position he or she holds is elective or appointive. To make that determination requires a review of the statute under which the particular improvement district was formed.

In the event the person holds an elective position on an improvement district, then he or she would meet the definition of public official and thus be required to file a SFI. If,

³ A person elected to the board of an improvement district would meet the definition of a public servant as would a person appointed to fill the remainder of the term of an elected board member.

⁴ The Brief Answer section of Advisory Opinion No. 99-EC-010 stated that "[m]embers of the board of commissioners of all suburban improvement districts are required to file an annual statement of financial interest." That statement was potentially misleading and should be read to mean that members of the board of all suburban improvement districts formed under Ark. Code Ann. § 14-92-201 et seq. are required to annually file a SFI.

on the other hand, the person holds an appointive position, then he or she would not meet the definition of public official.

Ark Code Ann. § 21-8-701(a)(7)

The second provision to be discussed is Ark. Code Ann. § 21-8-701(a)(7). Pursuant thereto, a person is required to file a SFI if he or she is appointed to a municipal, county or regional (i) planning board or commission, (ii) airport board or commission, (iii) water or sewer board or commission, (iv) utility board or commission, or (v) civil service commission.

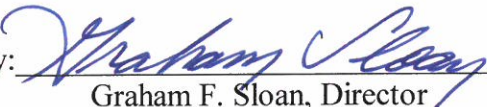
Improvement districts can be formed under a number of different statutes for a variety of purposes. For example, Ark. Code Ann. § 14-88-202 authorizes any city of the first or second class or incorporated town to create a municipal improvement district for local improvements of a public nature including buying or constructing sewers; constructing facilities for the off-street parking of vehicles; or constructing sidewalks, sidewalk overhead covers, benches, recreational areas, and other facilities pertaining to the construction, maintenance, and utilization thereof.

It is the Commission's opinion that Ark. Code Ann. § 21-8-701(a)(7) requires the filing of a SFI by persons who hold an appointive position on one of the five (5) enumerated types of boards or commissions. To the extent that an improvement district has been created for purposes of constructing or maintaining an airport, a water or sewer system, or a utility, a person appointed to serve on the board of such improvement district is required to file a SFI.

In summary, a person who holds an elective position on the board of an improvement district is required to file a SFI whether elected or appointed to the position. A person who holds an appointive position on the board of an improvement district is not required to file a SFI unless the improvement district was formed for purposes of building or operating an airport, a water or sewer system, or a utility.

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

ARKANSAS ETHICS COMMISSION

By: 
Graham F. Sloan, Director