

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2000-EC-014

Issued December 15, 2000

The Ethics Commission has received a written advisory opinion request from Senator George Hopkins. Therein, Senator Hopkins asks a number of questions concerning the required contents of a Statement of Financial Interest ("SFI").

QUESTION #1:

Whether an asset received by inheritance or devise is required to be reported as a "holding" on a SFI?

ANSWER:

The required contents of a SFI are set forth in Ark. Code Ann. § 21-8-701. Pursuant to subdivision (d)(4) of that statute, a public servant filing a SFI is required to disclose the following:

(A) The name of every business in which the public servant and his or her spouse, or any other person for the use or benefit of the public servant or his or her spouse, have an investment or holdings of over one thousand dollars (\$1,000) at fair market value as of the last day of the previous calendar year; and

(B) In addition thereto, identification of each source as described above which has a fair market value of over twelve thousand five hundred dollars (\$12,500) as of the last day of the previous calendar year.

It is the Commission's opinion that the foregoing statutory provision requires disclosure of the name of each business in which a public servant filing a SFI, his or her spouse, or any other person for the use or benefit of the public servant or his or her spouse has an investment or holding. Items such as stocks, bonds and other securities must be disclosed even if such items were received by inheritance or devise.

QUESTION #2:

If so, may a person who has received an inheritance which consists of more than one item report the value of the items in the aggregate since such items were received as a single inheritance or is the value of each item subject to disclosure?

ANSWER:

With respect to stocks, bonds and other securities, disclosure of each item worth more than \$1,000 is required except that different types of securities issued by the same authority, such as U.S. Treasury obligations or bonds, may be reported in the aggregate.

In the case of mutual funds, it is not necessary to disclose each investment held by the fund provided that the holdings of the fund are a matter of public record and the public servant has no ability to exercise control over the specific holdings. In such situations, the public servant may simply disclose the fund itself as a holding.

If the holdings of a mutual fund are not a matter of public record or control exists over the specific holdings, each holding worth more than \$1,000 must be disclosed. Moreover, in situations where control exists over the specific holdings of a mutual fund, disclosure of those holdings is required regardless of whether or not control is actually exercised.

QUESTION #3:

In the event the value of each separate item of an inheritance is subject to disclosure, may a person legally avoid reporting the value of each separate item by transferring the items to a revocable trust prior to the end of the calendar year in which received?

ANSWER:

Pursuant to Ark. Code Ann. § 21-8-701(d)(4), a public servant is required to disclose the name of each investment or holding over \$1,000 held not only by the public servant and his or her spouse, but also "any other person for the use or benefit of the public servant or his or her spouse." The fact that multiple investments or holdings are transferred to a revocable trust would not obviate the requirement that each separate investment or holding worth more than \$1,000 be reported.

QUESTION #4:

May a person required to file a SFI legally avoid specific reporting requirements on assets which were not inherited by placing such assets in a revocable trust?

ANSWER:

The fact that assets are placed in a revocable trust does not relieve a public servant filing a SFI from providing disclosure concerning each investment or holding worth more than \$1,000.

QUESTION #5:

May a person avoid reporting the amount of income received from each of his or her assets by placing such assets in a revocable trust as a source of income?

ANSWER:

Pursuant to Ark. Code Ann. § 21-8-701(d)(3), a public servant filing a SFI is required to disclose the following:

(A) Identification of each employer and of each other source of income amounting to more than one thousand dollars (\$1,000) annually received by the person or his or her spouse in their own names, or by any other person for the use or benefit of the public servant or his or her spouse, and a brief description of the nature of the services for which the compensation was received, except that this subdivision (d)(3) shall not be construed to require the disclosure of individual items of income that constitute a portion of the gross income of the business or profession from which the public servant or his or her spouse derives income; and

(B) In addition thereto, identification of each source of income as described above of more than twelve thousand five hundred dollars (\$12,500), except that this shall not be construed to require the disclosure of individual items of income that constitute a portion of the gross income of the business or profession from which the public servant or his or her spouse derives income.

It is the Commission's opinion that the foregoing statutory provision requires disclosure of the name of each source of income amounting to more than \$1,000 received by a public servant filing a SFI or his or her spouse in their own names, or by any other person for the use or benefit of the public servant or his or her spouse. The fact that assets are placed in a revocable trust would not relieve the public servant from listing each asset which produces annual income in excess of \$1,000 as a source of income.

QUESTION #6:

May a person list himself or herself as a source of income over \$12,500 on a SFI and provide a notation that the income is rental income and investment income without specifying the source of rental income or investment income?


ANSWER:

Pursuant to Ark. Code Ann. § 21-8-701(d)(3), a public servant filing a SFI is required to identify each source of annual income in excess of \$1,000, but is not required to disclose individual items of income which constitute a portion of the gross income of the business or profession from which the public servant or his or her spouse derives income. For example, an accountant is not required to list each of his or her individual clients.

There are few, if any, situations in which a public servant would simply list himself or herself as a source of income. In the situation where a public servant derives income of more than \$1,000 from a business which he or she owns, then the name of the business should be reported as a source of income. Likewise, income received from a profession should be reported under the public servant's professional name, *e.g.*, John Doe, CPA or Doe Accounting Firm.

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

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