

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 2002-EC-003 Issued April 19, 2002

The Ethics Commission has received a written request for an advisory opinion from Mr. Stuart W. Hankins who represents the Maumelle Suburban Improvement District No. 500 ("MSID"). In his advisory opinion request, Mr. Hankins asks whether or not the commissioners of the MSID are required to file a Statement of Financial Interest ("SFI") on an annual basis.

This general topic has been addressed by the Ethics Commission previously.<sup>1</sup> However, since there are numerous ways to form an improvement district and select commissioners<sup>2</sup>, the question of whether or not the commissioners of a particular improvement district must file a SFI is a factual determination which must be decided on a case-by-case basis.

Pursuant to Ark. Code Ann. § 21-8-701(a), the following types of persons are required to file a SFI:

- (1) A public official, as defined in § 21-8-402[17];
- (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;
- (7) All public and charter school superintendents;
- (8) Directors of educational cooperatives; and
- (9) 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;

<sup>1</sup> See, e.g., Advisory Opinion Nos. 92-EC-022, 93-EC-005, 99-EC-101, and 00-EC-004.

<sup>2</sup> See chapters 5 – 24, Title 14 of the Arkansas Code.

- (D) A utility board or commission; or
- (E) A civil service commission.

In Advisory Opinion No. 2000-EC-004, the Commission concluded that a board member of an improvement district does not fall within the categories listed in subsections (a)(2) through (a)(6). In 2001, an amendment added subsections (a)(7) and (a)(8) to Ark. Code Ann. § 21-8-701. It is clear that commissioners of improvement districts do not fall within either of these new categories. Therefore, if a commissioner of an improvement district is required to file a SFI it would be by virtue of (a)(1) or (a)(9).

The first application of the facts will be to subsection (a)(1) which provides that a SFI is required to be filed by a “public official.” The term “public official” is defined in Ark. Code Ann. § 21-8-402(17) to mean:

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 defined in Ark. Code Ann. § 21-8-402(6). The definition includes:

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.

The definition of “governmental body” specifically includes an improvement district. Accordingly, a person holding an elected position on the board of an improvement district would meet the definition of a public official.

Based upon the information submitted by Mr. Hankins, the MSID was formed by petition and ensuing order of the Pulaski County Judge in December of 1975. This improvement district was organized under Ark. Stat. Ann. § 20-704, which is now codified at Ark. Code Ann. § 14-92-219. The purposes of the MSID include providing water and sewer services to the district. The manner in which commissioners are chosen is governed by Ark. Stat. Ann. § 20-703.<sup>3</sup>

In accordance with said statute, the first commissioners were appointed by the county judge, but subsequent commissioners were “selected” by the remaining commissioners. Because they do not hold an elective office, the commissioners of the MSID do not meet the definition of a “public official” and would not be required to file a SFI under Ark. Code Ann. § 21-8-701(a)(1).

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<sup>3</sup> The “1981 amendments” to suburban improvement districts were not made retroactive to previously formed improvement districts. See Ark. Code Ann. § 14-92-202(a) and § 14-92-209(c). Thus, Ark. Stat. Ann. § 20-703 is the controlling law of the MSID.

The second category which must be reviewed is Ark. Code Ann. § 21-8-701(a)(9). This subsection requires that any person who is appointed to certain types of regional, municipal, or county boards or commissions must file a SFI. Those types of boards or commissions are: (1) planning boards or commissions; (2) airport boards or commissions; (3) water or sewer boards or commissions; (4) utility boards or commissions; and (5) civil service commissions.

In the information Mr. Hankins provided, he stated that the MSID provides water and sewer services for the district. Because this is one of the types of boards or commissions enumerated in Ark. Code Ann. § 21-8-701(a)(9), commissioners of the MSID would be required file a SFI if appointed to the board. The original commissioners of the improvement district were, in fact, appointed. However, the current commissioners were not appointed to this improvement district but rather "selected" by the remaining commissioners in accordance with Ark. Stat. Ann. § 20-703. Accordingly, the Ethics Commission concludes that the current commissioners of the MSID are not required to file a SFI.

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

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