

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2005-EC-002 Issued February 18, 2005

The Arkansas Ethics Commission has received a written advisory opinion request from Sam Ledbetter, State Representative-District 37. The question asked is whether a legislator who is also an employee of a law firm employed by a party with an interest in the outcome of a piece of legislation may participate in the legislative process surrounding such legislation.

According to the opinion request, SB230 is proposed legislation which would limit Central Arkansas Water's ability to condemn property for watershed protection. Mr. Ledbetter has served as legal counsel for Central Arkansas Water in a lawsuit involving condemnation of land around Lake Maumelle for watershed protection.

Mr. Ledbetter has advised the staff of the Commission that he is not receiving compensation from any party besides the State of Arkansas for his efforts in the General Assembly, and he has also disclaimed any income his law firm receives from Central Arkansas Water for legal services performed during the period of time beginning with the date this legislation was introduced through the date that final action is taken. Additionally, no member of his law firm is being compensated for any legal services rendered in connection with this particular legislation.

In reviewing the statutes under the Ethics Commission's jurisdiction, it is noted that there is no statute which expressly prohibits a legislator from voting on matters, or otherwise participating in the legislative process, which may relate to an interest of his or her employer. Ark. Code Ann. § 21-8-1001 prohibits board members of entities receiving state funds from voting on or attempting to influence an official decision if the member has a "pecuniary interest in the matter under consideration" or if the rule or regulation "exclusively benefits the member." This statute is not applicable, however, because the General Assembly is not a "board."

It bears mentioning that Ark. Code Ann. § 21-8-803 sets forth reporting requirements applicable to a legislator who is required to take an action in the discharge of his or her official duties that may affect his or her financial interest. This statute requires the reporting of potential conflicts in the event action may affect the legislator's

“financial interest or cause financial benefit or detriment to him, or a business in which he or she is an officer, director, stockholder owning more than ten percent (10%) of the stock of the company, owner, trustee, partner, or employee, which is distinguishable from the effects of the action on the public generally or a broad segment or the public.”

In such situations, the legislator is required to:

- (1) Prepare a written statement describing the matter requiring action and stating the potential conflict; and
- (2) (A) Deliver a copy of the statement to the appropriate official to be filed with the statement of financial interest;
(B) The copy of the statement may be delivered in person by the public official, by mail, or by a person authorized by the public official to deliver the copy.

The obligation to report a potential conflict of interest under this section arises as soon as the legislator becomes aware of the conflict. If the statement of financial interest filed by the legislator makes the conflict readily apparent, then no report need be filed.

Another statute of potential applicability is Ark. Code Ann. § 21-8-304, which contains a general prohibition against a public official using or attempting to use his or her official position to secure special privileges or exemption for himself or herself or his or her spouse, child, parent, or other person standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that is not available to others except as may be otherwise provided by law.


Whether or not it would violate Ark. Code Ann § 21-8-304 for a legislator to participate in the legislative process regarding legislation which would directly benefit his employer depends upon the facts of the particular situation. Factors to be considered include the pecuniary interest the legislator may have in the employer’s business and whether or not his vote was determinative on the matter under consideration.

Based on the facts presented in the opinion request and the applicable statutes referenced herein, it is the Commission’s opinion that Mr. Ledbetter may participate in the legislative process surrounding the subject legislation, provided the potential conflict of interest is readily apparent on his statement of financial interest or he has filed a statement reporting the potential conflict pursuant to Ark. Code Ann. § 21-8-803.

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

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By:


Rita S. Looney, Chief Counsel