

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2005-EC-005 Issued March 18, 2005

The Arkansas Ethics Commission has received a written advisory opinion request from Timothy W. Murdoch, an attorney practicing in Russellville, Arkansas. The question asked is whether or not a regional water distribution district can sell real property which is owned by the district, to one of its employees for fair market value.

According to the opinion request, the Tri-County Regional Water Distribution District is an entity whose creation is authorized pursuant to Ark. Code Ann. § 14-116-101 et seq. Although the statute permits the district to sell real estate, Mr. Murdoch states that he has not found any statute which specifically addresses the sale of property from a water distribution district to an employee.

A review of the statutes under the Ethics Commission's jurisdiction reflects that there is no statute which expressly addresses the sale of property by a water distribution district to one of its employees. While Arkansas law does address sales or contracts between members of certain governmental bodies to the governmental body or other establishment of the State of Arkansas,¹ the Commission is not aware of a provision which relates to the sale of real property from the governmental body to one of its employees.

Ark. Code Ann. § 21-8-304 contains a general prohibition against a public official or state employee 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. The term "special privileges or exemption" is defined in § 400(p) of the Commission's Rules on Conflicts to mean: a particular benefit or

¹ Ark. Code Ann. § 21-8-901 requires disclosure of sales from members of the General Assembly, his or her spouse, or any business in which such person or his or her spouse is an officer, director, or stockholder owning more than ten percent (10%) of the stock to any establishment of the State of Arkansas. Ark. Code Ann. § 6-24-101 et seq. sets forth the requirements for contracts between school district employees and/or an employee's family member and the school district.


advantage unfairly extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others.

Whether or not it would violate Ark. Code Ann § 21-8-304 for a state employee to purchase real property from a water distribution district depends upon the facts of the particular situation. Factors to be considered include the manner in which the sale took place (i.e., property appraised, sale advertised, etc.) and whether or not his offer was the only and/or best offer received by the district.

Based on the facts presented in the opinion request and the applicable statutes referenced herein, it is the Commission's opinion that a sale from a water distribution district to an employee is not prohibited so long as the employee has not used his position to secure a special privilege or exemption in connection with the transaction.

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