

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2005-EC-007 Issued April 15, 2005

The Arkansas Ethics Commission is issuing this advisory opinion on its own initiative to address how to determine whether or not a Statement of Financial Interest ("SFI") is required to be filed by members of municipal and county boards and commissions.

As previously discussed¹, the question of whether or not members of a specific board or commission are required to file a SFI depends upon whether such members fall within one of the categories listed in Ark. Code Ann. § 21-8-701(a). Pursuant to that subsection, 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;²
- (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;

¹ Advisory Opinion Nos. 2003-EC-001, 2002-EC-003 and 2000-EC-004.

² Act 1284 of 2005 amends this provision to eliminate the requirement of filing a SFI when the appointee is appointed to a state board or commission which is not charged by law with the exercise of regulatory authority and which receives or disburses state or federal funds only in the form of mileage reimbursement for members attending meetings of the board or commission.

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

If a person is *elected* to serve on a municipal or county board or commission, then he or she is required to file a SFI pursuant to Ark. Code Ann. § 21-8-701(a)(1) as a “public official.” That term 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) as:

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.

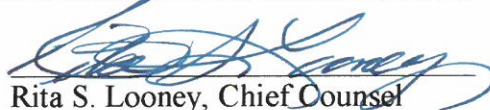
Based upon the foregoing, a person holding an *elected* position on any type of board or commission meets the definition of “public official” and is thereby required to file a SFI. When positions on a board or commission are not elective positions, the fact that a person serves on the board does not cause such person to meet the definition of “public official.”

The Commission wants to clarify that to hold an elective office does not require that one be elected on a written ballot at a public polling location on an election day. One can hold an “elective” office if elected by a show of hands or voice vote in a meeting of interested persons. A review of the particular board or commission’s enabling legislation is required to determine whether a person who serves on that board meets the definition of public official and thus is required to file a SFI.

In the event a person is *appointed* to serve on a municipal or county board or commission, then he or she is required to file a SFI only if the board or commission is one of the five types of boards or commissions enumerated in § 21-8-701(a)(9). Those types of boards or commission are as follows: (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. If a person holds an appointive position on a type of municipal or county board or commission not listed in § 21-8-701(a)(9), then he or she would not be 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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By: 
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