

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2005-EC-012 Issued August 19, 2005

The Arkansas Ethics Commission has received a written advisory opinion request from Mr. Winston F. Simpson, a school superintendent employed by a school district within the state of Arkansas. The question asked is whether or not it would be a conflict of interest for him to simultaneously serve as an Arkansas school superintendent and as a marketing consultant for Energy Education, Inc.

According to the opinion request, Mr. Simpson's role as a marketing consultant would be fulfilled outside of his regular contracted workdays with the school district, with the exception of occasional phone calls. The request further states that the school district by whom Mr. Simpson is employed would not be a client of Energy Education, Inc., and the school board would approve of his consultant role.

A review of the statutes under the Ethics Commission's jurisdiction reflects that there is no statute which expressly addresses the ability of a school district employee to also work as a consultant for a company whose clients are school districts other than the district by whom he is employed. Because a school superintendent is an employee of the school district and not an employee of the state of Arkansas, the two provisions which address potential conflicts of interest on the part of state employees (Ark. Code Ann. § 21-8-304(a) and (b)) are not applicable. Likewise, because a superintendent is not a school board member, the conflicts of interest provision set forth in Ark. Code Ann. § 21-8-1001 does not apply.

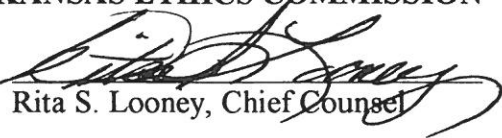
A school superintendent is, however, a "public employee" (an individual who is employed by a governmental body) and a "public servant" (all public officials, public employees, and public appointees) as defined in Ark. Code Ann. §§ 21-8-401(16)(A) and (18). Pursuant to Ark. Code Ann. § 21-8-801(a)(2), a public servant is prohibited from receiving compensation other than income and benefits from the governmental body to which he is duly entitled, for the performance of the duties and responsibilities of his office or position. A public servant is also prohibited from purposely using or disclosing confidential government information acquired by him in the course of his official duties, to secure anything of material value or benefit for himself or his family. § 21-8-801(a)(2).

It is the Commission's opinion that an employee of a school district who privately consults for a company which serves other school districts is not specifically prohibited from participating in such arrangement pursuant to the statutes under its jurisdiction. Any school district employee should be mindful of the above-referenced provisions, as well as any additional provisions within the jurisdiction of the Arkansas Department of Education, as they may be applicable to the situation described in the opinion request. Additionally, Arkansas law requires that superintendents file a written Statement of Financial Interest on an annual basis, and such filing would disclose the described consulting relationship if the income was more than \$1,000 annually.

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