

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2006-EC-001 Issued January 20, 2006

The Ethics Commission has received a written request for an advisory opinion from Mr. Steven Parker who is the Director of the Boston Mountain Solid Waste District. In his advisory opinion request, Mr. Parker asks whether or not the board members of that particular entity are required to file a Statement of Financial Interest ("SFI") on an annual basis.

It is the Commission's understanding that the regional solid waste management district was created pursuant to Ark. Code Ann. § 8-6-701 *et seq.* This statute renamed the eight regional solid waste planning districts as "regional solid waste management districts" and set forth the procedure for establishing the governing board of the districts.

As previously discussed¹, the question of whether or not the board members of the solid waste management district are required to file a SFI depends upon whether such members fall within one of the categories listed in of 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;
- (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:

¹ Advisory Opinion Nos. 2005-EC-007, 2003-EC-001, 2002-EC-003 and 200-EC-004.

- (A) A planning board or commission;
- (B) An airport board or commission;
- (C) A water or sewer board or commission;
- (D) A utility board or commission; or
- (E) A civil service commission.

It is clear that being a member of the board of an management district created in accordance with Ark. Code Ann. § 8-6-701 would not cause a person to fit into the categories listed in subdivisions (a)(2)-(8) of § 21-8-701. Thus, the question becomes whether a person who holds a position on the board of such a district is required to file a SFI by either subdivision (a)(1) or (9).

The first such subdivision, Ark. Code Ann. § 21-8-701(a)(1), requires that a SFI be filed by a "public official." That term is defined in Ark. Code Ann. § 21-8-402(17) to mean the following:

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. (Emphasis supplied.)

A review of the statute shows that each district is to be governed by a management board which is to be composed of representatives of the counties and of the larger cities within the district. Ark. Code Ann. § 8-6-703(b)(1). The county judge of each county within the district and the mayor of each city entitled to a representative shall serve on the board, unless the county judge or mayor appoints a member to the board, with confirmation of the county or city. Vacancies on the board are filled by appointment of the mayor or county judge. Ark. Code Ann. § 8-6-703(c)(4).


In accordance with the foregoing, positions on the board of the district are appointive, not elective. Accordingly, the fact that a person serves on a solid waste board would not cause such a person to be required to file a SFI by meeting the definition of a public official.

The second provision to be addressed is Ark. Code Ann. § 21-8-701(a)(9). Pursuant thereto, a person is required to file a SFI if he or she is appointed to certain types of regional, municipal, or county boards or commissions. Those types of boards or commissions are (i) planning boards or commissions, (ii) airport boards or commissions, (iii) water or sewer boards or commissions, (iv) utility boards or commissions, or (v) civil service commissions.

Although the solid waste management district is a regional board, it is not one of the specific types of regional, municipal, or county boards or commissions enumerated in § 21-8-701(a)(9). Accordingly, it is the Commission's opinion that a board member of a regional waste management district is not required to file a SFI by virtue of his or her status as a member of that board.

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

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By: 

Rita S. Looney, Chief Counsel