

ARKANSAS ETHICS COMMISSION

910 West Second Street, Suite 100
Post Office Box 1917
Little Rock, Arkansas 72203-1917
(501) 324-9600 Fax (501) 324-9606
Toll Free (800) 422-7773

Joe Ball
Chairman

Larry Ross
Vice Chairman

Stuart Vess
Elaine Black
Catherine Johnson
Commissioners



Graham F. Sloan
Director

Rita S. Looney
Chief Counsel

Robert L. Roddey
Staff Attorney

Todd Elder
Teresa Keathley
Directors of Compliance

ADVISORY OPINION NO. 2007-EC-004 Issued August 17, 2007

The Arkansas Ethics Commission has received a written advisory opinion request from Bill C. Poynter, a member of the Arkansas Oil and Gas Commission. In his opinion request, Mr. Poynter asks whether it is permissible for a member of a state commission to be involved in decision making pertaining to a company or corporation in which the member is a minor common stock owner and whose matters are under consideration by the commission.

Mr. Poynter refers to Section 403 of the Arkansas Ethics Commission's Rules on Conflicts, and goes on to state that it "would seem that an interpretation of [Section] 403...would allow such an individual to participate as a member of a large class if the member has disclosed his stock interest in a financial statement filed with the Secretary of State." Section 403 of the Rules on Conflicts is taken directly from Ark. Code Ann. § 21-8-1001 which provides as follows:

(a)(1) No member of a state board or commission or board member of an entity receiving state funds shall participate in, vote on, influence, or attempt to influence an official decision if the member has a pecuniary interest in the matter under consideration by the board, commission, or entity.

(2) A member of a state board or commission or board member of an entity receiving state funds may participate in, vote on, influence, or attempt to influence an official decision if the only pecuniary interest that may accrue to the member is incidental to his or her position or accrues to him or her as a member of a profession, occupation, or large class to no greater extent than the pecuniary interest could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

(b) No member of a state board or commission or board member of an entity receiving state funds shall participate in any discussion or vote on a rule or regulation that exclusively benefits the member.

The first subsection of this particular statute contains a general prohibition against a member of a state board or commission participating in an official decision if the member has a "pecuniary interest in the matter under consideration." An exception to that prohibition is then stated in the second subsection, which allows participation in the decision making process if the only pecuniary interest to the member accrues to him or her "as a member of a profession, occupation or large class." To answer the question posed by Mr. Poynter, the Commission is called upon to determine whether a minor stock holder in a company or corporation is a member of a "large class" within the meaning of the referenced provision.

While it is likely true that Mr. Poynter may be one of many stockholders of common stock in this particular company, the fact that he is one of many does not cause him to be a member of a "large class" as that phrase is interpreted by the Commission. It is the Commission's opinion that the type of "large class" referenced in the statute is one which would include, for example, stockholders in *all* utility companies, not merely a large group of stockholders in *one* company.

Mr. Poynter has also referenced the Statement of Financial Interest ("SFI"), which is required to be filed by all members of state boards or commissions, as well as other public servants. Pursuant to Ark. Code Ann § 21-8-701, the SFI requires disclosure of every business in which the public servant or spouse has an investment or holding of more than one thousand dollars (\$1,000)¹. However, the disclosure of such an investment on the member's SFI is not the determining factor in deciding whether a *board or commission member* may participate in the matter under consideration.

A member of a *legislative* body who is required to take an action in the discharge of his or her official duties that may affect his or her financial interest or the interest of a business in which he or she is an officer, director, stockholder (more than 10%), owner, trustee, partner or employee *is* permitted to take such action so long as the SFI filed by the *legislator* makes the conflict readily apparent. See Ark. Code Ann. § 21-8-803(a) and (c). Otherwise, the legislator is required to prepare a written statement describing the matter requiring action stating the potential conflict, and deliver a copy of such statement to the appropriate official to be filed with the SFI. Thus, a legislator is permitted to participate in matters which may affect his or her financial interest provided the disclosure of the potential conflict has been made.

With respect to members of state boards or commissions, the existence of a pecuniary interest in the outcome generally serves to prohibit a member from participating in a matter under consideration, notwithstanding the value of the interest or whether the interest is disclosed or not. That prohibition applies unless the pecuniary interest is incidental to his or her position or accrues to all other members of a profession, occupation or large class. As previously stated, the Commission has concluded that shareholders in one particular company do not constitute a large class.

¹ A "minor" stockholder would likely not be required to disclose his holdings because the value would not meet the monetary threshold for disclosure.

It is noted that the referenced statutes treat elected legislators differently than appointed board or commission members. Such difference is presumed to have been intended based upon the accountability inherent in elected, as opposed to appointed, positions.

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

ARKANSAS ETHICS COMMISSION

By: 
Rita S. Looney, Chief Counsel