

ARKANSAS ETHICS COMMISSION

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Opinion No. 91-EC-006

June 25, 1991

Mr. Bobby Tullis
Representative
P. O. Box 250945
Little Rock, AR 72225

Dear Mr. Tullis:

On June 21, 1991, this office received your request for an official opinion, under authority of Initiated Act 1 of 1988 (as amended) and Initiated Act 1 of 1990. Your question, which deals with possible conflicts of interest between one's duty as a legislator and his employment by a major corporation is as follows:

"If an elected official or legislator is hired as a contract employee (non-lobbying) of a corporation, what must he do to be in compliance with Arkansas' campaign and conflict of interest laws?

Your question has been answered, in large part, by two opinions issued by the Arkansas Attorney General pursuant to authority of Initiated Act 1 of 1988 (as amended) on May 11, 1989, and September 12, 1989. This Commission adopts the conclusions reached in these opinions Nos. 89-E-19 and 89-E-31, which have been attached to this opinion.

The Attorney General's opinions deal specifically with conflict of interest, the first opining that Initiated Act 1 of 1988 does not dictate that a legislator with a potential conflict must abstain from voting on measures affecting his or her financial interest. That opinion then details the steps a legislator dictated by law has to take when he or she has a potential conflict of interest. The latter opinion deals specifically with the Statement of Potential Conflict of Interest, required under ACA Section 21-8-803, when a legislator is required to take an official action which

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might affect his financial interest. That opinion concludes that the filing of the form must depend upon the individual circumstances of the particular legislator and the specific measure presented.

In addition, to fully respond to your request, ACA Section 21-8-701 states:

(a) The following person shall file
a written statement of financial interest:

(1) A public official, as defined in
subchapter 4 of this chapter

(c) The statement of financial interest
shall be filed by January 31 of each year . . .
The statement of financial interest shall
include the following:

(2) Identification of each employer and
of each other source of income amounting
to more than one thousand dollars (\$1,000)
annually received by the person or his or
her spouse in their own names, or by any
other person for the use or benefit of the
public servant or his or her spouse, and a
brief description of the nature of the
services for which the compensation was
received, except that this paragraph shall
not be construed to require the disclosure
of individual items of income that constitute
a portion of the gross income of the business
or profession from which the public servant
or his or her spouse derives income; and in
addition thereto, shall identify each source
of income as described above of more than
twelve thousand five hundred dollars (\$12,500)
except that this shall not be construed to
require the disclosure of individual items
of income that constitute a portion of the
gross income of the business or profession
from which the public servant or his or her
spouse derives income;

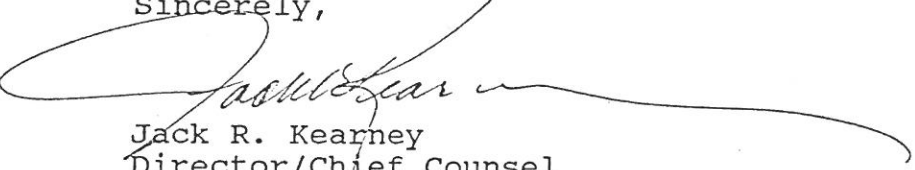
(3) The name of every business in which the
public servant and his or her spouse, or any
other person for the use or benefit of the
public servant or his or her spouse, have
an investment or holdings of over one thousand

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dollars (\$1,000) at fair market value as of the date of the statement, and in addition thereto, shall identify each source as described above which has a fair market value of over twelve thousand five hundred dollars (\$12,500) on the date of the statement;

It would appear then, and it is my opinion that a legislator employed by a corporation must report that fact on his Statement of Financial Interest, and should a potential conflict arise as to any measure before the legislature, he must file a Statement of Potential Conflict of Interest. And finally, if it appears to the legislator that there is an actual conflict between the measure before the legislature and his or her financial interest, he or she should abstain from voting.

Sincerely,



Jack R. Kearney
Director/Chief Counsel

JRK/at



STEVE CLARK
ATTORNEY GENERAL

STATE OF ARKANSAS
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200 TOWER BUILDING
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LITTLE ROCK, ARKANSAS 72201

(501) 682-2007

Opinion No. 89-E-31

September 12, 1989

The Honorable Neely Cassady
State Senator
P. O. Box 1810
Nashville, Arkansas 71852

Dear Senator Cassady:

You have requested an opinion under the authority granted in Initiated Act 1 of 1988 which is cited as "The Disclosure Act for Lobbyist and State Officials".

Your question pertains to the Conflict of Interest section of Initiated Act 1 of 1988 and you have attached to your request a form entitled Statement of Potential Conflicts of Interest. You have asked for an opinion as to whether or not the attached statement would comply with the provisions of Initiated Act 1 of 1988 in the event there was a conflict of interest between pending legislation and the businesses you have named in the attachment.

Section 21-8-803 of Initiated Act 1 of 1988 provides:

A member of the General Assembly who is required to take an action in the discharge of his official duties that may affect his financial interest or cause financial benefit or detriment to him, or a business in which he or she is an officer, director, stockholder owning more than 10% of the stock of the company, owner, trustee, partner or employee, which is distinguishable from the effects of the action on the public generally

or broad segment of the public shall:

1. Prepare a written statement describing the matter requiring action and stating the potential conflict;
2. Deliver a copy of the statement to the Secretary of State to be filed with the Statement of Financial Interest. The copy of the statement may be delivered in person by the public official, by mail, or by a person authorized by the public official to deliver the copy.
3. The obligation to report a potential conflict of interest under this section arises as soon as the member of the General Assembly is aware of the conflict. If the statement of Financial Interest filed by the member of General Assembly makes the conflict readily apparent, then no report need be filed.

This section of Initiated Act 1 of 1988 compels the filing of a Statement of Conflict of Interest when a legislator becomes aware of a conflict between pending legislative action and the financial interests of the legislator in question. No statement need be filed, however, if the particular conflict of interest is made readily apparent by the disclosures contained in the Statement of Financial Interest. Legislators are not required to abstain when confronted with such conflict of interest. Each individual legislator must examine his or her own financial interests to determine whether or not there is a potential conflict of interest relative to pending legislative matters.

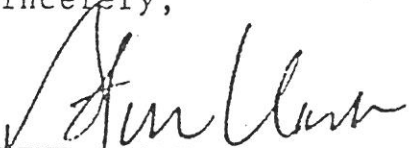
In my opinion the Statement of Potential Conflicts of Interest which you have attached to your opinion request is a sufficient Statement of Conflict of Interests for purposes of compliance with Initiated Act 1 of 1988. Such a statement would have to be filed if you were required to take an action which would either be beneficial or detrimental to your interests in any of the business entities you have described in the aforementioned Statement of Conflict of Interest, assuming your ownership interests in such business exceeds 10% or you were an office or director of the business. Again, this statement would be

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unnecessary in the event your Statement of Financial
Interest made the conflict readily apparent.

The foregoing opinion, which I hereby approve, was prepared
by Deputy Attorney General Bill McLean.

Sincerely,


STEVE CLARK
Attorney General

SC:gks



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LITTLE ROCK, ARKANSAS 72201

(501) 682-2007

Opinion No. 89-E-19

May 11, 1989

The Honorable David R. Matthews
State Representative
P.O.Box 38
Lowell, AR 72745

Dear Representative Matthews:

You have requested an opinion under the authority granted in Initiated Act 1 of 1988 which is cited as "The Disclosure Act for Lobbyists and State Officials".

You have asked the following question:

My law firm is retained by Arkansas Blue Cross Blue Shield to represent them in litigation in Washington and Benton County Circuit Courts. I handle a portion of the work and of course, derive a percentage of the profits of my law firm. Do the terms of Initiated Act 1 of 1988 dealing with conflict of interests require me to abstain from voting on any measure directly affecting Blue Cross and Blue Shield?

Section 21-8-803 of Initiated Act 1 of 1988 provides "a member of the General Assembly who is required to take an action in the discharge of his official duties that may affect his financial interest or cause financial benefit or detriment to him, or a business in which he or she is an officer, director, stockholder owning more than ten percent (10%) of the stock of the company, owner, trustee, partner or employee, which is distinguishable from the effects of the action on the public generally or a broad segment of the company shall:

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- (1) prepare a written statement describing the matter requiring action and stating the potential conflicts;
- (2) deliver a copy of the statement to the Secretary of State to be filed with the statement of financial interest. The copy of the statement may be delivered in person by the public official, by mail, or by a person authorized by the public official to deliver the copy.
- (3) The obligation to report a potential conflict of interest under this section arises as soon as the member of the General Assembly is aware of the conflict. If the statement of financial interest filed by the member of the General Assembly makes the conflict readily apparent, then no report need be filed.

In my opinion, the specific answer to your question is that you would not be required to abstain from voting on any measure directly affecting Arkansas Blue Cross and Blue Shield. If an enacted measure by the House of Representatives impacted upon Arkansas Blue Cross and Blue Shield in such a manner that would cause either financial benefit or detriment to you, the correct procedure would be to file a written statement describing the matter requiring action and stating the potential conflict with the office of the Secretary of State as outlined above in § 21-8-803 of Initiated Act 1 of 1988. You will note that the filing of this statement is not necessary if the conflict is made apparent by your filing of the required statement of financial interest.

The foregoing opinion, which I hereby approve, was prepared by Deputy Attorney General Bill McLean.

Sincerely,



STEVE CLARK
Attorney General

SC:gks