

ARKANSAS ETHICS COMMISSION

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Opinion No. 92-EC-022

October 22, 1992

Mr. Stuart W. Hankins
Hankins, Hicks & Madden
P. O. Box 5670
North Little Rock, AR 72119

Dear Mr. Hankins:

On September 10, 1992, this office received your request for an official opinion under authority of Initiated Act 1 of 1988 and Initiated Act 1 of 1990.

Your question, paraphrased, is:

Are the members of a suburban improvement district, which has authority to act for all the purposes provided for under Arkansas statute for suburban improvement districts, required to file financial disclosure documents pursuant to any statutory requirements?

Your apparently simple question is most difficult to answer, because we have competing statutes which must be interpreted before we attempt to do so. The problem of which statute takes precedence in your specific circumstance must be resolved. The final answer may require an attorney general's opinion or even the intervention of our courts.

One of the three statutes upon which a response to your request rest is:

§14-92-219. A suburban improvement district may be organized for any one (1) or more of the following purposes:

(1) To purchase, accept as a gift, or construct a waterworks system or betterments, improvements, and extensions to such waterworks system, either within or without

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the boundaries of the district, if the property of the district will be benefitted thereby, and to operate and maintain any such waterworks system it may purchase, construct, or own;

(2) (Same authority as above relating to "sewage collection system or sewage treatment plant, etc.")

(3) (Same authority as above relating to "streets, roads, highways and every other way for passage, etc.")

(4) (Same authority as above relating to recreational facilities such as . . ." parks, lakes, golf courses, playgrounds, etc.")

(5) (Same authority as above relating to "lay and maintain sidewalks")

(6) (Same authority as above relating to "lay gas pipelines etc.")

(7) (Same authority as above relating to "build telephone lines, etc.")

(8) (Same authority as above relating to "establish . . . fire departments")

(9) (Same authority as above relating to "own . . . maintain and operate hospitals, etc.")

(10) (Same authority as above relating to "own . . . maintain and operate libraries")

(Note: Paragraphs in parentheses are author's paraphrasing of statute.)

The above statute appears to this Commission to grant a suburban improvement district regulatory authority and the authority to receive and disburse funds. That authority becomes critical to our opinion, because the authority granted to your improvement district helps to determine how the district is to be classified under the language of one of the statutes which might be applied. Again, in this particular instance there appears to be two competing bodies of law that may be applied.

First, there is ACA § 21-8-305. The original ACA § 21-8-305 predated Initiated Act I of 1988. Initiated Act I, as a general

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rule, sets out the disclosure requirements of local offices. Subsequent to the passage of Initiated Act I the legislature produced a new ACA § 21-8-305 by way of Act 719 of 1989. However, other portions of Act 719 of 1989 mistakenly repealed the language which produced the new ACA §21-8-305. The language was later reinstituted by Act 326 of 1991 and is the present ACA § 21-8-305.

The language of the act is:

Act No 326 of 1991: § 1 states "Section 5 of Act 719 of 1989 amended Arkansas Code § 21-8-305 to require school board members and persons appointed to certain municipal or county boards or commissions to file a financial disclosure statement under Ark. Code §§ 21-8-305 through 21-8-309. The purpose of this Act is to reenact Arkansas Code §§ 21-8-305 through 21-8-309, as modified by § 2 of Act 719 of 1989

*§2. "The following persons shall file a written statement" required pursuant to this subchapter within the time specified in § 21-8-306.

(1) All persons who are elected members of a school board or who are candidates for a position on a school board; and

(2) Any person appointed to one (1) of the following types of 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;
- (D) A utility board or commission;
- and
- (E) A civil service commission.

The second statutory authority which may effect our opinion is ACA § 21-8-701 which is interpreted along with ACA § 21-8-402. Those statutes are part of the Arkansas Disclosure Act for lobbyists and state and local officials which was included in Initiated Act I of 1988. The Ethics Commission believes that these statutes could easily be applicable to your situation. However, it is not within the Commission's authority to resolve statutory conflicts.

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*NOTE: This subparagraph is the language as it appears in our statutes as ACA §21-8-305.

§ 21-8-701 (a) The following persons shall file a written statement of financial interest:

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

§ 21-8-402: As used in subchapters 4-8 of this chapter, unless the context otherwise requires

(6) "Governmental body" means 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;

(14) "Public appointee" means an individual who is appointed to a governmental body. "Public appointee" shall not include an individual appointed to an elective office;

(17) "Public servant" means all public officials, public employees, and public appointees:

A. ACA § 21-8-701 by its very language, appears to conflict with, supersede, or repeal ACA § 21-8-305 and Act 326 of 1991. If that is determined that to be true, the answer to your question rests on the provisions of ACA §§ 21-8-701 and 21-8-402 we would conclude:

(1) A municipal improvement district commissioner, which you are, is an appointed "governmental body". [see ACA § 21-8-402(a)]

(2) Because he or she is such, the appointee is a "public servant" [(see ACA §§ 402(14) and (17))]

(3) As a public servant, he or she is mandated to file a financial disclosure statement entitled "Statement of Financial Interest". [§ 21-8-701(a)(1)] (To add to the general confusion here, the legislature appears to be referring to different documents altogether in ACA § 21-8-305 and ACA § 21-8-701. In the

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former, the document referred to is called a "Code of Ethics Form" and is presently required to be filed mainly by county and municipal officials. In the latter, the document referred to is called a "Statement of Financial Interest" and is generally required to be filed by state and district officials.)

B. If on the other hand ACA § 21-8-305 prevails, this Commission would direct you to your local legal authorities, the courts or the Arkansas Attorney General for guidance as to whether a suburban improvement district is properly classified as a "planning board or commission" or some other board or commission listed in ACA § 21-8-305. If a suburban improvement district falls within the classifications enumerated in the statute then members would be required to file statements entitled "Code of Ethics Form".

We are not able to answer whether Act 326 of 1991 actually conflicts with § 21-8-701, which is part of an initiated act. If, in fact it does, then it must be decided whether the initiated act or the act of the legislature prevails.

We, therefore, will direct you to the Arkansas Attorney General or the courts for answers to the following questions.

1. Whether your suburban improvement district is legally considered a "planning commission", or other board commission listed in ACA § 21-8-305?

2. Whether, ACA § 21-8-305 or ACA § 21-8-701, is controlling of your situation under usually applied statutory interpretations?

3. Whether the legislative act (Act 326 of 1991) is in actual conflict with provisions of Initiated Act 1 of 1988? (It could be argued that a legislative act which conflicts with an initiated act is unconstitutional and thus ineffective.)

In summary, this Commission will offer only provisional opinions to your request:

(a) If ACA § 21-8-701 prevails, and your commission is deemed a governmental body, then you are required to file the financial disclosure form entitled "Statement of Financial Interest".

(b) If § 21-8-305 prevails, and your commission is deemed one of boards and commissions mentioned therein, then you are required to file the financial disclosure statement entitled "Code of Ethics Form".

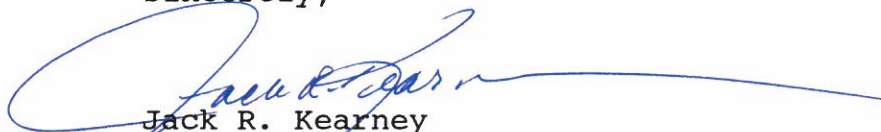
(c) If some statutory authority, the Attorney General or the courts make clear that you are neither a "governmental body" or one

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of the boards and commissions mentioned in ACA § 21-8-305, then you are not required to file either form.

It shall be the position of this Commission that you, and other persons similarly situated, shall not be subject to Ethics Commission action for failure to file the disclosure documents discussed herein, until such time as the Attorney General, the courts, or the General Assembly has made clear which laws should apply to this situation.

Sincerely,



Jack R. Kearney
Director/Chief Counsel

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