

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 98-EC-002 Issued February 20, 1998

### ISSUE:

Whether members of the General Assembly are required to report their legislative salaries, per diems and expense reimbursements as sources of income on their Statements of Financial Interest?

### BRIEF ANSWER:

A legislative salary must be reported as a source of income on a Statement of Financial Interest, but per diems and expense reimbursements are nonreportable items.

### FACTS PRESENTED:

A state legislator reported his legislative salary as a source of income (more than \$1,000) on his Statement of Financial Interest (sometimes hereinafter referred to as "SFI"). He did not report the receipt of either per diems or expense reimbursements as a source of income on his SFI. He has requested an opinion of the Arkansas Ethics Commission concerning the proper reporting of those items to guide legislators in properly completing their Statements of Financial Interest.

### DISCUSSION:

#### A. Introduction

After the enactment of Initiated Act 1 of 1988, public officials, including all members of the General Assembly, were required to file an annual Statement of Financial Interest. *See* Ark. Code Ann. § 21-8-701(a)(1). Those SFIs must be filed with the Office of the Secretary of State by January 31 of each year covering the previous calendar year.

The SFI form, which is furnished by the Secretary of State and approved by the Arkansas Ethics Commission, contains a section for public disclosure of all sources of income. Specifically, Ark. Code Ann. § 21-8-701(d)(2)(A), requires the following to be disclosed on section three of the form:

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 ... and a brief description of the nature of the services for which the compensation was received.

Income is broadly defined in Ark. Code Ann. § 21-8-402(7) as “any money or anything of value received, or to be received as a claim for future services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof.”

### B. Legislative Salary

The people of Arkansas set the amount of legislative salary through the passage a constitutional amendment on the 1992 general election ballot. By an overwhelming vote, Arkansans passed Amendment 70 to the state constitution. This Amendment went into effect on January 1, 1993, and provides, in relevant part, as follows:

(b) The members of the General Assembly shall receive as their annual salary the sum of \$12,500, except the President Pro Tempore of the Senate and the Speaker of the House of Representatives, who shall each receive the sum of \$14,000 annually, with such salaries to be payable in equal monthly installments. Except as provided herein, no member of the General Assembly shall receive **any other income** for service in the General Assembly, whether in the form of salaries or expenses, including, but not limited to, public relations funds. Provided further, that no member of the General Assembly shall be entitled to per diem unless authorized by law, or to reimbursement for expenses or mileage unless authorized by law, documented, and reasonably related to their official duties. [emphasis added.]

Section three of Amendment 70 permits adjustments to legislative salaries “by an amount not to exceed the average percentage increase in the Consumer Price Index for All Urban Consumers or its successor, as published by the United States Department of Labor, for the two years immediately preceding the year of the salary appropriation.” The members of the General Assembly have not adjusted their legislative salaries since the enactment of Amendment 70. They have, however, made adjustments to the salaries of the Executive Branch officials. Constitutional officers had their salaries increased by Act 494 of 1995 (codified at Ark. Code Ann. § 25-16-101) and by Act 1175 of 1997 (codified at Ark. Code Ann. § 25-16-102).

Based upon the foregoing, the Commission has determined that Ark. Code Ann. § 21-8-701(d)(2) requires members of the General Assembly to report their legislative salaries on the Statement of Financial Interest. Due to the passage of Amendment 70 setting legislative salaries at \$12,500 annually, the proper method of reporting such income on the Statement of Financial Interest is to check the box “more than \$1,000” and fill in the applicable information in Section 3, including a description of the nature of the services for which the salary was received. The Speaker and the President Pro Tem must check the box “more than \$12,500” because they receive an annual salary of \$14,000 for service in the General Assembly.

### C. Per Diems and Expense Reimbursements

Ark. Code Ann. § 10-2-212(2) authorizes the Senate Efficiency Committee to “establish the method of reimbursing members of the Senate for ordinary and necessary expenses incurred in the performance of their duties as members of the General Assembly.” Section 10-2-212(2) permits the Senate Efficiency Committee to, “within the limitations of the Arkansas Constitution and the Internal Revenue Service guidelines<sup>1</sup>, determine which expenses constitute ordinary and necessary expenses and the amount of per diem and mileage reimbursement to be paid” to members of the Arkansas Senate.

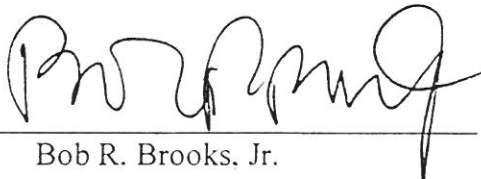
Similarly, pursuant to Ark. Code Ann. § 10-2-212(3)(b)(2)(A), the Speaker of the Arkansas House of Representatives is authorized to “establish the method for reimbursing members of the House for ordinary and necessary expenses incurred in the performance of their duties as members of the General Assembly.” The same section of law permits the Speaker to determine which expenses constitute ordinary and necessary expenses as well as the amount of per diem and mileage reimbursement to be paid to members of the House.

In Arkansas, members of the General Assembly may collect a per diem for each day the General Assembly is in session. Additionally, legislators may receive per diems for service on interim committees of the General Assembly as defined by Ark. Code Ann. § 10-2-217(b)(1) or for other interim legislative duties as authorized by law as defined in Ark. Code Ann. § 10-2-217(b)(2).

Although per diems and expense reimbursements paid to members of the General Assembly in connection with the performance of official duties would appear to fall within the statutory definition of income contained in Ark. Code Ann. § 21-8-402(7), the Commission is of the opinion that this definition must yield to Amendment 70. A reading of that amendment makes clear that legislative per diems and expense reimbursements do not constitute income. This opinion applies only to those per diems and expense reimbursements addressed in Amendment 70.

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

### **ARKANSAS ETHICS COMMISSION**

by:   
Bob R. Brooks, Jr.  
Executive Director

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<sup>1</sup> The Internal Revenue Code makes per diems paid to state legislators, up to the amount set for employees of the executive branch of the Federal Government, a nonreportable item for federal income tax purposes. *See* 26 U.S.C. § 162(h). The section does not apply to legislators who reside 50 or fewer miles from the capitol building of the State. *See* 26 U.S.C. § 162(h)(4). This per diem rate is set by the General Services Administration and published in the Federal Register. In Arkansas, for the year 1997, the maximum per diem rate was \$95/day. This amount consists of \$65/day for lodging and \$30/day for meals and incidental expenses.