

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2008-EC-009 Issued August 15, 2008

The Arkansas Ethics Commission is issuing this advisory opinion on its own initiative to address the question of whether or not Ark. Code Ann. § 7-6-217(c)(1) serves to prohibit a member of the Arkansas Ethics Commission from simultaneously serving on another state board or commission. This particular statutory provision provides as follows:

No member of the [Ethics] commission shall be a federal, state, or local government official or employee, an elected public official, a candidate for public office, a lobbyist as defined in § 21-8-402(11), or an officer or paid employee of an organized political party as defined in § 7-1-101.

The answer to this question turns upon whether or not an Ethics Commissioner is a “government official” within the meaning of this particular provision. Although that term is not defined, the statutory definitions of other terms included in this provision give direction in determining the term’s meaning.

The terms “public employee” and “public official” are defined in Ark. Code Ann. § 21-8-402(16) and (17), respectively, as follows:

(16)(A) “Public employee” means an individual who is employed by a governmental body or who is appointed to serve a governmental body.
(B) “Public employee” shall not include public officials or public appointees; [and]

(17) “Public official” means 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[.]

At first blush, it might seem logical to conclude that the term “government official” means a person who holds an elective office of a governmental body. A closer reading of Ark. Code Ann. § 7-6-217(c)(1) reveals, however, that the statutory prohibition includes “elected public officials” as a separate category.

When called upon to interpret a statute, it is the Commission’s duty, if possible, to give meaning to each term used. Accordingly, the Commission has concluded that the term “government official” means something other than a person holding an elective office of a governmental body.

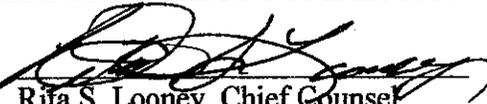
Black’s Law Dictionary, Seventh Edition, defines the term “official” as “[o]ne who holds or is invested with a public office.” In turn, the term “public office” is defined in Black’s as “[a] position whose occupant has legal authority to exercise a government’s sovereign powers for a fixed period.”

Based upon these definitions and in keeping with its duty to give meaning to each of the terms used in a statute, the Commission concludes that the term “government official” means a person who holds a position in federal state, or local government by virtue of which he or she is authorized to exercise regulatory powers.

It is clear that a person appointed as a member of the Arkansas Ethics Commission fits within that definition. Accordingly, it is the Commission’s opinion that Ark. Code Ann. § 7-6-217(c)(1) does, in fact, serve to prohibit a member of the Arkansas Ethics Commission from simultaneously serving on another state board or commission.

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

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By: 
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