

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 2011-EC-002 Issued January 21, 2011

The Arkansas Ethics Commission has received a written advisory opinion request from Mr. Mac Dodson, President of the Arkansas Development Finance Authority ("ADFA") which was created by Act 1062 of 1985. ADFA administers funding in the form of tax exempt bonds and other debt instruments through its series of program activities and employs a permanent full-time staff of professionals who, together, provide expertise in all areas of banking, finance, mortgage lending and accounting. Its stated mission is to provide capital for qualified activities that enhance the quality of life for Arkansans.

In his request, Mr. Dodson seeks guidance regarding whether a state representative may retain his position as Grants Administrator for Pulaski County in its participation in seeking HOME<sup>1</sup> program funds and Tenant Based Rental Assistance<sup>2</sup> ("TBRA") administered by the ADFA. Mr. Dodson has also requested that the Commission opinion include advice regarding any and all disclosures and other actions which may be required in connection with the stated scenario.

As outlined in Mr. Dodson's request, the representative does not have any ownership in the developments for which Pulaski County utilizes the HOME/TBRA funds, nor will he receive any direct financial benefit from the developments for which the funds are utilized. Mr. Dodson explained that Pulaski County requires that all contracts on developments for which HOME/TBRA funds are utilized be awarded on the basis of competitive sealed bidding, which requires public notice and public opening of bids. Additionally, all contracting actions are performed by the Pulaski County Purchasing Department, over which the representative has no authority.

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<sup>1</sup> HOME is a federally funded program with housing grant funds targeted to assist low and very low income Arkansans.

<sup>2</sup> TBRA Contracts must have a minimum lease of one year and cannot exceed two years, however, they can be renewed.

## ADVISORY OPINION NO. 2011-EC-002

### Page 2

In Advisory Opinion 2011-EC-001, this Commission has opined that where the participation of a business-owner senator in federal housing programs pre-existed his election to office, such was unrelated to his position as an elected state senator. Therefore, it was the Commission's opinion that his continued participation in ADFA's competitive housing program did not create a prohibited conflict of interest under Ark. Code Ann. § 21-8-304. Likewise herein, accepting that the relationship of the representative and the developments in Pulaski County is as described, the representative's position as grants administrator does not appear to create a prohibited conflict of interest under Ark. Code Ann. § 21-8-304.

Similarly, because the representative does not have any ownership in the developments for which Pulaski County utilizes the HOME/TBRA funds, it is the Commission's opinion that Executive Order 98-04 is not applicable. (See Advisory Opinion 2011-EC-001 for a description of the Order and its application.)

Ark. Code Ann. § 21-1-401 *et seq.* (Act 34 of 1999) limits state employment of constitutional officers and their spouses and establishes procedures regarding how they may enter into grants, contracts or leases with a state agency. While rule-making authority under Act 34 was given to Department Finance & Administration, enforcement authority rests with the Ethics Commission.

"Constitutional officers" are defined by Ark. Code Ann. § 21-1-401 to include members of the Arkansas House of Representatives and members of the Arkansas Senate. The term "state agency" is defined to include every board, commission, department, division, institution, and other office of state government whether located within the legislative, executive, or judicial branch of government, including state-supported colleges and universities.

While the representative is a "constitutional officer" under § 21-1-401 *et seq.* (Act 34 of 1999) and ADFA is a "state agency," the relationship of the representative is one of employment with Pulaski County, not with ADFA. Accordingly, Act 34 of 1999 does not appear to be applicable to the relationship as described in the opinion request.

Finally, in addition to the filing of a Statement of Financial Interest under Ark. Code Ann. § 21-8-701, Ark. Code Ann. § 21-8-803 sets forth reporting requirements applicable to a legislator who is required to take an action in the discharge of his or her official duties that may affect his or her financial interest. This statute requires the reporting of potential conflicts in the event action may affect the legislator's "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 or the public."

In such situations, the legislator is required to:

- (1) Prepare a written statement describing the matter requiring action and stating the potential conflict; and
- (2) (A) Deliver a copy of the statement to the appropriate official to be filed with the statement of financial interest;  
  
(B) 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.

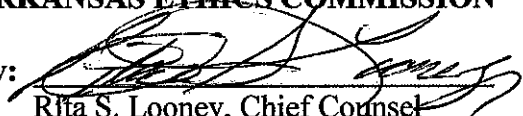
The obligation to report a potential conflict of interest under this section arises as soon as the legislator becomes aware of the conflict. If the statement of financial interest filed by the legislator makes the conflict readily apparent, then no report need be filed.

The Commission notes that if the representative is required to take an action in the discharge of his or her official duties that may affect the ADFA and its funds utilized by Pulaski County, filing a report pursuant to Ark. Code Ann. § 21-8-803 would be encouraged, although perhaps not technically required, because the potential conflict may affect the legislator's "financial interest or cause financial benefit or detriment to him," as it relates to his position as a grants administrator for the county.

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

**ARKANSAS ETHICS COMMISSION**

By:

  
Rita S. Looney, Chief Counsel