

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 349 OF 1995
HOUSE BILL 1423

4 **By: Representatives Schexnayder, Newman, D. Wood, Thomas, Argue, Ferrell, Sheppard,**
5 **Pappas, Flanagan, Wilkins, Dietz, Dawson, Thicksten, Lancaster, Horn, Jordan, Wallis, Cash,**
6 **Ammons, Cunningham, Roberts, Angel, Owens, Choate, Bisbee, Brown, Watts, Wyrick,**
7 **Townsend, Goodwin, Hogue, T. Smith, Laverty, Purdom, Von Gremp, Northcutt, J. Smith,**
8 **Bennett, McGinnis, Young, Jones, Capps, Mitchell, Mullenix, Vess, Miller, Calhoun, Simon,**
9 **Wilkinson, Harris, McJunkin, Malone, Wren, Hendren, Courtway, Simmons, M. Wilson,**
10 **Ferguson, Willems, Johnson, Hill, Critcher, Molinaro, Madison, McKissack, Hudson, Beatty,**
11 **K. Wood, Wooldridge, Murphy, Lynn, Hinshaw, Davis, Booker, Kidd, and Bush**

For An Act To Be Entitled

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15 "AN ACT TO REVISE ARKANSAS TITLE CODE TITLE 7, CONCERNING
16 THE ARKANSAS ETHICS COMMISSION AND FOR OTHER PURPOSES."

Subtitle

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18
19 "AN ACT TO REVISE ARKANSAS TITLE CODE
20 TITLE 7, CONCERNING THE ARKANSAS ETHICS
21 COMMISSION."

22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24
25 SECTION 1. Arkansas Code 7-6-217 is amended to read as follows:

26 "§ 7-6-217. Creation of Arkansas Ethics Commission.

27 (a) The Arkansas Ethics Commission shall be composed of five (5)
28 members, one each appointed by the Governor, Attorney General, Lieutenant
29 Governor, Speaker of the Arkansas House of Representatives, and President Pro
30 Tempore of the Arkansas Senate. Members of the commission shall be appointed
31 for terms of five (5) years. No person may be appointed to serve consecutive
32 terms on the commission. Provided, that any commissioner who has been
33 appointed to serve two (2) years or less of an unexpired term shall be
34 eligible for an appointment to a subsequent five-year term. Those
35 commissioners currently serving shall complete their current term.

36 (b) In making appointments to the commission, the appointing officials

1 shall insure that at least one (1) member of a minority race, one (1) woman,
2 and one (1) member of the minority political party, as defined in §
3 7-1-101(7), serves on the commission. Any person appointed as a member of the
4 minority political party must have voted in the preferential primaries of the
5 minority political party in the last two primaries in which he or she has
6 voted.

7 (c) No member of the commission shall be a federal, state or local
8 government official or employee, an elected public official, a candidate for
9 public office, a lobbyist as defined in § 21-8-402(11), or an officer or paid
10 employee of an organized political party as defined in § 7-1-101(1). During
11 the entire term of service on the Arkansas Ethics Commission, a commissioner
12 shall be prohibited from raising funds for, making contributions to, providing
13 services to, or lending his or her name in support of any candidate for
14 election to a state, county, municipal, or school board office under the laws
15 of Arkansas or in support of a ballot issue or issues submitted or intended to
16 be submitted to the voters of the state of Arkansas, or any of its political
17 subdivisions, excluding the exercise of the right to vote or the mere signing
18 of an initiative or referendum petition. Employees of the commission shall be
19 similarly prohibited.

20 (d) In the event of a vacancy on the commission, a successor shall be
21 appointed within thirty (30) days to serve the remainder of the unexpired
22 term, such appointment to be made by the official holding the office
23 responsible for appointing the predecessor. The commission shall elect its
24 chairperson.

25 (e) A majority of the membership of the commission shall constitute a
26 quorum for conducting business. No action shall be taken except by an
27 affirmative vote of a majority of those present and voting. No sanctions
28 shall be imposed without the affirmative vote of at least three (3) members of
29 the commission who are physically present at a commission meeting. The vote
30 of each member voting on any action shall be a public record.

31 (f) Members of the commission shall serve without compensation, but
32 shall be entitled to receive reimbursement from the state for actual and
33 reasonable expenses incurred in the performance of their official duties,
34 including reimbursement for mileage for official travel in connection with
35 commission business, at the same rate provided by travel and expense

1 regulations for state employees.

2 (g) The commission shall meet at such times as may be provided by its
3 rules, or upon call of the chairperson, or upon written request to the
4 chairperson of any three (3) members.

5 (h) The commission shall have the authority to:

6 (1) Pursuant to the Arkansas Administrative Procedure Act, §§ 25-
7 15-201 et seq., promulgate reasonable rules and regulations to implement and
8 administer the requirements of this subchapter, as well as subchapters 4-9 of
9 title 21, chapter 8, as amended, and to govern procedures before the
10 commission, matters of commission operations, and all investigative and
11 disciplinary procedures and proceedings:

12 (2) Issue advisory opinions and guidelines on the requirements of
13 this subchapter and the requirements of subchapters 4-9 of title 21, chapter
14 8, as amended;

15 (3) Investigate alleged violations of this subchapter and of
16 subchapters 4-9 of title 21, chapter 8, as amended, and render findings and
17 disciplinary action thereon;

18 (4) Pursuant to commission investigations, subpoena any person or
19 the books, records, or other documents being held by any person and take sworn
20 depositions;

21 (5) Administer oaths and conduct hearings for the purpose of
22 taking sworn testimony of witnesses appearing before the commission;

23 (6) Hire a staff and retain legal counsel;

24 (7) Approve forms prepared by the Secretary of State pursuant to
25 this act and subchapters 4-9 of title 21, chapter 8, as amended; and

26 (8) File suit in the Circuit Court of Pulaski County or in the
27 circuit court of the county wherein the debtor resides, or, pursuant to A.C.A.
28 16-17-601 et seq., in the small claims division of any municipal court in the
29 state of Arkansas, to obtain a judgment for the amount of any fine imposed
30 pursuant to §7-6-218(b)(4)(B). Said action by the court shall not involve
31 further judicial review of the commission's actions. The fee normally charged
32 for the filing of a suit in any of the circuit courts in the state of Arkansas
33 shall be waived on behalf of the Arkansas Ethics Commission."

34

35 SECTION 2. Arkansas Code 7-6-218 is amended to read as follows:

1 "§ 7-6-218. Citizen complaints.

2 (a) Any citizen wishing to file a complaint against a person covered by
3 this subchapter or by subchapters 4-9 of title 21, chapter 8, as amended, for
4 an alleged violation of such subchapters may file a complaint with the
5 Arkansas Ethics Commission.

6 (b)(1) Upon a complaint stating facts constituting an alleged violation
7 signed under penalty of perjury by any person, the Arkansas Ethics Commission
8 shall investigate the alleged violation of this subchapter or of subchapters
9 4-9 of title 21, chapter 8, as amended. The commission shall immediately
10 notify any person under investigation of the investigation and of the nature
11 of the alleged violation. The commission in a document shall advise the
12 complainant and the accused of the final action taken together with the
13 reasons for the action, and such document shall be a public record.

14 (2) If after the investigation, the commission finds that
15 probable cause exists for a finding of a violation, the accused may request a
16 hearing. The hearing shall be a public hearing.

17 (3) The commission shall keep a record of its investigations,
18 inquiries, and proceedings. All proceedings, records, and transcripts of any
19 investigations or inquiries shall be kept confidential by the commission,
20 unless the accused requests disclosure of documents relating to investigation
21 of the case, or in case of a hearing under (b)(2) of this section, or in case
22 of judicial review of a commission decision pursuant to Ark. Code Ann. 25-15-
23 212. Thirty (30) days after any final adjudication in which the commission
24 makes a finding of a violation, all records relevant to the investigation and
25 upon which the commission has based its decision, except working papers of the
26 commission and its staff, shall be open to public inspection.

27 (4) If the commission finds a violation of this subchapter or of
28 subchapters 4-9 of title 21, chapter 8, as amended, then the commission shall
29 do one (1) or more of the following:

30 (A) Issue a public letter of caution or warning or
31 reprimand;

32 (B) Notwithstanding the provisions of § 7-6-202, § 7-9-409,
33 § 21-8-403, and § 21-8-903, impose a fine of not less than twenty-five dollars
34 (\$25) nor more than one thousand dollars (\$1,000) for negligent or intentional
35 violation of this subchapter, or of subchapters 4-9 of title 21, chapter 8, as

1 amended. The commission shall adopt rules governing the imposition of such
2 fines in accordance with the provisions of the Administrative Procedure Act,
3 A.C.A. §§ 25-15-201 et seq. All monies received by the commission in payment
4 of fines shall be deposited in the State Treasury as general revenues; or

5 (C) Report its finding, along with such information and
6 documents as it deems appropriate, and make recommendations to the proper law
7 enforcement authorities.

8 (5) The commission shall complete its investigation of a
9 complaint filed pursuant to this section within one hundred and fifty (150)
10 days of the filing of the complaint; except that, if a hearing is conducted,
11 all action on the complaint by the commission shall be completed within one
12 hundred eighty (180) days.

13 (c) Any final action of the commission under this section shall
14 constitute an adjudication for purposes of judicial review under § 25-15-212."

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16 SECTION 3. Arkansas Code 7-4-101(f) is amended to read as follows:

17 "(f) The State Board of Election Commissioners may perform the
18 following duties:

19 (1) Publish a plain English election handbook which addresses
20 the do's and dont's for candidates under Arkansas law;

21 (2) Conduct statewide training for election clerks and judges and
22 county election commissioners;

23 (3) Monitor all election law-related legislation;

24 (4) Conduct investigations of citizen complaints and issue
25 advisory opinions regarding violations of election laws, except as to Ark.
26 Code Ann. 7-1-103(1) through (4), (6), (7) and (8), or except for any matter
27 relating to campaign finance and disclosure laws, which the Arkansas Ethics
28 Commission shall have the same power and authority to enforce as is provided
29 the commission under §§ 7-6-217 and 7-6-218 for the enforcement of campaign
30 finance laws;

31 (5) To develop procedures for receiving citizen complaints which
32 are referred to in subdivision (f)(4);

33 (6) Establish guidelines for and monitor the qualifications of
34 all election officials; and

35 (7) Formulate, adopt, and promulgate all necessary rules and

1 regulations to assure even and consistent application of fair and orderly
2 election procedures."

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4 SECTION 4. All provisions of this act of a general and permanent nature
5 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
6 Revision Commission shall incorporate the same in the Code.

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8 SECTION 5. If any provision of this act or the application thereof to
9 any person or circumstance is held invalid, such invalidity shall not affect
10 other provisions or applications of the act which can be given effect without
11 the invalid provision or application, and to this end the provisions of this
12 act are declared to be severable.

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14 SECTION 6. All laws and parts of laws in conflict with this act are
15 hereby repealed.

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17 SECTION 7. EMERGENCY. It is hereby found and determined by the General
18 Assembly that there now exists a vacancy on the Ethics Commission due to a
19 decision by the Arkansas Supreme Court that invalidated the Chief Justice's
20 appointment of a member of the commission; that this vacancy should be filled
21 as soon as possible; and that this act establishes the mechanism for filling
22 that vacancy and therefore should be placed into effect immediately.
23 Therefore, an emergency is hereby declared to exist and this act being
24 necessary for the immediate preservation of the public peace, health and
25 safety shall be in full force and effect from and after its passage and
26 approval.

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/s/Rep. Schexnayder, et al

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APPROVED: 2-17-95

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