

State of Arkansas

77th General Assembly

Regular Session, 1989

HOUSE BILL 1006

By: Representative Glover

"AN ACT TO BE KNOWN AS THE 'DISCLOSURE ACT FOR LOCAL LOBBYISTS
AND ELECTED MUNICIPAL AND COUNTY OFFICIALS'."

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

SECTION 1. Arkansas Code, Title 21, Chapter 8, is hereby amended to add the following new sections:

"SUBCHAPTER 9. GENERAL PROVISIONS

21-8-901. Subchapters nine through thirteen of this chapter may be referred to and cited as the 'The Disclosure Act for Local Lobbyists and Elected Municipal and County Officials.'

21-8-902. As used in subchapters nine through thirteen of this chapter:

(a) 'Administrative action' means any decision on, or proposal, consideration, or making of any rule, regulation, ratemaking proceeding or policy action by a municipality or county. 'Administrative action' does not include ministerial action.

(b) 'Business' means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, receivership, trust, or any legal entity through which business is conducted.

(c) 'Family' means an individual's spouse, children of that individual or his or her spouse, or brothers, sisters, or parents of the individual or his or her spouse.

(d) (1) 'Gift' means any payment, entertainment, advance, services or anything of value, unless consideration of equal or greater value has been given therefor.

(2) The term 'gift' does not include:

(A) Informational material such as books, reports, pamphlets, calendars, or periodicals informing a local public official regarding his or her official duties. Payments for travel or reimbursement for any expenses are not informational material.

(B) The giving or receiving of food, lodging or travel which bears a relationship to the local public official's office and when appearing in an official capacity.

(C) Gifts which are not used and which, within thirty (30) days after receipt, are returned to the donor.

(D) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any of these persons, unless the person is acting as an agent or intermediary for any person not covered by this paragraph.

(E) Campaign contributions.

(F) Any devise or inheritance.

(G) Anything with a value of less than one hundred dollars (\$100.00).

(e) 'Income' or 'compensation' means 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.

(f) 'Legislative action' means introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto, or any other official action or nonaction on any bill, law, resolution, amendment, nomination, appointment, report or other matter pending or proposed before the governing body of a municipality or before a quorum court.

(g) 'Lobbying' means communicating directly or soliciting others to communicate with any local public official with the purpose of influencing legislative action or administrative action.

(h) 'Lobbyist' means a person who:

(1) Receives income or reimbursement in a combined amount of two hundred fifty dollars (\$250.00) or more in a calendar quarter for lobbying; or

(2) Expends two hundred fifty dollars (\$250.00) or more in a

calendar quarter for lobbying excluding the cost of personal travel, lodging, meals, or dues; or

(3) Expends two hundred fifty dollars (\$250.00) or more in a calendar quarter, including postage, for the express purpose of soliciting others to communicate with any public official to influence any legislative action or administrative action unless the communication has been filed with the Secretary of State or the communication has been published in the news media. If the communication is filed with the Secretary of State, the filing shall include the approximate number of recipients.

(i) 'Person' means a business, individual, corporation, union, association, firm, partnership, committee, club, or other organization or group of persons.

(j) 'Local public official' means a person holding an elective office of a municipality or county.

(k) 'Registered lobbyist' means a lobbyist registered pursuant to the provisions of subchapters nine through thirteen of this chapter.

21-8-903. Any person who violates any provision of subchapters nine through thirteen of this chapter shall be deemed guilty of a Class A misdemeanor.

The culpable mental state required shall be a purposeful violation.

21-8-904. The Prosecuting Attorney of the District wherein an alleged violation occurred shall have the authority to investigate the alleged violations of this chapter.

21-8-905. Subchapters nine through thirteen of this chapter shall be supplemental to all other laws pertaining to ethics, conflicts of interest, and shall not repeal any other laws, except for laws specifically repealed by subchapters nine through thirteen of this chapter.

SUBCHAPTER 10. ATTORNEY GENERAL.

21-8-1001. (a) The Attorney General shall also have the authority to investigate the alleged violations of subchapters nine through thirteen of this chapter and to use all existing powers granted that office in conducting

such investigations including but not limited to the conduct of hearings as well as the right to subpoena any person or the books, records, or other documents being held by any person. The Attorney General shall have the authority to administer oaths for the purpose of taking testimony of witnesses subpoenaed before him which he may deem necessary to adequately present the state's case. Further, the Attorney General shall have the authority to issue advisory opinions under, and guidelines for persons covered by, subchapters nine through thirteen of this chapter.

21-8-1002. Any citizen wishing to file a complaint against a person covered by subchapters nine through thirteen of this chapter may file a complaint with the Attorney General.

21-8-1003. (a) Upon a complaint stating facts constituting an alleged violation signed under penalty of perjury by any person, the Attorney General shall investigate the alleged violation of subchapters nine through thirteen of this chapter. The Attorney General shall immediately notify any person under investigation of the investigation and of the nature of the alleged violation. The Attorney General shall also advise the complainant and accused of the final action taken together with the reasons for the action. The document sent by the Attorney General to the complainant and the accused to advise them of the final action taken shall be a public record.

(b) If after the investigation, the Attorney General finds that probable cause exists for a finding of a violation, the accused may request a hearing. The hearing shall be a public hearing.

(c) The Attorney General shall keep a record of his investigations, inquiries, and proceedings. All proceedings, records and transcripts of any investigations or inquiries shall be kept confidential by the Attorney General unless the accused requests a public hearing or disclosure of such documents.

(d) If the Attorney General finds a violation of this Act, then the Attorney General may do any one or more of the following:

- (1) Issue a public letter of caution or warning; or
- (2) Report his finding, along with such information and documents as he deems appropriate, and make recommendations to the proper law enforcement authorities.

(e) The Attorney General shall complete his investigation of any

complaint filed pursuant to subchapters nine through thirteen of this chapter within ninety (90) days of the filing of the complaint; except that, if a hearing is conducted, all action on the complaint by the Attorney General shall be completed within one hundred twenty (120) days.

SUBCHAPTER 11. LOBBYIST REGISTRATION AND DISCLOSURE.

21-8-1101. (a) (1) A lobbyist shall register within five (5) days after beginning lobbying.

(2) A lobbyist shall not be required to register if he or she engages in no lobbying other than the following activities:

(A) The publishing or broadcasting, by news media executives or their employees or agents, in the ordinary course of business, of news items, editorials, or other comments or paid advertisements which directly or indirectly urge legislative action or administrative action;

(B) Engaging in lobbying exclusively on behalf of an Arkansas church which qualifies as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code;

(C) Action in a person's official capacity as an elected or appointed official or employee of the state, a county, school district, or municipal government or any other political subdivision of the state; however, if the person receives income from a nongovernmental person in excess of two hundred fifty dollars (\$250.00) in a quarter for lobbying, or expends or is reimbursed in excess of two hundred fifty dollars (\$250.00) in a quarter for lobbying, excluding the cost of personal travel, lodging, meals, dues, or informational material, that person shall be required to register as a lobbyist;

(D) Drafting legislation;

(E) Appearing in:

(i) a judicial proceeding;

(ii) a proceeding or hearing if the appearance is a matter of public record; or

(iii) any hearing or appeal proceeding conducted pursuant to the Arkansas Tax Procedure Act.

(F) Assisting an executive agency, at the written request of the agency, in drafting administrative regulations or in publicizing or

assisting in the implementation of final administrative actions;

(G) Testifying as an individual at a public hearing in support of or in opposition to legislation or administrative action; testifying on behalf of a corporation, partnership, association, or other organization with which the person is regularly associated as an employee, officer, member or partner; or testifying at the request of a legislative committee; or

(H) Actions by contractors or employees of contractors while engaged in selling to the municipality or county by demonstrating or describing commodities or services or inquiring as to specifications or terms and conditions of a particular purchase unless such contractor or its employees expend in excess of two hundred fifty dollars (\$250.00) in a calendar quarter for food, lodging, travel, or gifts to benefit local public officials who purchase commodities or services on behalf of the municipality or county.

(3) A person whose only act of lobbying is to compensate or reimburse a registered lobbyist in the person's behalf shall not be required to register as a lobbyist.

(b) Upon the termination of a registered lobbyist's employment or designation as a lobbyist, the termination shall be conveyed by the registered lobbyist in writing to the public official with whom the lobbyist is registered.

(c) Each registered lobbyist whose employment or designation as a lobbyist has not terminated shall re-register by January 15 of each year.

21-8-1102. The lobbyist shall register and make other filings with the Secretary of State.

21-8-1103. (a) Within fifteen (15) days after the end of each calendar quarter, each registered lobbyist shall file a complete and detailed statement, signed and sworn to, concerning his or her lobbying activities during the previous calendar quarter.

(b) Lobbyist activity reports shall be open to public inspection.

21-8-1104. The lobbyist activity reports shall be signed and sworn to by the registered lobbyist. The reports shall contain:

(a) The total of all expenditures made or incurred by the registered

lobbyist or on behalf of the registered lobbyist by his or her employer during the preceding period. These totals shall be itemized according to financial category and employers and clients, including food and refreshments, entertainment, living accommodations, advertising, printing, postage, travel, telephone, and other expenses or services. Registered lobbyists shall not be required to report office expenses other than office expenses specifically required to be reported under this section. Registered lobbyists are not required to report unreimbursed personal living and travel expenses not incurred directly for lobbying.

(b) (1) An itemized listing of each:

(A) Gift given to a local public official or on behalf of the local public official; and

(B) Payment for food, lodging, or travel in excess of twenty-five dollars (\$25.00) on behalf of a local public official; and

(C) Any other item paid or given to a local public official or on behalf of the local public official, except for campaign contributions, having a value in excess of twenty-five dollars (\$25.00) unless consideration of equal or greater value has been given therefor.

(2) Each item shall be identified by date, amount paid or value, and the name of the individual receiving or to be benefited by the item and a description of the item.

(3) In the case of special events, including parties, dinners, athletic events, entertainment, and other functions, expenses need not be allocated by individuals but the date of the event, location, group of local public officials invited, and total expense shall be stated.

(c) A detailed statement of any money loaned or promised or line of credit established to a local public official or to anyone on behalf of the local public official in excess of twenty-five dollars (\$25.00) per individual. Money loaned or a line of credit established that is issued in the ordinary course of business by a financial institution or a person who regularly and customarily extends credit shall not be required to be disclosed.

(d) A statement detailing the direct business association or partnership with any local public official before whom the lobbyist may engage in lobbying.

(e) A statement detailing any salary received or to be received for his lobbying services, whether in form of a fee, salary, forbearance, for-

givenness, or any other form of recompense, and any combination thereof. Where lobbying is incidental to the person's regular employment, his compensation for lobbying shall be a prorated amount of his regular employment compensation based on the time devoted to lobbying.

21-8-1105. A registered lobbyist shall maintain and preserve all accounts, bills, receipts, and any other documents necessary to substantiate the financial reports required by subchapters nine through thirteen of this chapter for a period of at least three (3) years from the date of the filing of the statement or report.

21-8-1106. The local public official with whom a lobbyist is to register and make other filings shall be determined as follows:

(1) A lobbyist who lobbies local public servants of municipal government shall register and make other filings with the city clerk or recorder of the municipality, as the case may be; and

(2) A lobbyist who lobbies local public servants of a county shall register and make other filings with the county clerk of the county.

21-8-1107. Each county clerk and each city clerk or recorder shall: (a) Provide forms approved by the Attorney General for registration and for statements required by subchapters nine through thirteen of this chapter to all persons required to file;

(b) Issue a certificate of registration to a lobbyist registered under the provisions of subchapters nine through thirteen of this subchapter; and

(c) Make all statements and reports filed available for public inspection and copying, at a reasonable cost, during regular office hours.

21-8-1108. (a) No person shall purposely employ any lobbyist who is required to register as a registered lobbyist but is not registered pursuant to this chapter.

(b) No person engaging in lobbying shall:

(1) Influence or attempt to influence, by coercion, bribery, or threat of economic sanction, any local public official in the discharge of the duties of his or her office.

(2) Purposely provide false information to any local public

official as to any material fact pertaining to any legislative or administrative action.

(3) Purposely omit, conceal, or falsify in any manner information required by the registration and lobbyist activity reports.

(c) Any person convicted for violation of any provision of this subchapter is prohibited from acting as a registered lobbyist for a period of three (3) years from the date of the conviction. Any person violating this three (3) year ban shall be deemed guilty of a violation of this chapter.

SUBCHAPTER 12. STATEMENT OF FINANCIAL INTEREST

21-8-1201. (a) On or before January 31 of each year all persons required to file the statement of financial interest shall file the written statement required in this subchapter as follows:

(1) A person holding a county elective office shall file with the county clerk; and

(2) A person holding a municipal elective office shall file with the city clerk or recorder, as the case may be.

(b) Any candidate for an elective county or municipal office shall not be required to file the information on or before January 31 of each year, but shall file the information within thirty (30) days after the deadline for filing for office for which he or she seeks election. Any incumbent officeholder who filed the information on or before January 31 of the year in which an election shall be held, shall not be required to file an additional statement upon becoming a candidate for reelection or election to another office at any election held during the year.

21-8-1202. A local public official or a candidate for a municipal or county elective office shall file a statement of financial interest pursuant to this subchapter instead of the statement of financial interest required by A.C.A. sections 21-8-301 -- 21-8-309. A local public official shall file the statement of financial interest by January 31 of each year. A candidate for a county or municipal elective office shall file the statement of financial interest within thirty (30) days after the deadline for filing for office for which he seeks election. The statement of financial interest shall include

the following:

(a) The name of the local public official and his or her spouse and all names under which they do business.

(b) Identification of each employer and of each other source of income amounting to more than one thousand dollars (\$1,000.00) annually received by the person or his or her spouse in their own names, or by any other person for the use or benefit of the local public official or his or her spouse and a brief description of the nature of the services for which the compensation was received, except that this paragraph shall not be construed to require the disclosure of the individual items of income that constitute a portion of the gross income of the business or profession from which the local public official or his or her spouse derives income; and in addition thereto, shall identify each source of income as described above of more than twelve thousand five hundred dollars (\$12,500.00), except that this shall not be construed to require the disclosure of individual items of income that constitute a portion of the gross income of the business or profession from which the local public official or his or her spouse derives income.

(c) The name of every business in which the local public official and his or her spouse or any other person for the use or benefit of the local public official or his or her spouse, have an investment or holdings of over one thousand dollars (\$1,000.00) at fair market value as of the date of the statement, and in addition thereto, shall identify each source as described above which has a fair market value of over twelve thousand five hundred dollars (\$12,500.00) on the date of the statement.

(d) Every office or directorship held by the local public official or his or her spouse, in any business, corporation, firm, or enterprise subject to jurisdiction of a regulatory agency of the municipality or county the local public official serves.

(e) The name and address of each creditor to whom the value of five thousand dollars (\$5,000.00) or more was personally owed or personally obligated and is still outstanding by the local public official. Loans made in the ordinary course of business by either a financial institution or a person who regularly and customarily extends credit shall not be required to be disclosed. Debts owed to the members of the local public official's family need not be included.

(f) The name and address of each guarantor or co-maker, other than a

member of the local public official's family, who has guaranteed a debt of the public official that is still outstanding. This requirement shall be applicable only to debt guarantees for debts assumed or arising after July 1, 1989. Guaranteed debts existing prior to July 1, 1989, which are extended or refinanced shall become subject to disclosure in the annual financing statement due to be filed after the conclusion of the year in which such extension or refinancing occurred.

(g) The source, date, and description of each gift of more than one hundred dollars (\$100.00) received by the local public official or his or her spouse, except that this requirement shall apply only to gifts received after July 1, 1989.

(h) Each nongovernmental source of payment of the local public official's expenses for food, lodging, or travel which bears a relationship to the local public official's office when the local public official is appearing in his or her official capacity when the expenses incurred exceed one hundred fifty dollars (\$150.00), except that this requirement shall apply only to such payments received after July 1, 1989. The local public official shall identify the name and business address of the person or organization paying the local public official's expenses and the date and nature of that expenditure if not compensated by the entity for which the local public official serves.

(i) Any local public official who is employed by any business which is under direct regulation or subject to direct control by the municipality or county which he serves shall set out such employment and the fact that the business is regulated by or subject to control of the municipality or county on the statement of financial interest.

(j) If a local public official or any business in which he or she or his or her spouse is an officer, director, stockholder owning more than ten percent (10%) of the stock of the company, owner, trustee, or partner shall sell any goods or services having a total annual value in excess of one thousand dollars (\$1,000.00) to the municipality or county in which the local public official serves, then the local public official shall set out in detail the goods or services sold, the municipality or county to which they were sold, and the compensation paid for each category of goods or services sold.

21-8-1203. Forms used by persons in filing statements as required in this subchapter shall provide for the signature of the person, under penalty of perjury, with respect to the truth and accuracy of the statements made on the form.

SUBCHAPTER 13. CONFLICT OF INTEREST.

21-8-1301. No local public official shall: (a) Receive a gift or compensation as defined in subchapter nine of this chapter, other than income and benefits from the municipality or county to which he or she is duly entitled, for the performance of the duties and responsibilities of his or her office or position;

(b) Purposely use or disclose to any other person or entity confidential government information acquired by him or her in the course of and by reason of the local public official's official duties, to secure anything of material value or benefit for himself or herself or his or her family.

21-8-1302. (a) No local public official shall appear for compensation on behalf of another person, firm, corporation or entity before any entity of the municipality or county.

(b) This section shall not:

(1) Apply to any judicial proceeding or to any hearing or proceeding which is adversarial in nature or character;

(2) Apply to any hearing or proceeding on which a record is made by the entity;

(3) Apply to an appearance which is a matter of public record;

(4) Apply to ministerial actions; or

(5) Preclude local public officials from acting on behalf of another person to determine the status of a matter without accepting compensation.

(c) An appearance which is a matter of public record as provided in A.C.A. 21-8-1302(b) (3) may be made by:

(1) Filing a written statement within twenty-four (24) hours with the agency head of the entity of the municipality or county before which an appearance is sought. In the event that a written statement cannot be provided to the agency head prior to the meeting, telephonic notice must be

given the agency head or his office; or

(2) Filing a quarterly statement with the agency head before which an appearance is sought.

(d) A statement filed under A.C.A. 21-8-1302(c) shall identify the client on behalf of whom the appearance is made and contain a general statement of the action sought from the municipality or county. The statements shall be retained by the agency head and shall be a matter of public record. If the agency head determines that the release of the client's name would be an unwarranted invasion of individual privacy or would give advantage to competitors for bidding, the agency head may withhold the name until appropriate.

21-8-1303. A local public official who is required to take an action in the discharge of his official duties that may affect his 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 of the public shall:

(1) Prepare a written statement describing the matter requiring action and stating the potential conflict;

(2) Deliver a copy of the statement to the officer with whom he or she files a statement of financial interest to be filed with that statement. The copy of the statement may be delivered in person by the local public official, by mail or by a person authorized by the local public official to deliver the copy.

(3) The obligation to report a potential conflict of interest under this section arises as soon as the local public official is aware of the conflict. If the statement of financial interest filed by the local public official makes the conflict readily apparent, then no report need be filed."

