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Cc:
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Date: Tue, 21 Mar 2023 22:00:54 +0000
Subject: Fwd: Arkansas State Legislature SB71 Bill Information

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From: JEDITeam <jediteam@arkw.com>
Sent: Tuesday, March 21, 2023 11:53:41 AM
To: CAW_Everyone <CAW_Everyone@arkw.com>
Subject: Arkansas State Legislature SB71 Bill Information

Good morning, CAW –

In an effort to keep all CAW employees HIV-Informed-P.

The JEDI team would like to share information with you regarding Bill SB71...

If you or someone you love is a **WOMAN, DISABLED, BLACK, VETERAN, HISPANIC OR LATINX** this bill will impact you **loved ones**.

This bill that would end affirmative action in Arkansas is now back on the deferred list of the House State Agencies & Govt'l Affairs Committee. It will be heard very soon after legislation is back in session.

1. This bill would **criminalize** any action by **governmental entities** that considers **race, gender, ethnicity** and **nationality**.
2. Not only does SB71 promote white supremacy, but it also attacks all currently-protected groups including **all women, veterans and disabled Arkansans**.
3. It will have far-reaching impacts on public employment, business and education.
4. It ignores data and opportunity for broad prosperity. [Read more here](#).

IF you feel this bill does not meet with your values and the HIVIP standards we ascribe to, please join JEDI as we flood Representatives with calls and emails, telling them to VOTE NO on SB71!

◆ Leave a message for your Representative [at 501-682-6211](tel:501-682-6211) ◆ Call & email House State Agencies Committee members 

<image001.png>

You can learn more about SB71 by reading the bill [SB71 Bill Information - Arkansas State Legislature](#) & the need for affirmative action by this week's Friday Webinar presented by the Arkansas Public Policy Panel.

JEDI TEAM

Senator Sullivan:

The Disclosure Act for Lobbyists and State and Local Officials, A.C.A. § 21-8-401 et. seq., regulates lobbying in Arkansas. The Act does not include any prohibitions regarding a local government engaging a lobbyist, and I have not found any other relevant provisions in state law that specifically address a municipality hiring a lobbyist to lobby against legislation. Below I have summarized the law that I have found related to this issue.

Regardless of the category of spending, if public funds are at issue, the public purpose doctrine will apply. Stewards of public funds are required to expend them only for a public purpose. *See, e.g.,* Ark. Code Ann. § 14-58-303(a) (giving mayors the power to make purchases for "public purposes" and enter into contracts "for the benefit of the city, or in carrying out any work or undertaking of a public nature. . ."). The Arkansas Supreme Court has held that if public funds are not properly used for a public purpose, the misapplication of funds may constitute an illegal exaction under article 16, § 13 of the Arkansas Constitution. *Hodges v. Lamora*, 337 Ark. 470 (1999).

In addition, according to the Arkansas Supreme Court, a misapplication of public funds may constitute a denial of taxpayers' due process rights. In *Chandler v. Board of Trustees of Teacher Retirement System*, 236 Ark. 256 (1963), the court considered the use of tax funds for paying retirement benefits for educational employees. The court held that "no principle of constitutional law is more fundamental or more firmly established than the rule that the State cannot, within the limits of due process, appropriate public funds to a private purpose."

The Arkansas Supreme Court has held that the meaning of "public purpose" is "not exact, nor is it prone to a static definition." *City of North Little Rock v. Pulaski County*, 332, Ark. 578 (1998). Indeed, there have been a number of attorney general opinions addressing factors relevant to the analysis of what may constitute a "public purpose," but they seem to indicate that whether something is a public purpose depends on the relevant facts. Attorney General Opinion 2001-180 stated, "[a] primary factor in determining whether public funds are being used impermissibly appears to be whether those who contributed tax money received the intended benefit therefrom, or whether by contrast, the benefit was received by a private individual or entity. . . . A determination of the question of who is receiving the primary benefit of the property will turn upon a consideration of all the relevant facts. . . ." The opinion also sets out a number of factors that may be part of the analysis, such as whether the expenditure confers a direct public benefit of a reasonably general character to a significant part of the public as opposed to a remote theoretical benefit; the legislative declaration of public purpose; whether controls and safeguards exist to ensure a public purpose is being met; and whether an arrangement is memorialized in writing. Other attorney general opinions address the public purpose analysis similarly, noting the factors are very specific to the facts of each individual case.

The question of whether a city could use tax revenues to participate in an economic development organization whose activities included lobbying legislators was addressed in Attorney General Opinion 2001-031. The Attorney General stated that lobbying raised the question of whether the city could engage in "government speech," or speech that "clearly advocates a particular position on a matter of public debate." The Attorney General noted that the United States Supreme Court has stated, "Government officials are expected as a part of the democratic process to represent and to espouse the views of a majority of their constituents. . . . When the government speaks, for instance to promote its own policies or to advance a particular idea, it is, in the end, accountable to the electorate and the political process for its advocacy. If the citizenry objects, newly elected officials later could espouse

some different or contrary position." *Quoting Keller v. State Bar of California*, 496 U.S. 1, 12 (1990); *Board of Regents of University of Wisconsin System v. Southworth*, 529 U. S. 217, 234 (2000). The Attorney General stated, "It is in the very nature of a political administration to take and advance positions, and doing so will necessarily entail attempting to influence legislation."

The opinion also noted that "the Supreme Court has been particularly jealous in guarding the public's right to disinterested government information on matters scheduled for an impending vote" as part of a ballot measure or referendum. Arkansas law imposes a defined limit on the use of public funds when it comes to ballot measures. Ark. Code Ann. § 7-1-111(b) states that it "is unlawful for a public servant or a governmental body to expend or permit the expenditure of public funds to support or oppose a ballot measure."

Other attorney general opinions have considered the use of public funds for lobbying. Attorney General Opinion 2007-189 opined that there was no violation of Arkansas law by the Arkansas Municipal League and the Arkansas Association of Counties being involved in lobbying activity, even though some of the funds supporting that activity originated as tax dollars. The Attorney General noted that the Disclosure Act for Lobbyists and State and Local Officials does not include any prohibitions on who may lobby, as long as any person who acts as a lobbyist is registered pursuant to the act, and also does not contain prohibitions on the source of funds that are expended for lobbying efforts. The Attorney General analyzed the organizations' lobbying activities as government speech and ultimately concluded that there was no statutory or constitutional prohibition on these two organizations expending funds for lobbying activities.

Op. Atty. Gen. 2004-190 considered the legality of the Arkansas Department of Health contracting with a lobbyist for the purpose of influencing legislative or administrative action. The Attorney General stated that he could not find any statutory law or judicial precedent on this issue, and as a result, he looked at the law generally and considered the limited authority on this issue in other states as well. The Attorney General noted that the principle that state agencies are limited in their powers to those expressly conferred by statute or necessarily implied from those statutes has been cited by other states in opining that state agencies do not have the authority to enter into contracts for lobbying services. While noting the authorization of the Department of Health to enter into contracts, the Attorney General concluded that none of the statutory provisions "expressly authorize the employing or contracting of lobbyists," and he found it "doubtful" that such a power was necessarily implied by the statutes related to contracting for services. The Attorney General concluded that there is "no controlling law on the point in Arkansas. . . . Legislative or judicial clarification may therefore be indicated. Pending such clarification, however, it is my opinion that such contracts are unauthorized."

Mr. Steinbuch also mentioned the issue of lobbyists engaging in litigation, but I did not find anything specific to that issue.

I have attached Attorney General opinions 2001-180, 2001-031, 2007-189, and 2004-190 for your convenience.

I hope this information is helpful. Please let me know if I can assist you further.

Thank you,
Tonia

The breakdown of payments was provided in the table below. In total, CAW spent **\$118,525**.

AABE Arkansas Chapter	\$1,000
AR Kids Read	\$1,500
Arkansas Association of Asian Businesses	\$1,000
Arkansas Black Hall of Fame Foundation	\$10,000
Arkansas Water Environment Association	\$500
Arkansas Womens Hall of Fame	\$2,000
Art Action Inc	\$1,500
Associated Industries of Arkansas Foundation Inc	\$25,000
Big Brothers Big Sisters of Central AR	\$7,500
Central Arkansas Sphinx Foundation	\$1,000
Fifty for The Future	\$5,000
Keep Little Rock Beautiful	\$1,000
Little Rock Black Nurses Assoc of Ark	\$1,000
Little Rock Regional Chamber	\$30,000
Maumelle Area Chamber of Commerce	\$500
Museum of Discovery	\$2,500
NLR Chamber of Commerce	\$8,000
Omega of Greater Little Rock	\$1,500
Philander Smith College	\$1,000
Rhythm in The Rock	\$1,500
Sherwood Chamber of Commerce	\$400
Women's Foundation Arkansas	\$15,125