

State of Arkansas

CALL ITEM 2

76th General Assembly

Third Extraordinary Session, 1988

HOUSE BILL 1032

By: Reps. Schexnayder and Gibson

"AN ACT TO AMEND THE ARKANSAS CODE OF 1987, TITLE 21, CHAPTER 8, TO ENACT THE ARKANSAS CODE OF PUBLIC ETHICS; TO AMEND THE ARKANSAS CODE OF 1987, TITLE 19, CHAPTER 11, SECTION 709 TO DELETE LANGUAGE RESTRICTING THE APPEARANCE OF FORMER STATE EMPLOYEES IN MATTERS CONNECTED WITH THEIR FORMER DUTIES; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code of 1987, title 21, chapter 8, is hereby amended to read as follows:

"SUBCHAPTER 1. GENERAL PROVISIONS

21-8-101. This chapter may be referred to and cited as the 'Arkansas Code of Public Ethics.'

21-8-102. As used in this chapter:

(1) 'Administrative action' means any decision on, or proposal, consideration, enactment, defeat, or making of any rule, regulation, ratemaking proceeding or policy action or non-action by a governmental body or any other policy matter which is within the official jurisdiction of the governmental body. 'Administrative action' shall not include ministerial action.

(2) 'Agency head' means the chief executive or administrative officer of any governmental body. 'Agency head' shall not include a legislator.

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

(4) 'Candidate for public office' means any person who has filed a declaration of candidacy or a petition to appear on the ballot for election as a public official.

(5) 'Confidential government information' means information which has been obtained under governmental authority and which, at the time this section is applied, the governmental body is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

(6) 'County government' means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of a county.

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

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

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

(i) Informational material such as books, reports, pamphlets, calendars, or periodicals informing a public servant regarding his or her official duties. Payments for travel or reimbursement for any expenses shall not be deemed 'informational material.'

(ii) The giving or receiving of food, lodging or travel which bears a relationship to the public servant's office and when appearing in an official capacity. If the expenses for food, lodging or travel are paid for by a registered lobbyist, the expenses shall be presumed to bear a relationship to the public servant's office and that he or she was appearing in his or her official capacity.

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

(iv) 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.

(v) Campaign contributions.

(vi) Any devise or inheritance.

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

(9) 'Governmental body' means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of the executive, judicial, or legislative branch of the state, municipality, county, school district, improvement district, or any political district or subdivision thereof.

(10) 'Immediate family' means an individual's spouse, and the children of that individual or his or her spouse residing in the individual's household.

(11) '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, capital gain, or any other form of recompense or any combination thereof.

(12) 'Legislative action' means introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto, or any other official action or non-action on any bill, ordinance, law, resolution, amendment, nomination, appointment, report or other matter pending or proposed before a committee or house of the Arkansas General Assembly, a quorum court or a city council or board of directors of a municipality.

(13) 'Legislator' means any person who is a member of the Arkansas General Assembly, a quorum court of any county, or the city council or board of directors of any municipality.

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

(15) 'Lobbyist' means a person who:

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

(B) 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

(C) 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 servant to influence any legislative action or administrative action.

(16) 'Ministerial action' means an action performed in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to, or the exercise of, the public servant's own judgment as to the propriety of the action being taken.

(17) 'Municipal government' means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of a municipality.

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

(19) 'Public appointee' means an individual who is appointed to a governmental body and does not receive a salary for his or her services. 'Public appointee' shall not include an individual appointed to an elective office.

(20) 'Public employee' means an individual who is employed by a governmental body or who is appointed to serve a governmental body. 'Public employee' shall not include public officials or public appointees.

(21) 'Public official' means a legislator or any other person holding an elective office of any governmental body, whether elected or appointed to the office.

(22) 'Public servant' means all public officials, public employees and public appointees.

(23) 'Registered lobbyist' means a lobbyist registered pursuant to the provisions of this chapter.

(24) 'Retainer' means a consideration or fee paid on a regular and continuing basis to a person for services, whether or not specific services are performed by the person.

(25) 'Salary' means fixed compensation paid regularly for services.

(26) 'State government' means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of the State of Arkansas.

(27) 'Termination of public service' means termination of employment with the governmental body which employed the public servant or termination of public service with the governmental body served.

21-8-103. Any person who violates any provision of this chapter shall be deemed guilty of a Class A misdemeanor. The culpable mental state required by this chapter shall be a knowing violation, except where another culpable mental state is specifically provided.

21-8-104. The Prosecuting Attorney of the District wherein an alleged violation occurred, shall have the authority to investigate the alleged violations of this chapter and to use all existing powers granted that office.

21-8-105. Nothing in this chapter shall prohibit a municipality or county from enacting legislation that is stricter than that contained in this chapter.

SUBCHAPTER 2. ARKANSAS ETHICS COMMISSION

21-8-201. (a) There is established the Arkansas Ethics Commission.

(b) The commission shall be composed of five (5) members. Three (3) members shall be appointed by the Governor, subject to confirmation by the Senate. One (1) member shall be appointed by the President Pro Tempore of the Senate of the Arkansas General Assembly and one (1) member shall be appointed by the Speaker of the House of Representatives of the Arkansas General Assembly. At least one member of the commission shall be a member of a racial minority and at least one member shall be female.

(c) No member or employee of the commission shall:

- (1) hold or be a candidate for any other public office while a member or employee;
- (2) hold office in any political party or political organization; or
- (3) serve as an employee of the United States or as a public employee of any governmental body, other than this commission.

(d) All members and employees of the commission shall be subject to all provisions of this chapter, but shall not therefore be disqualified from serving as members or employees.

(e) (1) Members of the commission shall serve for staggered terms of five (5) years. The terms of the initial members shall be staggered by lot such that one (1) member will serve a term of one (1) year, one (1) member will serve a term of two (2) years, one (1) member will serve a term of three

(3) years, one (1) member will serve a term of four (4) years, and one (1) member will serve a term of five (5) years.

(2) No person shall be appointed to more than one full five (5) year term on the commission.

(f) Any vacancy occurring on the commission shall be filled by the public official who made the appointment. Upon the failure of the public official to make an appointment for a vacancy within sixty (60) days, after receiving notice of the vacancy, the remaining commissioners shall fill the vacancy by majority vote. A person appointed to fill a vacancy occurring other than by expiration of a term of office shall be appointed for the unexpired term of the member he or she succeeds, and shall be eligible for appointment to one full five (5) year term.

(g) A member of the commission may be removed by the Governor upon a finding of substantial neglect of duty, inability to discharge the powers and duties of office, gross misconduct, or conviction of a felony.

(h) Members of the commission shall not be compensated but shall receive reimbursement for their actual and necessary expenses.

21-8-202. When any member of the commission is disqualified for any reason to hear and participate in the determination of any matter pending before the commission, the Governor shall appoint a qualified person to hear and participate in the decision on the particular matter. The special commissioner so appointed shall have all authority and responsibility with respect to the particular matter before the commission as if the person were a regular member of the commission, but shall have no authority or responsibility with respect to any other matter before the commission.

21-8-203. (a) The commission shall elect a chairman and vice chairman; in the absence of the chairman or in the event of a vacancy in that position, the vice chairman shall serve as chairman.

(b) Any action by the commission shall require the affirmative vote of three of its members, and three members shall constitute a quorum.

(c) The chairman or any three members of the commission may call a meeting, provided that adequate advance notice of the meeting is given.

(d) The commission shall have the authority to appoint an executive director and such additional personnel as it requires to perform its duties.

The executive director shall serve at the pleasure of the commission.