

ARKANSAS ETHICS COMMISSION

Enabling Laws

Act 53 of 2016
Initiated Act 1 of 1990, as amended.
A.C.A. §7-6-217

History and Organization

The Arkansas Ethics Commission was created as a result of the passage of Initiated Act 1 of 1990. Its purpose is to serve as the compliance and enforcement agency with respect to various ethics and public disclosure laws applicable to candidates for public office, state and local public officials, public servants, lobbyists, political parties, political committees, and persons involved with initiatives, referenda, and other matters referred to voters within the State of Arkansas.

Initiated Act 1 of 1990, popularly known as "The Standards of Conduct and Disclosure Act for Candidates and Political Campaigns," charged the Commission with the responsibility of governing the campaign finance activities of candidates for public office, candidate committees, and political action committees. It also set new limits on the amount individual citizens could contribute to parties, candidates, and political action committees. In addition to its authority to administer the laws governing campaign finance, the Commission was given authority to administer Initiated Act No. 1 of 1988 and Act No. 34 of 1999. The first Act, popularly known as "The Disclosure Act for Lobbyists and State and Local Officials," governs the relationship between elected and appointed state, county, and municipal public officials and possible non-government or otherwise conflicting financial interests. In addition, this Act governs the registration and activities of lobbyists. The second Act, which concerns "Constitutional Officers and Their Spouses," places certain restrictions on the entering into of employment, lease agreements, contracts or grants with any state agency. Each of these Acts requires significant disclosure by the persons within its scope.

Over time, the Commission's jurisdiction has steadily grown. Presently, the Commission has jurisdiction over all of the following:

Section 28, 29, and 30 of Article 19 of the Arkansas Constitution;

Ark. Code Ann. §3-8-701 et seq. (entitled "Disclosure Act for Initiative Proceedings");

Ark. Code Ann. §7-1-103(a)(1)-(4), (6) and (7) (concerning "Elections");

Ark. Code Ann. §7-6-201 et seq. (entitled "Campaign Financing");

Ark. Code Ann. §7-9-401 et seq. (entitled (Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters");

Ark. Code Ann. §19-11-718 (concerning "Special State Employees - Conflicts of Interest");

Ark. Code Ann. §21-1-401 et seq. (concerning "Constitutional Officers and Their Spouses");

Ark. Code Ann. §21-8-301 through §21-8-903 (referred to as "The Disclosure Act for Lobbyists and State and Local Officials");

Ark. Code Ann. §21-8-1001 et seq. (pertaining to "State Boards, Commissions, and Entities receiving State funds:); and

Ark. Code Ann. §23-115-501(e) and §23-115-601(j) (concerning "Arkansas Scholarship Lottery Act" vendor/retailer gift/compensation prohibition).

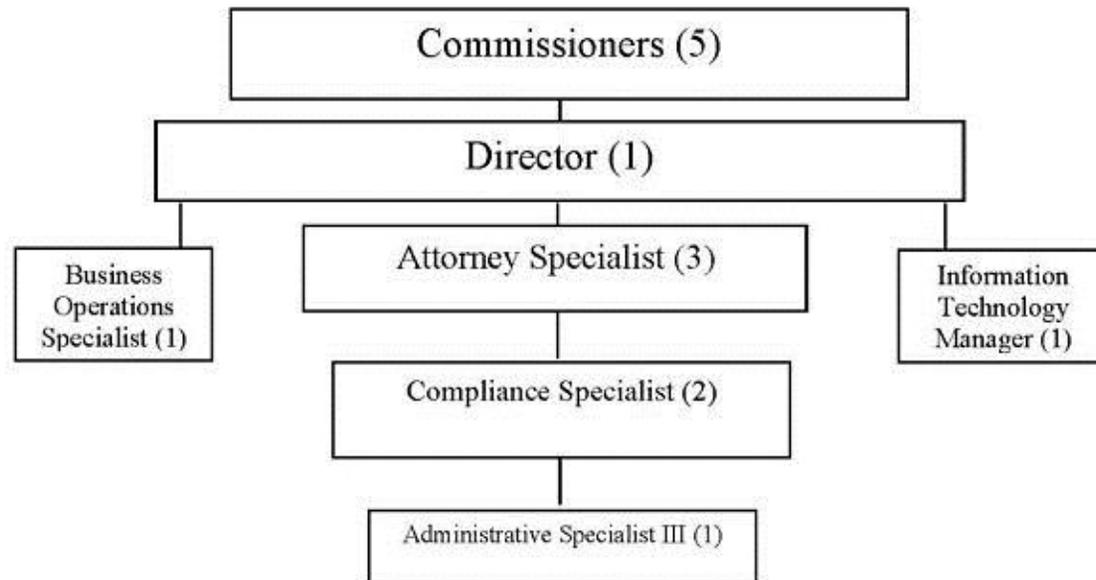
The Commission itself is composed of five (5) members appointed to five-year staggered terms by the Governor, the Lieutenant Governor, the Attorney General, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives, respectively. Members of the Commission serve without compensation, but may receive reimbursement for expenses incurred in the performance of their official duties. The Commission has a nine (9) member staff comprised of a Director, three (3) Attorney Specialists, two (2) Compliance Specialists, an Information Technology Manager, a Business Operations Specialist, and two (2) Administrative Specialists.

During its existence, the Commission, with the assistance of its staff, has performed the following functions: (1) investigate alleged violations of ethics and public disclosure laws and determine whether a violation has occurred; (2) issue sanctions for violations of ethics and public disclosure laws and/or make referrals for criminal prosecution; (3) conduct review exercises to determine whether required disclosure documents are being filed; (4) prepare and distribute educational materials and conduct training sessions for candidates, elected and appointed officials, lobbyists, political committees, and ballot and legislative question committees; (5) issue advisory opinions concerning ethics and public disclosure laws; (6) promulgate rules to implement and administer ethics and public disclosure laws; (7) hold a monthly public meeting and conducts public hearings; (8) answer questions regarding ethics and public disclosure laws and rules on a daily, informal basis; (9) prepare and update disclosure forms, instructions, and calendars used by public officials, lobbyists, political parties, political committees, candidates for public office, and ballot and legislative question committees; (10) administer a reminder notice program for candidates for public office, public officials, lobbyists, political parties, and political committees; (11) maintain report files on all ballot and legislative question committees registered in accordance with the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to

Voters; (12) make information publicly accessible in an electronic form via the internet; (13) respond to requests for public records under the Freedom of Information Act; and (14) bring civil actions in circuit court to enforce orders entered in proceedings before the Commission.

It is noted that the Commission is not charged by law with performing such functions as conducting review exercises to monitor compliance and providing education and training. Due to budgetary constraints, the Commission has found it necessary to significantly curtail these activities for the Commission. Without an increase in funding, the day is approaching when it will no longer be feasible for the Commission to administer a reminder notice program.

During its existence, the Commission has sought to promote openness and accountability in government through a balanced approach of (i) interpreting, investigating compliance with, and issuing sanctions for proven violations of the laws under its jurisdiction, and (ii) providing assistance in the form of education, training, and reminder notices to persons required to comply with those laws. The Commission finds itself at a point, however, where a lack of adequate resources has impaired its ability to continue providing the same level of assistance to members of the various regulated communities. Instead of being both a compliance and enforcement agency, the Commission is having to increasingly devote its limited resources to enforcement.



Agency Commentary

The Arkansas Ethics Commission (AEC) is the compliance and enforcement agency with respect to a wide variety of ethics and public disclosure laws applicable to: candidates for public office, state and local public officials, public servants, lobbyists, political parties, political committees, and persons involved with ballot measures presented to voters. The AEC currently has a five (5) member board and a nine (9) member staff to serve the citizens of the State of Arkansas.

The AEC's staff has remained steady at 9 members since 1999 while its appropriation for operations has actually declined over that period of time. Several years ago, the AEC's funding was moved from the Central Services to the Miscellaneous State Agencies fund which has resulted in spending blocks that have effectively reduced the amount available for operations even further.

Meanwhile, there has been a significant increase in the actual number of cases being processed by the AEC. The following is a comparison of the 2012 election cycle (2011 and 2012) with the 2014 election cycle (2013 and 2014):

- The total number of cases for the 2012 election cycle was 101 and the total number of cases for the 2014 election cycle was 138 (which represents a 37% increase).
- The average length of a probable cause report during the 2012 election cycle was 9 pages and the average length of a probable cause report for the 2014 election cycle was 16 pages (which represents a 78% increase).
- With respect to the 2012 election cycle, 66 of the 101 cases were filed by citizens and the remaining 35 were filed by the AEC itself.
- With respect to the 2014 election cycle, 123 of the 138 cases were filed by citizens and the remaining 15 were filed by the AEC itself.

These numbers show: (i) that the actual number of cases being processed by the AEC has definitely grown; (ii) that the increase in the number of cases being brought by citizens has resulted in fewer cases being brought by the AEC itself; and (iii) that the cases have become much more involved. With respect to observation (ii), most cases brought by the Ethics Commission tend to rise out of compliance reviews. The fact that more time is being spent investigation cases filed by citizens has cut into the time available to monitor compliance of the various types of person required to file disclosure forms. With respect to observation (iii), not only are more issues being raised but those issues have become more complex. In summary, the AEC has been called upon to do more and more with less and less. To do so, has required the AEC to become skilled at using its limited resources very efficiently.

It has become increasingly difficult for the AEC to work within the budget constraints that have been placed upon it. This has required

changes be made to help reduce operating costs. Moving the AEC's office to a new location has reduced the total rent expenses. Several contracts have been reevaluated to ensure that they are being most effectively used. The AEC has continued to look for new vendors who can provide similar services at reduced costs.

Over time, however, the issues which citizens utilize the AEC's complaint process to address have become increasingly more involved. As a result, the expertise and man hours required to investigate the often multi-level issues presented in citizen complaints has increased significantly. With the advent of immediate online availability of disclosure filings by political candidates, committees, and public servants, the nature of the allegations contained in citizen complaints being filed with the AEC has become more complex. This has caused some cases to require multiple investigatory trips to locations around the state. All of this has placed demands on the operating expenses of the organization.

The AEC has had to curtail some voluntary programs that have been beneficial in the past, for example conducting education and training. This reduction in services provided has caused the AEC to become more reactive and less proactive. There has been an increase of instances in which the respondent's first argument is that he or she did not know of the applicable law. Ignorance of the law is no excuse, but education and training were an effective method of reducing the number of violations committed.

With regard to operating expenses, the AEC is asking for the same levels that it had in the past biennium. Funding at this level, without any cuts, will help ensure that the AEC can continue to carry out its work. This covers the payroll expense including matching services. It will cover the increasing costs involved in all of the investigations. The AEC would have to evaluate the costs as they progress to see if any training programs could be re-implemented.

Audit Findings

DIVISION OF LEGISLATIVE AUDIT
AUDIT OF :
ARKANSAS ETHICS COMMISSION
FOR THE YEAR ENDED JUNE 30, 2015

Findings

None

Recommendations

None

State Contracts Over \$50,000 Awarded To Minority Owned Businesses Fiscal Year 2016

None

Employment Summary

	Male	Female	Total	%
White Employees	4	2	6	75 %
Black Employees	0	1	1	12 %
Other Racial Minorities	0	1	1	13 %
Total Minorities			2	25 %
Total Employees			8	100 %

Publications

A.C.A. 25-1-201 et seq.

Name	Statutory Authorization	Required for		# of Copies	Reason(s) for Continued Publication and Distribution	Unbound Black & White Copies Produced During the Last Two Years	Cost of Unbound Copies Produced During the Last Two Years
		Governor	General Assembly				
N/A	N/A	N	N	0	N/A	0	0.00

Agency Position Usage Report

FY2014 - 2015						FY2015 - 2016						FY2016 - 2017					
Authorized in Act	Budgeted			Unbudgeted Total	% of Authorized Unused	Authorized in Act	Budgeted			Unbudgeted Total	% of Authorized Unused	Authorized in Act	Budgeted			Unbudgeted Total	% of Authorized Unused
	Filled	Unfilled	Total				Filled	Unfilled	Total				Filled	Unfilled	Total		
9	8	1	9	0	11.11 %	12	8	1	9	3	33.33 %	12	8	1	9	3	33.33 %

Analysis of Budget Request

Appropriation: 192 - Ethics Operations

Funding Sources: HUA - Miscellaneous Agencies Fund

The Arkansas Ethics Commission enforces Arkansas' standards of conduct and disclosure laws concerning candidates for public office, state and local public officials, lobbyists and committees, individuals involved with initiatives, referendums and other matters referred to the voters. The Commission is composed of a five (5) member board and a nine (9) member staff.

Base Level Regular Salaries and Personal Services Matching include the continuation of the previously authorized 2017 Salaries and Career Service Payments for eligible employees. Personal Services Matching includes the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$420 per month. Base Level salaries and matching do not include appropriation for a Cost of Living Adjustment or Merit Pay Increases. The Base Level salary of unclassified positions reflects the FY17 line item maximum plus the previously authorized 2016 1% Cost of Living Adjustment authorized by Act 1007 (3 (B)) of 2015.

The Agency is requesting Base Level of \$713,997 in FY18 and \$714,119 in FY19 in appropriation and general revenue funding with nine (9) Regular positions.

The Executive Recommendation provides for the Agency Request.

Appropriation Summary

Appropriation: 192 - Ethics Operations

Funding Sources: HUA - Miscellaneous Agencies Fund

Historical Data

Agency Request and Executive Recommendation

Commitment Item		Historical Data			Agency Request and Executive Recommendation			Agency Request and Executive Recommendation		
		2015-2016 Actual	2016-2017 Budget	2016-2017 Authorized	2017-2018			2018-2019		
					Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries	5010000	438,992	467,790	613,185	467,890	467,890	467,890	467,990	467,990	467,990
#Positions		10	9	12	9	9	9	9	9	9
Extra Help	5010001	0	0	1,500	0	0	0	0	0	0
#Extra Help		0	0	2	0	0	0	0	0	0
Personal Services Matching	5010003	142,775	148,976	198,563	151,618	151,618	151,618	151,640	151,640	151,640
Operating Expenses	5020002	101,932	94,489	111,078	94,489	94,489	94,489	94,489	94,489	94,489
Conference & Travel Expenses	5050009	0	0	3,000	0	0	0	0	0	0
Professional Fees	5060010	0	0	0	0	0	0	0	0	0
Data Processing	5090012	0	0	0	0	0	0	0	0	0
Capital Outlay	5120011	0	0	0	0	0	0	0	0	0
Total		683,699	711,255	927,326	713,997	713,997	713,997	714,119	714,119	714,119
Funding Sources										
General Revenue	4000010	683,699	711,255		713,997	713,997	713,997	714,119	714,119	714,119
Total Funding		683,699	711,255		713,997	713,997	713,997	714,119	714,119	714,119
Excess Appropriation/(Funding)		0	0		0	0	0	0	0	0
Grand Total		683,699	711,255		713,997	713,997	713,997	714,119	714,119	714,119