

MEMORANDUM

TO: CHARIMAN EUODIAS GOZA

FROM: TODD TURNER

RE: OPINION ON CONFLICT OF INTEREST ISSUE

DATE: APRIL 8, 2008

We were asked to render a legal opinion about the possibility of a conflict of interest for a Justice of the Peace serving as an advisory member of the EDCCC Board of Directors. Under the statutory authority which governs the EDCCC, the County Judge is charged with the duty to appoint the Board of Directors, subject to approval by the Quorum Court. Likewise, pursuant to the EDCCC's By-Laws, the County Judge also selects certain advisory, non-voting Directors who are also subject to approval by the Quorum Court.

We can find no statute which would prohibit a Justice of the Peace from serving as an advisory non-voting member of the EDCCC. However, Arkansas Code Annotated § 14-14-1202(c)(3)(A) (which is incorporated in the EDCC's draft Conflict of Interest Policy) expressly prohibits a Justice of the Peace from simultaneously serving "as an elected city council member." Although this provision of the statute has not been challenged in court, the Arkansas Attorney General has opined that this statute is constitutional. *AG Opinion No. 2006-107*. The Attorney General reasoned that these offices, which are both legislative, provide significant decision-making authority which could lead to potential conflicts of interest.

In an earlier opinion, the Attorney General concluded that a potential conflict of interest would occur if a Justice of the Peace also served as an elected board member of an improvement district. *AG Opinion No. 2005-147*. One reason for this potential conflict is that the Quorum Court was charged with oversight of the improvement district. In some instances, the Quorum Court might be required to remove or replace a director of the improvement district. Consequently, the Attorney General observed that there was a potential for a conflict of interest.

As noted above, the Clark County Quorum Court has a degree of oversight and supervisory functions which affect the EDCCC. In addition to the statutory obligation to approve both voting and non-voting directors, the Quorum Court must approve amendments to the By-Laws and may, at times, be involved in budgetary matters which affect the EDCCC. While the EDCCC's By-Laws do not confer advisory board members with the power to vote, the appearance of a conflict could occur on matters affecting the EDCCC which required approval or confirmation by the Quorum Court. Advisory, non-voting members do not receive pay from the EDCCC. However, an advisory board member might claim an expense reimbursement which could also lead to the appearance

of a conflict of interest. In light of the Quorum Court's statutory duty to approve the appointment of both voting and non-voting board members, I believe that the better course to avoid any appearance of a conflict of interest would be for Justices of the Peace to refrain from serving on the EDCCC.

Nonetheless, in the absence of express, statutory prohibitions, issues involving potential ethical and conflict-of-interest scenarios are best resolved by the affected individual. Consequently, since we can find no express prohibition, there appears to be no basis to force the removal of an advisory member who is, or later becomes, a Justice of the Peace. However, in order to avoid the appearance of a potential conflict, a duly-elected Justice of the Peace should certainly exercise discretion if he or she decided to assume the additional role as an advisory director of the EDCCC.