

Opinion No. 2012-147

February 13, 2013

The Honorable Jon Woods  
State Senator  
Post Office Box 8082  
Springdale, Arkansas 72766-8082

Dear Senator Woods:

This is my opinion on your question:

Under Arkansas law, is the mayor of a city of the first class with a mayor-city council form of government legally permitted to attend Civil Service Commission meetings and ask applicants questions when the hiring<sup>1</sup> of a fire or police chief is being considered?

**RESPONSE**

In my opinion, the mayor may attend a public meeting of the board of civil service commissioners but may not ask questions without the board's consent. The mayor may not attend an executive session of the board.

***Attendance***

A municipal board of civil service commissioners "is a governmental entity covered by the [Freedom of Information Act]."<sup>2</sup> Normally, then, its meetings are

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<sup>1</sup> I assume your question concerns a city in which the council has by ordinance delegated to the board "the authority to appoint . . . the heads of the police and fire departments . . ." A.C.A. § 14-42-110(a)(2) (Repl. 1998).

<sup>2</sup> Op. Att'y Gen. 88-058; *see generally* A.C.A. §§ 25-19-101 to -110 (Repl. 2002, Supp. 2011) (Freedom of Information Act).

open to the public.<sup>3</sup> Everyone, including a mayor of course, is entitled to attend a public meeting.<sup>4</sup>

A governing body may hold an executive session – a meeting closed to the public – “for the purpose of considering employment [or] appointment . . . of any public officer or employee.”<sup>5</sup> Thus a board may, at its option, meet privately to consider hiring.<sup>6</sup>

May the mayor attend an executive session? The mayor is not a member<sup>7</sup> and thus does not have a commissioner’s right to attend.

The Act specifies the only four other people who may attend an executive session, only at the governing body’s request:

(A) Only the person holding the top administrative position in the public agency, department, or office involved, the immediate supervisor of the employee involved, and the employee may be present at the executive session when so requested by the governing body . . . .

(B) Any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board . . . .<sup>8</sup>

The mayor does not hold the top administrative position in the police or fire department and cannot attend an executive session under that part of the statute.

With respect to the language allowing the immediate supervisor of the employee involved to attend, I assume for purposes of this opinion that all job applicants fall

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<sup>3</sup> See A.C.A. § 25-19-106(a) (Supp. 2011).

<sup>4</sup> See Op. Att’y Gen. 97-016.

<sup>5</sup> A.C.A. § 25-19-106(c)(1).

<sup>6</sup> See, e.g., Op. Att’y Gen. 2002-161.

<sup>7</sup> See A.C.A. § 14-51-202(b)(1) (Supp. 2011).

<sup>8</sup> A.C.A. § 25-19-106(c)(2).

into one of two categories. First, some applicants are not current city employees. The mayor clearly is not the immediate supervisor of a person who is not employed by the city.<sup>9</sup> Second, the other applicants are current city employees but are lower-level departmental employees seeking advancement to the top departmental job. Any such person's immediate supervisor may be the current departmental chief or a departmental employee of middle rank, but is not the mayor. The mayor is not, accordingly, the immediate supervisor of any assumed applicant and cannot attend an executive session as such.

Finally, the mayor is neither "the employee" nor the person being interviewed and cannot attend an executive session as such.

Not being one of the people permitted by the Act to attend an executive session at the board's request, the mayor, in my opinion, may not attend.

### ***Participation***

"Because the [Act] requires that meetings be open to the public, anyone has the right to attend . . . . The right to attend a meeting, however, does not carry with it the right to participate."<sup>10</sup> I know of no other law giving the mayor authority to participate in board meetings. It follows that while the mayor may attend a public meeting, the mayor may not, in my opinion, ask questions without the board's consent, whether that consent might be embodied in a board rule<sup>11</sup> or given informally. As discussed above, the mayor may not attend a board's executive session, so obviously may not participate therein.

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<sup>9</sup> Not only is the mayor not the immediate supervisor of such a person, there probably is no "employee involved" at all when the applicant is not a current city employee. A predecessor in this office concluded in essence that the second occurrence of the word "employee" in A.C.A. § 25-19-106(c)(2)(A) does not include prospective employees. Op. Att'y Gen. 2002-161. That conclusion is almost compelled by the language of A.C.A. § 25-19-106(c)(2)(B) (*i.e.*, if the second occurrence of "employee" in subsection (A) includes prospective employees, subsection (B) appears to be superfluous). The first occurrence of the word "employee" in A.C.A. § 25-19-106(c)(2)(A) should, in my view, be taken to mean the same thing as the second occurrence, thus not to include prospective employees.

<sup>10</sup> John J. Watkins & Richard J. Peltz, *THE ARKANSAS FREEDOM OF INFORMATION ACT* 342 (footnote omitted) (Arkansas Law Press, 5th ed., 2009) (citing Op. Att'y Gen. June 2, 1969, and 93-052).

<sup>11</sup> See A.C.A. § 14-51-301 (Supp. 2011) (board's rulemaking authority).

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Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL  
Attorney General

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