



**STATE OF ARKANSAS**  
**THE ATTORNEY GENERAL**  
**DUSTIN MCDANIEL**

Opinion No. 2014-050

June 24, 2014

The Honorable Jimmy Hickey, Jr.  
State Senator  
1600 Arkansas Blvd., Suite 106  
Texarkana, Arkansas 71854

Dear Senator Hickey:

This is my opinion on your question about a municipal advertising and promotion (“A&P”) commission. You provide these facts:

Texarkana currently has an Advertising and Promotion Commission in place, which is served by seven members.<sup>1</sup> Two of these members have terms that expired on March 21, 2014, and they have continued to serve on the commission.

Your question is:

Are these two members, whose above mentioned terms have expired, legally authorized to vote on the nomination of two new members or possibly their own nomination for reappointment?

In my opinion, such a member may vote to appoint a *new* member to either position and to reappoint the *other* member, but should not vote for *his own* reappointment.

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<sup>1</sup> Given Texarkana’s population, I assume the A&P commission was formed under A.C.A. §§ 26-75-601 to -619 (Repl. 2008, Supp. 2013), not under A.C.A. §§ 26-75-701 to -705 (Repl. 2008) (applying to certain cities having fewer than 5,000 inhabitants).

## RESPONSE

A member whose term has expired and who has not resigned or been replaced may continue to serve on an A&P commission as a *de facto* officer<sup>2</sup> whose actions – generally including voting on any matter before the commission<sup>3</sup> – are valid and binding.

The law provides that a commission vacancy, “[w]hether resulting from expiration of a regular term or otherwise, . . . shall be filled by appointment made by the *remaining* members of the commission, with the approval of the governing body of the city.”<sup>4</sup>

While the meaning of “remaining” may be equivocal in context, a predecessor opined that *de facto* members may act to fill vacancies.<sup>5</sup> I see no persuasive reason to disagree. In my opinion, then, a *de facto* member generally may vote on a commission appointment or reappointment.

But a *de facto* member should not, in my opinion, vote for *his own* reappointment. The common law<sup>6</sup> on conflicts of interest, stated generally, is that:

Officers are not permitted to place themselves in a position in which personal interest may come into conflict with the duty which they owe to the public. . . . When conflicts of interest arise between an officeholder’s private interests and public duties, it is proper that the officeholder recuse himself from the matter in which the conflict arises.<sup>7</sup>

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<sup>2</sup> See Op. Att’y Gen. 2013-028, 2010-168, and 99-024.

<sup>3</sup> See Op. Att’y Gen. 99-024.

<sup>4</sup> A.C.A. § 26-75-605(d) (Repl. 2008) (emphasis added).

<sup>5</sup> See Op. Att’y Gen. 99-024.

<sup>6</sup> See A.C.A. § 1-2-119 (Repl. 2008) (adopting English common law to the extent not inconsistent with local law).

<sup>7</sup> 67 C.J.S. Officers § 347 (footnotes omitted); see also Op. Att’y Gen. 2012-018 and authorities cited therein. Note also that a municipal public servant may not “use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself . . . that are not available to others except

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Here, in my opinion, the member's personal, private interest in continuing to serve on the A&P commission may conflict with his public duty to ensure that the best available candidate occupies the office; his own interest in continuing may cloud his judgment about which available candidate's appointment would best serve the public interest. He should, in my opinion, recuse.

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

Sincerely,



DUSTIN McDANIEL  
Attorney General

DM:JMB/cyh