



STEVE CLARK
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

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OPINION NO. 85-29

The Honorable David Matthews
State Representative
P. O. Box 38
Lowell, Arkansas 72745

Dear Representative Matthews:

You have recently requested an opinion concerning whether the meetings of officers or directors of a property owners' association are "public meetings" subject to Arkansas' Freedom of Information Act, hereafter "FOI".

According to the Freedom of Information Act, Ark. Stat. Ann. §12-2803 (Repl. 1977), public meetings are:

[T]he meetings of any bureau, commission or agency of the State, including municipalities and counties, boards of education and all other boards. . . supported wholly or in part by public funds, or expending public funds. (Emphasis added).

Additionally, §12-2805 provides that meetings of the governing bodies of all boards or organizations of the State, wholly or partially supported by public funds are public.

Section 12-2802; the policy statement of the FOI states that "public business" should be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decisions that are reached in public activity and in making public policy.

A property owners' association is normally composed of private owners in a geographic area organized to direct policy for that area. By this definition, a property owners' association is not within the FOI as it has no public or governmental status.

Your second and third questions concern whether the association's status changes if 1) it receives funds directly or indirectly from the state or federal government and/or 2) if it engages in activities ordinarily handled only by a government agency, i.e. operating a police force.

In response to your second question, two recent Arkansas Supreme Court cases are helpful. In North Central Association of Colleges and Schools v. Troutt Bros., Inc., 261 Ark. 378, 548 S.W.2d 825 (1977) and Arkansas Gazette Co. v. Southern State College, 273 Ark. 248, 620 S.W.2d 258 (1981), appeal dis'd 455 U.S. 931 (1982), at issue was the "public" status of the North Central Association, a voluntary association of Arkansas colleges and universities and the Arkansas Intercollegiate Athletic Conference respectively. The factors considered by the Court in determining the status of these organizations are illustrated by the language from North Central, supra, at 381:

[T]he NCA affects public schools in Arkansas to the extent of the standards required for accreditation and its continuance. The State Committee is composed of public servants with its official situs and operation in a public owned institution. The NCA and State Committee are supported wholly or in part by public funds. In the circumstances, we are of the view as indicated that the Freedom of Information Act is applicable.

Using this decision as its basis, in Arkansas Gazette Co., supra, at 249, the Court stated:

"In North Central. . . we held that a voluntary association of publicly supported educational institutions was subject to the Freedom of Information Act even though the association business was conducted through a private non-profit corporation. Similarly. . . the dues paid by the state supported institutions are from public funds. Therefore, the AIC is partially supported by public funds." (Emphasis added).

The bases for decision in these cases were 1) the use of public employees in the private organization 2) the public situs of organizational meetings and 3) the monetary support of the organization by public funds. In our Opinion No. 83-163, a copy of which is attached, we opined that the "mere receipt" of public monies would not subject otherwise private groups to the FOI as this could be so broadly extended so as to include entities which receive tax refunds, indirect subsidies, etc.

The two cited cases and Opinion 83-163 are not necessarily in conflict. Clearly, the Legislature by its policy statement in the FOI intended that the Act apply to public or governmental activity. On the other hand, the language "supported wholly or in part" by public funds reveals as does the Arkansas Gazette case that private entities can be subject to the FOI.

The author of "Access to Public Records under the Arkansas Freedom of Information Act", 37 Ark. L. Rev. 741, 768 (1984), concludes after discussion of the cited precedents that when "the State. . . seeks to conduct its affairs through private entities" the activities of those entities become subject to the FOI. I believe this to

be a reasonable and valid inference of the meaning of the applicable statutory and case law.

It is my opinion that an organization's receipt of public funds coupled with its use of those funds to carry out a governmental function makes a private entity fall within the provisions of Arkansas' FOI. Of course, the factors of situs, employees, etc. enter into this determination. Both North Central and Arkansas Gazette Co. cases rely on this principle.

In response to your third question, if public funds are received to accomplish the tasks you mention and these governmental-type operations are accomplished at the direction of a property owner's association, FOI could be applied.

The foregoing opinion, which I hereby approve, was prepared by Deputy Chief of Staff R.B. Friedlander.

Sincerely,

STEVE CLARK
Attorney General

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