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Opinion No. 85-233

August 27, 1987

Arkansas Science & Technology Authority
c/o Mr. W. J. Williams, Jr.
Wright, Lindsey & Jennings
2200 Worthen Bank Building
Little Rock, Arkansas 72201

Dear Mr. Williams:

This is in response to your request for an opinion on whether the investment of cash bonds in a financial institution which also employs a director of the The Authority as an officer violates Act 409 of 1985, the by-laws of The Authority or Resolution 85-4. You have also requested an opinion as to whether the rental of office space from First Commercial Bank violates §15 of Act 409, as this institution employs a director of The Authority. The opinion request under present consideration withdrew a previous opinion request presented by John W. Ahlen, Ph.D., President of Arkansas Science & Technology Authority.

In order to address these questions, a brief outline of this legislation must be permitted. Act 859 of 1983, codified as Ark. Stat. Ann. §6-1601 et seq. created the Arkansas Science & Technology Authority (hereinafter The Authority). This Act was amended by Act 409 of 1985 which empowered the Board of Directors to be the governing body of The Authority. Act 409 established an Investment Fund for the restricted use of The Authority. Such fund was to be formed from the net income of the Endowment Fund. This Act further declares that such monies are cash funds.

Act 859 directs The Authority, acting through its Board of Directors, to deposit all monies in one or more financial institutions authorized to do business in this State. Resolution 85-4 resolves that the investment fund monies will be deposited in such banks by investing in certificates of deposit in an amount not to exceed \$100,000. An amount to be

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determined by The Authority will be placed in an insured, interest bearing, bank account for immediate accessibility. Proper authorization must be received for the withdrawal of funds for an investment in a qualified security by securing the approval of majority vote of the Board before purchasing any such qualified security.

Article III, §5 entitles a Director to vote on all issues presented. Section 8 states: "No Director shall have any right, title or interest in or to any property of The Authority." Act 409 specifically prohibits all directors of The Authority for purposes of personal gain, from having or attempting to have, directly or indirectly, any interest in any contract agreement of the authority in connection with the qualified investments or other programs of The Authority.

The two provisions referred to above clearly intend that no Director shall be placed in a position of benefiting from an investment on which he is required to vote. This same prohibition would apply to a Director who withheld an affirmative vote on a qualified security and thereby received a personal benefit. The use of funds committed to a banking institution may provide just such a benefit to one acting as an officer of the bank even though the benefit may be indirect. It must be remembered that this type of prohibition is not only directed at dishonor, but also conduct that tempts dishonor. It attempts to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with temptation. See, United States v. Mississippi Valley Generating Co., 364 U.S. 520, 549 (1961). Therefore, I conclude that the opportunity for a Director to obtain a benefit, even though it may be indirect, in the use of the investment fund is inconsistent with the spirit of Act 409, the by-laws of The Authority and Resolution 85-4.

You have also asked whether the rental of office space from First Commercial Bank violates the provisions of §15 of the Act due to the employment of a Director by this banking institution. The Director owns no personal interest in this lease arrangement nor does he stand to achieve any direct personal gain by reason of this rental arrangement. Section 15 has been paraphrased above and refers only to a conflict arising between a Director and any interest in any agreement in

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connection with qualified investments or other programs. As the rental of office space is neither connected with qualified investments nor other programs of The Authority, §15 is not violated by this agreement.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Connie Griffin.

Sincerely,


STEVE CLARK
Attorney General

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