



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2025-076

December 4, 2025

The Honorable Breanne Davis
State Senator
Post Office Box 10088
Russellville, Arkansas 72812

Dear Senator Davis:

You have requested my opinion concerning A.C.A. § 21-8-304(a) and whether a city council member must recuse from voting in a particular situation.

You explain that a town's mayor resigned,¹ creating a vacancy in that office. Under A.C.A. § 14-45-103,² the town council chose to fill the vacancy by appointing a qualified elector. Two people expressed interest in the appointment. One was an active council member whose husband also served on the council. The acts of this council member and her husband form the primary factual foundation of your opinion request.

First, you report that during an executive session to discuss the appointment of a new mayor, the council member's husband—also a council member—attended and “advocated for the appointment of his wife (an action that was later found to have violated [A.C.A.] § 21-8-304(a) by the Arkansas Ethics Commission, who issued a Public Letter of Caution)” to the husband. Second, you report that after the council came out of executive session, a motion was made to nominate another individual as mayor, and that motion was seconded. Two members voted for that person; one person voted against; and both the husband and wife abstained from voting, citing their belief that voting would be an “impermissible conflict of interest.”

The town announced the appointment of the new mayor because it believed that the two “for” votes constituted a sufficient majority for the appointment. But you report that legal counsel later advised the town that because the town “has a full five-member town council and no member was

¹ You report that the town has a population under five hundred people and that it is organized under a mayor-city-council form of local government.

² As amended by Act 995 of 2025, § 1.

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statutorily disqualified by virtue of voting on his or her own appointment,” the appointed mayor “was required to receive a minimum of three (3) affirmative votes for a valid appointment.”

Against this background, you ask the following questions:

1. Does the law require a council member, who has requested consideration for an appointment to fill a vacancy in a municipal office, to recuse himself or herself from participating and voting on a third party’s nomination for appointment to that position?
2. Does the law require the spouse of a council member, who happens to serve on the same council and who has advocated for the consideration of and appointment of his or her spouse to fill a vacant office, to recuse himself or herself from participating in a vote on the nomination of a third party to fill that same position?

Brief response: To answer the first two questions together—while no statute or constitutional provision directly addresses the scenario you have described, a common law conflict of interest or A.C.A. § 21-8-304(a) may apply. But whether participating in a vote on the nomination of a third party would violate § 21-8-304 or other ethics law depends on specific facts. The Arkansas Ethics Commission has authority to review fact-specific scenarios, issue ethics opinions, and enforce A.C.A. § 21-8-304.

3. If the answer to either of the above questions is yes, would such recusals reduce the number of members required for determining a majority? For example, if the law requires two (2) members of a five (5) member body of the whole council to abstain from participating in a vote, would the law consider affirmative votes of two (2) of the remaining three (3) members to constitute a majority for purposes of filling a vacancy?

Brief response: No. A majority vote is based on the total number of members elected to the council, not just the members who are present and voting on the matter at issue. Therefore, three affirmative votes would still be required on a five-member council, even if two members abstain.

DISCUSSION

Question 1: Does the law require a council member, who has requested consideration for an appointment to fill a vacancy in a municipal office, to recuse himself or herself from participating and voting on a third party’s nomination for appointment to that position?

Question 2: Does the law require the spouse of a council member, who happens to serve on the same council and who has advocated for the consideration of and appointment of his or her spouse to fill a vacant office, to recuse himself or herself from participating in a vote on the nomination of a third party to fill that same position?

Arkansas law does not expressly prohibit a council member from voting on a third party's appointment to a vacancy for which the council member is also a candidate.³ Nor does it expressly prohibit the council member's spouse from voting on the third party's appointment. But ethics laws and common law principles regarding conflicts of interest may apply.⁴

First, as this Office has consistently concluded, a common law conflict of interest may arise when someone in a position of public trust, like a city council member, uses the position directly or indirectly to further his or her own interests in conflict with the public trust.⁵ Thus, council members should abstain from voting on matters that would require them to divide their allegiance—"that would require [them] to act in the interest of one [thing] at the expense of the interest of the other."⁶

Second, under A.C.A. § 21-8-304(a), a city council member cannot "use or attempt to use his or her official position to secure special privileges or exemptions" personally, for a spouse, or for someone with whom the council member has a substantial financial relationship.⁷ Although undefined in the statute, the Arkansas Ethics Commission—authorized to enforce A.C.A. § 21-8-304—defines "special privileges or exemptions" to mean "[a] particular benefit or advantage unfairly extended to a person beyond the common advantages of others" or "[t]he unjustified release of a person from a duty or obligation required of others."⁸

Factors the Arkansas Ethics Commission has considered in favor of recusal include the council member having a monetary interest in the outcome and having a determinative vote on the matter under consideration.⁹

No Arkansas case law, Attorney General opinion, or Ethics Commission advisory opinion or order expressly addresses the scenario you have described. In the consolidated cases of 2023-CO-012, 2021-CO-015, and 2021-CO-025, the Arkansas Ethics Commission found that a council member violated A.C.A. § 21-8-304(a) when she voted on an ordinance that would have rescinded a previous ordinance allowing dual service as a city council member and a city employee, because that vote "directly impacted her ability to serve" in both roles. Other Ethics Commission final

³ See A.C.A. §§ 14-42-103 (as amended by Act 519 of 2025, § 1), 14-43-411 (as amended by Act 519 of 2025, § 5), 14-43-412 (as amended by Act 519 of 2025, § 6), 14-45-103 (as amended by Act 519 of 2025, § 10).

⁴ See Ark. Att'y Gen. Op. 2018-140.

⁵ E.g., Ark. Att'y Gen. Ops. 2023-082, 2012-018, 2006-219, 2001-042, 1999-344, 1998-275, 1994-283.

⁶ Ark. Att'y Gen. Op. 2001-042.

⁷ See also A.C.A. § 21-8-301(6) (defining "public servant" to include public appointees, employees, and officials).

⁸ 21 C.A.R. 2-101(16).

⁹ See Ark. Ethics Comm'n, Advisory Opinion No. 2004-EC-003 (April 16, 2004).

orders finding that someone violated A.C.A. § 21-8-304 chiefly concern conflicts arising from financial interests or gain.¹⁰

Whether voting on a third-party candidate constitutes a conflict of interest under the common law or A.C.A. § 21-8-304 is a factual question. But the mere fact that someone was a candidate for a position may not warrant recusal if the vote does not directly affect the outcome in that person's favor to the exclusion of others. As discussed above, additional facts that may indicate recusal is necessary include whether the person voting has a financial interest in the third party or is related to the third party.

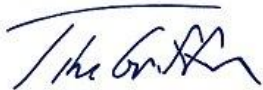
Whether voting on the appointment of a third party to a vacancy—when the council member or council member's spouse has been a candidate for that appointment—presents a conflict in a given situation is fact-specific. When a factual question arises concerning a potential violation of § 21-8-304, the Arkansas Ethics Commission has the authority to review the facts and issue advisory opinions on that statute and other ethics law.¹¹

Question 3: If the answer to either of the above questions is yes, would such recusals reduce the number of members required for determining a majority? For example, if the law requires two (2) members of a five (5) member body of the whole council to abstain from participating in a vote, would the law consider affirmative votes of two (2) of the remaining three (3) members to constitute a majority for purposes of filling a vacancy?

When a statute requires a majority vote of all city council members,¹² the majority vote is based on the total number of members elected to the council, not just the members who are present and voting on the matter at issue.¹³ Thus, in a five-member council, three affirmative votes are required to fill a vacancy, and that does not change even if two members abstain from voting.¹⁴

Assistant Attorney General William R. Olson prepared this opinion, which I hereby approve.

Sincerely,



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¹⁰ E.g., Ark. Ethics Comm'n, Final Order Nos. 2022-CO-085, 2017-CO-008, 2016-CO-026, 2015-CO-028.

¹¹ See A.C.A. § 7-6-217(g).

¹² See, e.g., A.C.A. § 14-45-103, as amended by Act 995 of 2025.

¹³ See Ark. Att'y Gen. Op. 2002-132.

¹⁴ *Id.*