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## ADVISORY OPINION NO. 2011-EC-004

Issued June 24, 2011

The Arkansas Ethics Commission ("AEC") has received a written advisory opinion request from Ms. Carolyn Witherspoon, counsel for the Little Rock Municipal Airport Commission (the "LRMAC"). As described in her request, the LRMAC has seven members who are appointed by the Mayor and the City Board of Directors and serve staggered five-year terms.

Ms. Witherspoon states that the LRMAC generally meets once a month as a full commission and the Commissioners receive no payment for their service. She also states that funding for the airport is "diverse" and federal law requires the airport be self-sustaining.

In her request, Ms. Witherspoon seeks guidance concerning three (3) gifts purchased by the Executive Director of the LRMAC to be presented to "soon-to-be retiring Commissioners." As described, the gifts are valued at less than \$500 each and were purchased with airport revenue funds generated by fees. Ms. Witherspoon states that two of the three gifts were presented to retiring Commissioners during 2009 and 2010 at the conclusion of their last meetings and that no official acts were taken by the retiring Commissioners after the gifts were presented. The remaining gift is intended to be presented to the next retiring Commissioner.

The question asked is whether the purchase and presentation of these gifts complies with state law, specifically Ark. Code Ann. § 21-8-801. Ms. Witherspoon also requests that the AEC's opinion include advice regarding any recommended remedy if the already-presented gifts were prohibited.

The receipt of gifts by public servants is addressed in Ark. Code Ann. § 21-8-801, which provides, in pertinent part, as follows:

No public servant shall...[r]eceive a gift or compensation as defined in § 21-8-401 et seq., other than income and benefits from the governmental body to which he or she is duly entitled, for the performance of the duties and responsibilities of his or her office or position.

The AEC has previously issued several opinions concerning Ark. Code Ann. § 21-8-801 and in one such opinion, Advisory Opinion No. 2000-EC-007, the AEC addressed a question which is very similar to the question presented herein. In that opinion, the questions related to a retirement event and gift to be presented to a State Senator whose term was about to expire. In answering the question as to whether there is a limit on the amount which can be spent on an item to be presented as a token of appreciation, the AEC noted that the term "gift" is defined, with certain exclusions, to mean "any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor." One of the items excluded from that definition is "[a]nything with a value of one hundred dollars (\$100) or less."

The AEC went on to state that a public servant is not prohibited from receiving an item conferred to show appreciation for the public servant's job performance (i.e., to reward the public servant for doing his or her job) so long as the value of the item does not exceed one hundred dollars (\$100.00). Items costing more than one hundred dollars (\$100.00) which are given to public servants to show appreciation for their efforts (i.e., to reward them for doing their job) or to reward them for past or future action are prohibited, unless such items are otherwise excluded from the definition of "gift."

The term "gift" is defined in both Ark. Code Ann. § 21-8-402(5) and § 300(b) of the AEC's Rules on Gifts to mean "any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefore." In addition to the exclusion for anything worth less than \$100, the definition also excludes "[a]n item which appointed or elected members of a specific governmental body purchase with *their own personal funds* and present to a fellow member of that governmental body in recognition of public service." (Emphasis supplied.)

While the AEC does not believe that the gift prohibition statute was drafted with the giving of retirement gifts in mind, until the referenced Commissioners are no longer serving on the LRMAC, they meet the definition of "public servant<sup>1</sup>" and the prohibition applies to them. Under the current law, there are no specific exceptions for "retirement gifts," especially when given while the public servant is still serving.

Additionally, although the retirement/appreciation gift is being presented by the LRMAC (i.e., the governmental body they are serving), the Commissioners are not "entitled" to such gifts. In accordance with Ark. Code Ann. § 21-8-801, a public servant is clearly prohibited from receiving a gift or compensation for the performance of the duties and responsibilities of his or her office or position, other than income and benefits

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<sup>1</sup>As used in the AEC's Rules on Gifts, the term "public servant" is defined in § 300(j) to mean "all public officials, public employees, and public appointees."

from the governmental body to which he or she is duly *entitled*. The AEC concludes that a gift showing appreciation to public servant upon his or her retirement is a kind gesture from the governmental body, but nevertheless, it is not a benefit to which the retiring public servant is "entitled."

Accordingly, options to cure the previously presented gifts include: (1) return of the gifts to the LRMAC by the retiring Commissioners; (2) reimbursement of the cost of the gift which exceeds the \$100 gift exception amount by the retiring Commissioners; or (3) purchase of the gift (and reimbursement for those previously given) by the fellow Commissioners pursuant to peer gift exception.

This advisory opinion is issued by the Ethics Commission pursuant to Ark. Code Ann. § 7-6-217(g)(2).

**ARKANSAS ETHICS COMMISSION**

By:

  
Rita S. Looney, Chief Counsel