

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 2007-EC-005 Issued October 19, 2007

The Arkansas Ethics Commission has received a written advisory opinion request from Robert T. Rogers II, the Prosecuting Attorney for the 19<sup>th</sup> Judicial District East. In his opinion request submitted on behalf of Carroll County, Mr. Rogers asks if it is permissible for county road department employees and county sheriff's office employees to receive compensation from an anonymous donor.<sup>1</sup>

According to Mr. Rogers, an anonymous donor gave \$20,000.00 to Carroll County in two separate checks of \$10,000.00 each, and specified that the money was to be split evenly between the county road department and the sheriff's office for use as a bonus for selected employees. The recipients and amounts of those bonuses were left to the discretion of the county judge and sheriff. The donor is now a vendor of asphalt to the county pursuant to a bid awarded prior to the donor's purchase of the asphalt company.

Mr. Rogers goes on to state that the money was deposited into the county's general fund and subsequently appropriated by the quorum court to the salaries line items of the road department and sheriff's office budgets. The money has not been paid out to employees pending resolution of any ethical issue. Mr. Rogers asks if this arrangement violates Ark. Code Ann. § 21-8-801 which provides, in pertinent part, as follows:

[n]o public servant shall...[r]eceive a gift or compensation as defined in subchapter 4 of this chapter, 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.

In Opinion 1999-EC-007, the Commission specifically addressed several issues encompassed within Ark. Code Ann. § 21-8-801, including the "prohibited

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<sup>1</sup> It is noted that while the donor may *seek* to remain "anonymous," the Commission is not aware of any banking procedure whereby a check can be written and presented for payment without a payee being identified. Moreover, having presented a check to a public entity, the donor's identity is public information and would likely be required to be disclosed pursuant to a request made under Arkansas's Freedom of Information Act.

compensation” language. In citing Attorney General Opinion No. 98-024, the Commission concluded that:

“except as expressly provided by statute, a public servant can only be compensated for doing his or her job by the governmental body which he or she serves. In other words, a public servant cannot receive outside compensation for doing his or her job.”

It is clear from the scenario described by Mr. Rogers that the donor seeks to provide “outside compensation” to county employees who are to be selected at the discretion of the county judge and sheriff. While the quorum court apparently appropriated these funds to the budgets of these departments, no employee is “*duly entitled*” to any of the funds. Compensation to public servants must be *from* the governmental body he or she serves and the public servant must be *entitled* to the compensation, i.e., it must be legally owed to the public servant.

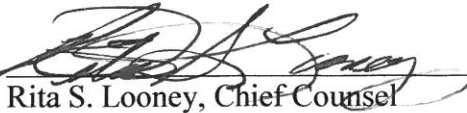
Additionally, the Commission is mindful that Ark. Code Ann. § 21-8-801(b)(1) prohibits the *conferring of compensation* to “any public servant, the receipt of which is prohibited by subdivision (a)(1) of this section.” Thus, this statute not only prohibits a public servant from receiving such compensation, but it also prohibits the donor from conferring such prohibited compensation to public servants (county employees).

Finally, the fact that this donor wishes to be “anonymous” does not make him so. This donor’s identity is known to the prosecuting attorney and likely to others in the county administration offices. Moreover, the fact this donor is also a vendor with a contract for services with the county potentially raises additional concerns regarding this “donation.”

While the Commission is not being called upon to address the potential conflict of interest in this relationship, it bears mentioning that such arrangement is, at a minimum, suspect. Ark. Code Ann. § 21-8-801 prevents the donor from doing indirectly what he cannot do directly, i.e., he cannot provide a private bonus to public servants for doing their jobs. The Commission encourages the donor and county to make all reasonable efforts to undo or cancel the donation arrangement because such arrangement appears to violate Ark. Code Ann. § 21-8-801(a) and (b).

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

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By:   
Rita S. Looney, Chief Counsel