

**ARKANSAS ETHICS COMMISSION**  
**SUBSTITUTE OPINION NO. 97-EC-011**

ISSUED: August 21, 1997

ISSUE PRESENTED:

*What is the fair market value of a ride on a private airplane provided by a lobbyist to a public official?*

BRIEF RESPONSE:

The actual operating costs of the aircraft for the trip should be used (usually expressed in terms of a hourly rate to operate the aircraft multiplied by the number of hours) divided by the number of passengers on the plane. This figure should be disclosed by the lobbyist, the public official or both on the applicable reporting form.

FACTS PRESENTED:

A lobbyist intends to provide trips via private aircraft for various public officials on different dates and to different locales. Sometimes, not all the seats on the plane will be filled.

DISCUSSION:

Ark. Code Ann. § 21-8-604 requires lobbyists to report the giving of anything of value to a public official. Section 604(b)(2)(A)(ii) requires the lobbyist to itemize any transportation expenses in excess of twenty-five dollars (\$25.00).

Ark. Code Ann. § 21-8-701(d)(7) requires a public official to report on his annual Statement of Financial Interest the receipt of any gift in excess of \$100. The definition of "gift" contained in Ark. Code Ann. § 21-8-402(5)(B)(ii) excludes the giving or receiving of food, lodging or travel which bears a relationship to the public official's office and when appearing in an official capacity. Any nongovernmental source of payment of travel expenses in excess of \$150, must be reported by a public official on the annual Statement of Financial Interest, pursuant to Ark. Code Ann. § 21-8-701(d)(8), if the travel bears a relationship to his office and when appearing in his official capacity.

Generally, when a lobbyist provides private aircraft transportation for a public official, the expenditure is sufficiently large enough that some type of reporting is required from the lobbyist, the public official or both. This opinion is intended to assist lobbyists and public officials in placing a value on transportation via private aircraft. The opinion is a substitute for the previously issued Commission opinion number 97-EC-011 which was issued on June 20, 1997 and withdrawn by the Commission at its meeting of July 14, 1997.

Corporations that own aircraft usually compute the actual operating cost for that particular plane. This figure generally includes the expenses for a crew to fly the plane (and stay overnight, if applicable), the cost of the fuel to operate the plane, repairs to the plane, depreciation, landing fees and any applicable catering. Normally, this cost is expressed in terms of a per hour operational expense. In other words, what it actually costs the corporation to operate this particular plane on an hourly basis.

So, for example, a corporation owns a jet that it has determined will cost \$800/hour to operate in 1997, given historical expenses for crew, fuel, repairs, depreciation, fees and catering. The plane seats eight (8) persons. The corporation flies six (6) public officials and two lobbyists to New York on its jet. The actual flying time from Little Rock to New York and back is four and one-half hours. The value of a ride on this jet is computed by multiplying \$800/hour times four and one-half hours of actual flying time. This computation totals \$3600 for the plane ride. This total figure (\$3600) must be divided by the number of passengers on the trip. In this example, there were eight (8) passengers that travelled from Little Rock to New York and back (pilots do not count as passengers). Therefore, by dividing the total cost of the plane ride (\$3600) by the number of passengers (8), the value of the plane ride was \$450/per passenger. This is the figure to be used for reporting purposes.

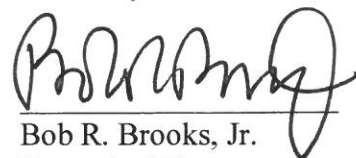
In the example cited above, the lobbyist would report, among other things, the fact that he had provided transportation on private aircraft on section 15 of the Lobbyist Activity Report, which requires disclosure of the date of the trip, the client paying for the trip, the purpose of the trip, the names of the public officials who benefitted from the trip, the type of aircraft provided (i.e., Citation V jet or Beechcraft King Air B100 turboprop) and the name and location of lodging, if applicable. The current Lobbyist Activity Report requires the lobbyist to disclose the name of the carrier in section 15, however, in this example, private aircraft was used to provide transportation for the public officials so the lobbyist must disclose the specific type of aircraft provided in place of the name of the carrier.

The Commission is mindful that this opinion applies only to a select number of lobbyists registered in Arkansas. Each client represented by the lobbyist owns a particular type of aircraft and these planes are rarely the same kind, make or model. Therefore, it is anticipated that the actual operating costs will vary from plane to plane.

Because of the degree of flexibility afforded by this rule, the Commission specifically reserves the right to inspect the records, receipts and flight logs of the owner of planes used by lobbyists to transport public officials for purposes of verifying actual operating costs. This may involve, but will not be limited to, the interviewing of company officials and pilots to confirm the actual operating costs of the plane involved and detailed review of documents to support such figures. Lobbyists should retain any and all records to support amounts reported pursuant to this opinion.

#### SUMMARY:

When a public official is provided private aircraft transportation by a lobbyist, the value of that travel is computed by taking the actual operating costs of the plane divided by the number of passengers on the trip.

  
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