

# ARKANSAS ETHICS COMMISSION

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Post Office Box 1917  
Little Rock, Arkansas 72203-1917  
(501) 324-9600 Fax (501) 324-9606  
Toll Free (800) 422-7773



Graham F. Sloan  
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Jill Rogers Barham  
Drew Blankenship  
Staff Attorneys

Julie Dorobek  
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Directors of Compliance

## ADVISORY OPINION NO. 2023-EC-001 Issued November 17, 2023

The Arkansas Ethics Commission (“AEC”) has received a written advisory opinion request from Senator Bart Hester of Cave Springs, Arkansas. Therein, he asked for an advisory opinion concerning the payment of travel expenses to attend the American Israel Education Foundation (“AIEF”) Conference.

As background, he provides the following information:

- AIEF is a 501(c)(3) non-profit educational organization that conducts educational programs for members of the U.S. Congress, American state politicians, and other influential American political figures. The week-long programs are conducted bi-annually in Israel. AIEF’s goal is to educate political leaders about the importance of the U.S.-Israel relationship, which is accomplished through (among other things) firsthand experiences in Israel, briefings by experts on Middle East affairs, and meetings with Israeli political figures.
- AIEF is a non-partisan organization. But in an effort to promote more robust attendee participation, AIEF bifurcates its conference by political party into two, annual meetings. Members of the Democratic party are invited earlier in the year, and members of the Republican party are invited later in the year.
- Importantly, although the conference is conducted in Israel, course participation is limited to U.S. citizens. Because the conference is offered without respect to region, the conference seems appropriately characterized as a national conference. Similar to other national conferences, such as the National Conference of State Legislatures, AIEF offers to pay for an attendee’s travel, room, board, and program expenses.

In seeking this advisory opinion, Senator Hester stated that he would like to attend the AIEF’s December 2023 educational seminar for Republican leaders, and that he would like to know whether Arkansas’s ethics laws allow AIEF to cover expenses related to his travel, room, board,

and course registration. In answering that question, he requested clarity on the following embedded issues:

1. Assuming that AIEF exceeds the expenditure threshold for lobbying, does AIEF otherwise meet Arkansas's legal definition of a lobbyist?
2. Assuming that AIEF is considered a lobbyist under Arkansas law, would payments issued by AIEF on behalf of an Arkansas State Legislator for his or her travel, room, board, and program expenses (registration fees) fall under the gift exemption pertaining to payments by "national organizations for. . . national conferences. . . ? Ark. Const. Art. 19 § 30(b)(2)(B)(vi)."
  - a. Is a "national conference" under Article 19, § 30(b)(2)(B)(vi) regarded as "national" based on the composition of its participants, the location of its meeting, the subject-matter covered, or something else entirely?
  - b. What constitutes a "request" of an elected or appointed official to "represent" the State of Arkansas at a national organization under Article 19, § 30(b)(2)(B)(vi)?

**Main Question presented: Do Arkansas's ethics laws allow the AIEF to cover expenses related to a state senator's travel, room, board, and course registration?**

In brief, yes, Arkansas's ethics laws allow AIEF to cover expenses related to a state senator's travel, room, board, and course registration. Ark. Const. Art. 19 § 30(a) provides as follows:

Persons elected or appointed to the following offices shall not knowingly or willfully solicit or accept a gift in violation of Arkansas Constitution, Article 19, § 30, from a lobbyist, a person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist:

- (1) Governor;
- (2) Lieutenant Governor;
- (3) Secretary of State;
- (4) Treasurer of State;
- (5) Auditor of State;
- (6) Attorney General;
- (7) Commissioner of State Lands;
- (8) Member of the General Assembly;
- (9) Chief Justice of the Supreme Court;
- (10) Justice of the Supreme Court;
- (11) Chief Judge of the Court of Appeals;
- (12) Judge of the Court of Appeals;
- (13) Circuit court judge;
- (14) District court judge;
- (15) Prosecuting attorney; and

(16) Member of the independent citizens commission for the purpose of setting salaries of elected constitutional officers of the executive department, members of the General Assembly, justices, and judges under Arkansas Constitution, Article 19, § 31.

As a member of the General Assembly, Senator Hester would be prohibited from accepting a gift from a lobbyist, a person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist.

It appears that AIEF would constitute a lobbyist under Arkansas law. Ark. Code Ann. § 21-8-402 (10) defines “Lobbying” to mean communicating directly or soliciting others to communicate with any public servant with the purpose of influencing legislative action or administrative action. Likewise, it provides a contact email address and says that AIEF is the charitable organization affiliated with AIPAC (“America’s Pro-Israel Lobby”).<sup>i</sup> The AIEF’s own website makes it clear it is identifying “political influentials” and sponsoring trips for said “influentials.”

Ark. Const. Art. 19 § 30(b)(2) provides that “gift” means any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor. It goes on to provide several exceptions. The only potentially applicable exception is provided in the definition of “Gift” in Ark. Const. Art. 19, § 30(b)(2)(B) (vi) (a) to be “Payments by regional or national organizations for travel to regional or national conferences at which the State of Arkansas is requested to be represented by a person or persons elected or appointed to an office under subsection (a) of this section.” AIEF invites and sponsors leaders and elected officials from all over the United States to its conference. Based on the law and the facts presented, it appears that the AIEF could sponsor Senator Hester’s trip to its conference in Israel under the exception for “Payments by regional or national organizations for travel to regional or national conferences at which the State of Arkansas is requested to be represented by a person or persons elected or appointed to an office under subsection (a) of this section.”

**Imbedded Issues on Which Clarity is Being Sought:**

**1. Assuming that AIEF exceeds the expenditure threshold for lobbying, does AIEF otherwise meet Arkansas’s legal definition of a lobbyist?**

Yes, as stated above, it appears that AIEF would constitute a lobbyist under Arkansas law. Ark. Code Ann. 21-8-402 (10) defines “Lobbying” to mean communicating directly or soliciting others to communicate with any public servant with the purpose of influencing legislative action or administrative action.

Ark. Code Ann. § 21-8-402 (1) (A) provides that “Administrative action” means any decision on, or proposal, consideration, or making of any rule, ratemaking proceeding, or policy action by a governmental body, and (B) “Administrative action” does not include ministerial action.

Likewise, Ark. Code Ann. § 21-8-402 (8) provides that “Legislative action” means introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto, or any other official action or nonaction on any bill, ordinance, law, resolution, amendment, nomination,

appointment, report, or other matter pending or proposed before a committee or house of the General Assembly, a quorum court, or a city council or board of directors of a municipality[.]

Ark. Code Ann. §21-8-402 (11) provides that “Lobbyist” means a person who:

(A) Receives income or reimbursement in a combined amount of four hundred dollars (\$400) or more in a calendar quarter for lobbying one (1) or more governmental bodies;

(B) Expends four hundred dollars (\$400) or more in a calendar quarter for lobbying one (1) or more governmental bodies, excluding the cost of personal travel, lodging, meals, or dues; or

(C) Expends four hundred dollars (\$400) or more in a calendar quarter, including postage, for the express purpose of soliciting others to communicate with any public servant to influence any legislative action or administrative action of one (1) or more governmental bodies unless the communication has been filed with the Secretary of State or the communication has been published in the news media. If the communication is filed with the Secretary of State, the filing shall include the approximate number of recipients[.]

The following is listed on the AIEF’s website, aiefdn.org:

*“The American Israel Education Foundation (“AIEF”) is the charitable organization affiliated with AIPAC, America’s pro-Israel lobby, and was incorporated in 1988. AIEF makes annual grants to AIPAC that are consistent with the Foundation’s status as a charitable and educational 501 (c)(3) organization, providing grants to support select educational programs including Middle East research, educational materials and conferences, and leadership programs for university students. In addition to making grants for AIPAC programs, the Foundation funds educational seminars to Israel for members of Congress and other political influentials. These AIEF-sponsored trips help educate political leaders and influentials about the importance of the U.S. - Israel relationship through firsthand experiences in Israel, briefings by experts on Middle East affairs, and meetings with Israeli political elite.”*

Likewise, it provides a contact email address and says, “AIEF The Charitable Organization Affiliated with AIPAC.”<sup>ii</sup> Its own website, AIEF makes it clear it is identifying “political influentials” and sponsoring trips for said “influentials.”

While not part of the question presented, it should also be noted that while AIEF could pay for Senator Hester’s travel to its conference, such activity would likely trigger lobbyist registration and reporting, and such an expenditure would be reportable on its lobbyist activity reports.

2. **Assuming that AIEF is considered a lobbyist under Arkansas law, would payments issued by AIEF on behalf of an Arkansas State Legislator for his or her travel, room, board, and program expenses (registration fees) fall under the gift exemption pertaining to payments by “national organizations for... national conferences...? Ark. Const. Art. 19 § 30(b)(2)(B)(vi).**

As stated above, Ark. Const. Art. 19 § 30(b)(2) provides that “gift” means any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor. It goes on to provide several exceptions. The only potentially applicable exception is provided in the definition of “Gift” in Ark. Constitution Art. 19, § 30(b)(2)(B) (vi) (a) as “Payments by regional or national organizations for travel to regional or national conferences at which the State of Arkansas is requested to be represented by a person or persons elected or appointed to an office under subsection (a) of this section.”

- a. **Is a “national conference” under Article 19, § 30(b)(2)(B)(vi) regarded as “national” based on the composition of its participants, the location of its meeting, the subject-matter covered, or something else entirely?**

Neither “national organization” nor “national conference” are defined by statute or rule. Black’s Law Dictionary defines “national” to mean “nationwide in scope.” Based on the background provided and the AIEF’s website, the AIEF seeks to have reach that is nationwide in scope. Likewise, it appears that the December 2023 educational seminar described by Senator Hester is a national conference.

- b. **What constitutes a “request” of an elected or appointed official to “represent” the State of Arkansas at a national organization under Article 19, § 30(b)(2)(B)(vi)?**

Neither “request” nor “represent” are defined in the laws under the AEC’s jurisdiction. One simple interpretation of this phrase would be a specific, direct invitation from the organization to the elected or appointed official to attend the conference in their official capacity, which Senator Hester appears to have received.

### **In Conclusion:**

This response constitutes an advisory opinion concerning the laws under the Commission’s jurisdiction and the specific transaction or activity set forth in your request. If there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestors may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law.

It should be noted that the advisory opinion process is not a vehicle designed to make factual findings regarding events that have already occurred. An advisory opinion, by its very nature, is intended to provide guidance related to future conduct—not past events—and is prospective in its application. Accordingly, the Commission cannot opine regarding the permissibility of a specific past event.

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

**ARKANSAS ETHICS COMMISSION**

By: *Jill Rogers Barham*  
**Jill Rogers Barham**

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<sup>i</sup> The following was obtained from the website, Israellobby.com:

*“Incorporation of the American Israel Education Foundation*

*The Foundation will conduct and support projects consistent with AIPAC's purposes which are educational in nature and qualify under section 501(c)(3)...”*

*On September 29, 1988 Walter B. Slocombe, Geoffrey J. Vitt, and Eileen M. Mallon incorporated the American Israel Education Foundation in Washington, D.C. as a 501(c)(3) charitable organization to "advance the purposes of the American Israel Public Affairs Committee." The board members of AIEF were Charles Schusterman, Morton Friedman, Bernard White and Harriet Zimmerman.*

*AIEF applied to the IRS for tax-exempt status on April 6, 1989, stating it would only solicit relatively large contributions. "At this time, it is the intent of the, officers of the corporation not to have a broad based fundraising campaign. The minimum: contribution being requested is \$50,000. Use of specialized mailings, professional-fundraisers or the formation of fundraising committees is not contemplated.. All fundraising activities will be conducted by non-paid volunteers. As of the date incorporation, commitments of \$400,000 have been received from three individuals. No written materials have been prepared for use in soliciting financial support."*

*AIEF's application states "its fundamental purpose is to maintain and further the friendship between the U.S. and Israel and to strengthen and promote the mutual ideals and interests of both nations... The following types of specific educational activities are proposed for the future:*

*1. Educating students and young professionals about the Middle East. This will be accomplished by such activities as sponsoring seminars and programs, including summer internships in Washington...2. Educating students and young professionals about leadership skills, the American political system and careers in public service. This will be accomplished by a. conducting training seminars at college campuses and graduate schools. b. Hiring field workers to help organize, educate and motivate students and young professionals, on a nonpartisan basis, to get involved in local and national public affairs, including nonpartisan voter registration drives. c. Conducting national training seminars in Washington about careers in public service and politics and to teach public policy advocacy..."*

*On August 17, 1989 the IRS granted AIEF tax exempt status including the ability to solicit and accept tax-deductible contributions.*

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