

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2015-EC-002

Issued May 15, 2015

The Ethics Commission has received a written request for an advisory opinion from Randy Massanelli, Vice Chancellor for Governmental Relations at the University of Arkansas. In his advisory opinion request, Mr. Massanelli asked two questions:

- 1. Whether the practice of selling tickets to officials covered under Amendment 94, at face value and without requiring a donation to the Razorback Foundation, is prohibited under §30 (a) of the Amendment, which prohibits gifts from a lobbyist, a person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist. In other words, is sale of the tickets at face value considered a "gift" under §30(b)(2)(A) of the Amendment?*
- 2. Whether, in light of the passage of Amendment 94, it is permissible for the University to sell parking in University lots not controlled by the Razorback Foundation to certain public servants (including members of the General Assembly, usually season ticket holders), so long as the University charges those public servants for the parking, and so long as the amount charged is comparable to the amount charged for certain other University guests who are actual or potential donors to the University, as well as comparable to the amounts charged in nearby private parking lots not operated by the University? In other words, under such circumstances, is the sale of parking at the local going rate to public servants who are covered under Amendment 94 considered a "gift" under §30(b)(2)(A) of the Amendment? To clarify, parking in these lots is not available to the general public, but only to the public servants and certain other invited University guests.*

The Commission has previously analyzed whether tickets and parking passes to University of Arkansas Razorback games constituted prohibited gifts. See Advisory Opinion Nos. 2000-EC-005, 2002-EC-001, and 2002-EC-002. However, it is being called upon to reexamine the topic in light of the passage of Amendment 94.

During the 2015 general election, Issue 3 (now "Constitutional Amendment No. 94") was passed by the voters of Arkansas. During the 90th General Assembly, the Arkansas Legislature passed SB 967 (now Act 1280) which amended Amendment 94 by adding additional provisions. It provided, in pertinent part, as follows:

§30 Gifts from lobbyist

- (a) Persons elected or appointed to the following officers shall not knowingly or willfully solicit or accept a gift 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 Article 19, § 31, of this Constitution.

(2)(A) "Gift" means any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor.

There are several exceptions to the definition of gift. However, none of them appear to be applicable to the facts presented in the instant advisory opinion request.

Background information:

Per the Razorback foundation website, the regulations and prices for obtaining season tickets are provided below.

"Seating Prioritization"

All new season ticket requests and seat improvement requests will be allocated using the new Razorback Priority Points Program. Tickets will be allocated based on Priority Points rank within a member's current classification. *All requests are assigned based upon availability.*

Retaining Season Ticket Locations

To retain season ticket locations in all venues, existing season ticket holders must maintain or exceed the previous year's **total Annual Fund contribution**, regardless of the number of tickets purchased in each sport.

Seat Improvement Requests

Current season ticket holders must meet or exceed the minimum membership classification or required seat value totals, whichever is greater, to qualify for specific sections. Please refer to the 2015 member benefits chart for minimum member classification levels required for each section in football and baseball and the seating charts below for required minimum seat values.

New Season Ticket Requests*

Football, Baseball & Men's Basketball: First-time season ticket purchasers must meet the minimum member classification or required seat value totals, **whichever is greater**, to qualify for specific sections. Please refer to the chart below for minimum member classifications required for each section and the venue seating charts below for required for required minimum seat values. First-time season ticket purchasers must meet or exceed the minimum required seat value totals to qualify for specific sections. See chart below.

FIRST TIME FOOTBALL SEASON TICKET PURCHASERS & SEAT IMPROVEMENTS FOR ALL SPORTS

Football, baseball & Men's basketball: For first time football season ticket purchasers or current season ticket holders wanting to improve seating, the required member classification for each section is listed in the chart below. Seating access at athletic events is determined by a member's priority ranking, which includes current member classification as well as total lifetime giving dollar amount.

BEST AVAILABLE SECTION(S) BASED ON MEMBERSHIP LEVEL				
	Number of Football Priority Tickets Allowed*	Donald W. Reynolds Razorback Stadium	Baum Stadium	Bud Walton Arena
Broyles-Matthews Platinum - \$20,000+	18	All Sections	All Sections	All Sections
Broyles-Matthews Gold - \$10,000 - \$19,999	14	All Sections	All Sections	All Sections
Broyles-Matthews Silver - \$5,000 - \$9,999	12	103, 105, 114	All Sections	All Sections
Super Hog - \$3,000 - \$4,999	8	113, 115	106, 110	101, 117-119, 136, 136*
Wild Hog - \$2,000 - \$2,999	6	102, 106, 120-126	105, 111	102, 115, 133*
Dish Hog - \$1,000 - \$1,999	6	Hog Heaven	104, 112	103, 105, 112, 113, 122, 123*
Big Hog - \$500 - \$499	4	101, 107, 112, 116, 119, 127, 128, 504, 514	109, 113	201-203, 215-221, 233-236*
Big Red - \$100 - \$499	4	502, 503, 505, 506, 513, 515	102, 114	107-111, 125-129, 207-211, 206-208, 212-214*
Razorback - \$50 - \$99	1	502, 506	103, 101, 115, 116	201-203, 215-221, 233-236*

* These are the maximum number of tickets that may be purchased in 2015. These are not limits to the number of season tickets that may be purchased in 2015.
 *Section 1 - 101-111, 125-129, 207-211, 206-208, 212-214
 *Section 2 - 103, 105, 112, 113, 122, 123

Analysis:

It is clear from the website that, in order to obtain season tickets, there is a cost independent of the actual ticket price. The amount one donates affects his or her "Membership Level". The amount paid towards your annual contribution will affect a person's ability to seek out the most highly desirable seating and the largest number of tickets. For example, to have access to 18 season tickets for any seats in the stadium someone wishes, one must contribute over \$20,000. Again,

this is the cost just to be eligible to apply, and does not include the price of the actual tickets. The minimal amount to contribute to be eligible to buy the least desirable ticket in the stadium is between \$50-\$99.

If the University is selling the tickets and is waiving the membership level contribution, the Commission concludes that waving such contribution constitutes "something of value". In other words, waiver of such a fee to apply to buy season tickets would certainly within under the definition of "gift", which is defined to include any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor.

The remaining question would be whether the entity waiving this contribution is a lobbyist, a person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist. If the University of Arkansas meets the definition of lobbyist, a person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist, and the University is the entity selling tickets and providing such a waiver, then such a waiver would be a prohibited gift under Act 1280. The person seeking this Advisory Opinion was, at the time of this opinion, registered as the lobbyist for the University of Arkansas. Based on the premise that the University of Arkansas will continue to employ a registered lobbyist, it is the Commission's opinion that the waiver of the contribution for members of the General Assembly would be prohibited under Amendment 94.

Turning to the parking passes, the previous analysis of the University falling under the definition of lobbyist would still apply. What would remain to be addressed is whether the ability to buy parking passes at the same rate as University employees and current and potential large donors pay would meet the definition of a "gift" under Amendment 94. The facts presented by the person requesting the advisory opinion also include that the cost is the same or similar to other private parking lots in the area.

If such were the case, i.e., that the parking is substantially the same as the private parking available in the area, and the cost was the same as private parking in the area, then it would appear that the members of the General Assembly would not be getting anything of value for which consideration of equal or greater value has not been given. On those facts, the Commission is of the opinion that there would not be a violation of Amendment 94 (as amended by Act 1280). If alternate facts were presented, e.g., the private parking in the area was not substantially similar or the costs were not equal, then the Commission concludes that solicitation or accepting the parking passes would not be permissible under the Amendment 94 gift prohibition.

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

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