

ARKANSAS ETHICS COMMISSION

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

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ADVISORY OPINION NO. 2018-EC-003

Issued October 19, 2018

The Arkansas Ethics Commission ("AEC") received a written advisory opinion request from Mr. Martin W. Bowen of North Little Rock, Arkansas. Therein, he provides the following facts:

A company provides communication services to county jails throughout the state. From time to time, the company rents booths at association meetings to inform county sheriffs and their staff of the services the company provides. In an effort to get their business, the company either takes them out for dinner or brings in food for them to eat. The company spends more than \$400.00 per event but never more than \$400.00 per attendee.

Based upon the facts presented above, Mr. Bowen asks whether the company is required to register as a lobbyist and comply with the rules and regulations under the jurisdiction of the AEC in relation to those activities.

The definition of "lobbyist" is set forth in Ark. Code Ann. § 21-8-402(11), the registration requirements for lobbyist are set forth in Ark. Code Ann. §§ 21-8-601 and 21-8-602, and the lobbyist reporting requirements are set forth in Ark. Code Ann. §§ 21-8-603 and 21-8-604. The term "Lobbying" is defined in Ark. Code Ann. § 21-8-402 (10) to mean communicating directly or soliciting others to communicate with any public servant with the purpose of influencing legislative action or administrative action.

The term "lobbyist" is defined in Ark. Code Ann. § 21-8-402(11) to mean, in pertinent part, a person who:

(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[.]

The term "legislative action" is defined in Ark. Code Ann. § 21-8-402 (8) as follows:

(8) "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[;]

The term "administrative action" is defined in Ark. Code Ann. § 21-8-402 (1) to mean "any decision on, or proposal, consideration, or making of any rule, regulation, ratemaking proceeding, or policy action by a governmental body does not include ministerial action."

Lobbyist registration is addressed in Ark. Code Ann. § 21-8-601, which provides, in pertinent part, as follows:

(a)(1) A lobbyist shall register within five (5) days after beginning lobbying...

(3) A lobbyist shall not be required to register if he or she engages in no lobbying other than the following activities:

(H) Actions by contractors or employees of contractors while engaged in selling to a governmental body by demonstrating or describing commodities or services or inquiring as to specifications or terms and conditions of a particular purchase *unless such contractor or its employees expend in excess of four hundred dollars (\$400) in a calendar quarter for food, lodging, travel, or gifts to benefit public servants who purchase commodities or services on behalf of a governmental body.* (emphasis added)

The communication services referenced are telephone services for inmates of the jail and the contract for those services is negotiated by the Sheriff and approved by the County Judge. It is the AEC's opinion that the method and level of telephone services which the county jail will provide to inmates carries Constitutional implications and would constitute a policy decision on the part of the county sheriff and/or jail administrator. Furthermore, communication services for prisoners and jail inmates are often a source of revenue for jails; choosing to raise revenue in that manner could also constitute a policy decision.

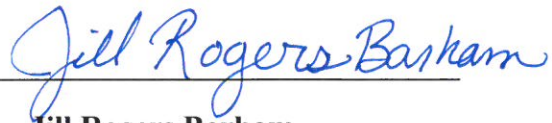
Mr. Bowen specifically states that his client meets the \$400 threshold on food for public servants spent in an effort to obtain their business. The AEC would advise that a sheriff and county judge entering into a contract for inmate telephone services constitutes administrative action. Therefore, if the company spends \$400 or more in a calendar quarter for lobbying public servants, the AEC would advise that company should register as a lobbyist and report pursuant to Ark. Code Ann. § 21-8-402(11), Ark. Code Ann. §§ 21-8-601 and 21-8-602, and Ark. Code Ann. §§ 21-8-603 and 21-8-604. This opinion is in keeping with a previously issued opinion, 1992-EC-017, which provided that if the potential new contract or arrangement is not one already utilized by a governmental entity, and the company's efforts included convincing the public servant of the benefits of contracting the services through that company, as opposed to using in-house employees or using the services of another governmental body, the effort would be deemed lobbying and would require registration and reporting upon the crossing of the applicable spending amount per quarter.

This advisory opinion is limited to the specific set of facts or activity set forth in the request. The AEC emphasizes that, 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 requestor 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.

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

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By: 
Jill Rogers Barham
Staff Attorney