

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2019-EC-001 Issued February 15, 2019

The Arkansas Ethics Commission (the “Commission”) has received a written advisory opinion request from Mr. Robert Coon, the managing partner of Impact Management Group (“IMG”) of Little Rock, Arkansas. Therein, Mr. Coon provides the following facts:

2019 marks the 20th anniversary for IMG. Accordingly, IMG wishes to hold a celebration to commemorate this milestone to which we could invite friends, family members, current clients, former clients, business associates, and public officials to attend at no cost.

IMG is a registered lobbying firm. Many of its principals and staff are registered lobbyists and are thus prohibited from providing gifts to public officials. In order to comply with Ethics Rules, IMG has begun the process of obtaining approval to designate the aforementioned anniversary event as a “planned activity” for a defined governmental body, including the Arkansas General Assembly. In designating this event as a “planned activity”, however, IMG would be limited to a small handful of potential dates available on the House and Senate social calendars.

Because IMG is registered as a lobbyist and many of its principals and staff are also registered as lobbyists, the prohibition on gifts from lobbyists to certain public officials set forth in Ark. Const. Art. 19, § 30¹ is applicable. As an alternative to designating the

¹ Ark. Const. Art. 19, § 30 came into existence as the result of the passage of Issue 3 by the voters in the general election held on November 4, 2014, which made it Amendment 94 to the Arkansas Constitution. During the 90th General Assembly, the Arkansas Legislature passed SB 967, which became Act 1280 of 2015. Said legislation amended the language of Amendment 94 by adding additional provisions to the prohibition concerning gifts from lobbyists. One such provision, Art. 19, § 30(b)(2)(B)(v), provides that the term “gift” does not include:

(a)(1) Food or drink available at a planned activity to which a specific governmental body is invited, including without limitation a governmental body to which a person elected or appointed to an office under subsection (a) of this section is not a member. (2) If a committee of the General

event as a “planned activity” as defined in Art. 19, § 30(b)(2)(B)(v), IMG seeks clarification concerning the exception to the definition of “gift” found in Art. 19, § 30(b)(2)(B)(iv) for “[a]nything that is readily available to the general public at no cost.” More specifically, IMG seeks clarification on the Commission’s interpretation of the term “general public” and the phrase “readily available to the general public.”

IMG asks whether the type of event described above would be considered by the Commission to be “readily available to the general public” if IMG invites friends, family members, clients, former clients, and business associates at no cost. If yes, IMG would also like to know if that also means that public officials² could attend the event under an Article 19, § 30(b)(2)(B)(iv) exception to the definition of “gift”.

Assembly is invited to a planned activity under subdivision (b)(2)(B)(v)(a)(1) of this section, only members of the committee of the General Assembly may accept food or drink at the planned activity.

(b) (1) As used in this subdivision (b)(2)(B)(v), "planned activity" means an event for which a written invitation is distributed electronically or by other means by the lobbyist, person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist to the members of the specific governmental body at least twenty-four (24) hours before the event.

(2) As used in this subdivision (b)(2)(B)(v), "planned activity" does not include food or drink available at a meeting of a specific governmental body for which the person elected or appointed to an office under subsection (a) of this section is entitled to receive per diem for attendance at the meeting.

² Amendment 94 (as amended by Act 1280 of 2015) provides, 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.

The term “general public” is not defined in Art. 19, § 30 of the Arkansas Constitution. Likewise, it is not a defined term in the Arkansas Code or the Commission’s Rules on Prohibition of Gifts from Lobbyists to Certain Public Officials Under Ark. Const. Art. 19, § 30. Language of a constitutional provision that is plain and unambiguous must be given its obvious and common meaning. *Pritchett v. Spicer*, 2017 Ark. 82, 513 S.W.3d 252 (2017). Neither rules of construction nor rules of interpretation may be used to defeat the clear and certain meaning of a constitutional provision. *Proctor v. Daniels*, 2010 Ark. 206, 392 S.W.3d 360 (2010).

As Mr. Coon notes in IMG’s request, the *Cambridge Dictionary* defines the term “general public” to mean “ordinary people, especially all the people who are not members of a particular organization, or who do not have any special type of knowledge.” *Merriam-Webster* defines the “general public” as “all the people of an area, country, etc.” While *Black’s Law Dictionary* does not contain a definition of “general public”, it defines “general” as “pertaining to or designating the genus or class, as distinguished from that which characterizes the species or individual; universal, not particularized, as opposed to special; principal or central, as opposed to local; open or available to all, as opposed to select; obtaining commonly, or recognized universally, as opposed to particular universal or unbounded, as opposed to limited; comprehending the whole or directed to the whole, as distinguished from anything applying to or designed for a portion only.” *Black’s Law Dictionary* defines “public” as “1. relating or belonging to an entire community, state, or nation; or 2. open or available for all to use, share, or enjoy.”

Taking those definitions into consideration with the phrase “readily available to the general public”, it is the Commission’s opinion that the Article 19, § 30(b)(2)(B)(iv) exception to the definition of “gift” would not apply to an event at which invitations were issued to friends, family members, clients, former clients, and business associates only. Such a gathering would fall short of an event that is “readily available to the general public”. In order for such an event to be “readily available to the general public”, the “general public” would have to be made aware of the event’s existence.

While an invitation-only event would not meet the exception, it would be possible for IMG to take actions which would allow the event to fit with the Article 19, § 30(b)(2)(B)(iv) exception. As Mr. Coon suggests in the request, IMG could make an announcement of the event on widely-used social media platforms and through traditional media to make the “general public” aware that the event is not limited to invitees. While an announcement on IMG’s website could be interpreted as evidence that IMG intends the event to be open to the public, visitors to the website likely fall into the categories of persons to which the company would send invitations rather than the “general public”, so that action alone would not cause the event to meet the exception. An announcement through traditional media would need to be made through a platform that would make it likely to be seen by the “general public”, such as a notice in a state-wide newspaper, or ads on television or radio stations with a wide viewer or listener audience. An additional

factor signaling that IMG intends the event to be “readily available to the general public at no cost” would be to hold the event at a venue which is open to the public, such as a park or a convention center.

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 refrains from opining about 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).

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By: 
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