

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2000-EC-001 **Issued January 21, 2000**

ISSUE:

Whether it is permissible under Ark. Code Ann. § 21-8-801(1) for coaches at public colleges and universities to accept outside compensation for the performance of the duties and responsibilities of their positions?

BRIEF ANSWER:

No. In the absence of legislative authority, coaches may not receive outside compensation for the performance of their duties and responsibilities of their positions. However, private compensation received pursuant to outside employment is not prohibited under Ark. Code Ann. § 21-8-801(1).

DISCUSSION:

Senator Bill Walker has requested that the Commission issue an advisory opinion on the propriety under Ark. Code Ann. § 21-8-801(1) of coaches at public colleges and universities receiving outside compensation for things such as "endorsing athletic clothing and footwear, shows on TV and radio, and clinics." Due to the great number of public institutions of higher learning, it is not practical for the Commission to analyze the compensation being received by each coach at every college or university in the State of Arkansas.

By way of example, this advisory opinion will address the University of Arkansas and, more specifically, the overall compensation packages of the Men's Head Basketball Coach and the Head Football Coach. Under Act 431 of 1999¹, the General Assembly set

¹ Act 431 of 1999 was the University of Arkansas' general appropriation bill for the 82nd General Assembly. It was introduced by the Joint Budget Committee as House Bill 1561 on February 12, 1999. The bill passed the House on February 25, 1999, by a vote of 85-0, it passed the Senate on March 2, 1999, by a vote of 35-0 and it was signed into law by the Governor on March 4, 1999.

the maximum salary of these coaches for the fiscal year 2000 at \$126,112.² Recent press reports, however, indicate the overall compensation packages of these coaches to be near or in excess of \$1,000,000.³ It is the Commission's understanding that the overall compensation packages for these coaches include, among other things, endorsements for sports apparel and shoes, housing allowances, and income from television and radio shows and sports camps.

A preliminary concern is whether or not arrangements such as a shoe contract are "for the performance of the duties and responsibilities of" a head coach's position. The Commission's interpretation of prohibited compensation under Ark. Code Ann. § 21-8-801(1) was initially set forth in Advisory Opinion No. 99-EC-007.

In that opinion, the Commission held that "a public servant cannot receive outside compensation for doing his or her job."⁴ It would appear on the face that these types of arrangements would not fall within the prohibitive language of Ark. Code Ann. § 21-8-801(1) because compensation paid under such contracts is not for the performance of the duties and responsibilities of the position of head coach. If there were any doubt, however, the General Assembly specifically answered it by passing Act 431 of 1999 which expressly permits such arrangements.

Section 13 of Act 431 of 1999 contains the following language:

SECTION 13. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. ADDITIONAL PAYMENTS AUTHORIZED. The Board of Trustees of the University of Arkansas is hereby authorized to make additional payments to head coaches at the University of Arkansas, Fayetteville, from revenues generated by contracts with vendors of athletic apparel, shoes and other products in such amounts as may be established by the Board of Trustees for performance by the coaches of consulting and other obligations pursuant to contracts between the University and such vendors. ***Such additional payments to head coaches shall not be considered salary***

² Under Article 5, Section 27 of the Arkansas Constitution, the Legislature sets the compensation of all state employees by bills "passed by two-thirds of the members of each branch of the General Assembly."

³ An article in the January 17, 2000, issue of *Arkansas Business* indicates that Coach Richardson's salary for fiscal year 2000 is \$126,112 with supplemental income of \$905,520 for a total package of \$1,031,632 and that Coach Nutt's salary is \$122,752 with supplemental income of \$827,248 for a total package of \$950,000. The source for these figures is, according to the article, "reports filed with the chancellors of supplemental sports compensation."

⁴ See also § 305(b) of the Commission's proposed Rules on Gifts, promulgated on December 3, 1999.

and shall not be deemed or construed to exceed the maximum salaries established for such coaches by the General Assembly (emphasis added).

With regard to housing allowances, Act 431 of 1999 contains the following section:

SECTION 11. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. SPECIAL ALLOWANCES. For the purpose of providing necessary allowances for housing and other unusual expenses incurred by or on behalf of the athletic directors, associate and assistant athletic directors, head coaches, assistant coaches, offensive coordinators, defensive coordinators, and head trainers in the men's and women's Athletic Departments at the University of Arkansas, Fayetteville, the Board of Trustees may make special allowances available therefor in such amounts as the Board of Trustees may determine as justified, an equitable allowance in view of the unusual and exacting duties of said athletic directors, head coaches, assistant coaches, offensive coordinators, defensive coordinators, and head trainers in the men's and women's Athletic Departments at the University of Arkansas, Fayetteville, and for the purpose of providing such allowances, the Board of Trustees is authorized to expend from the auxiliary income of the University of Arkansas, Fayetteville, which is derived from the athletic event receipts, or from the contributions from sources other than state funds, an amount not to exceed ten thousand dollars (\$10,000) each for such purposes during each year of the 1999-2001 biennium for the athletic directors, associate athletic directors, and head coaches, and an amount not to exceed one thousand dollars (\$1,000) each for the assistant athletic directors, assistant coaches, offensive coordinators, defensive coordinators, and head coaches. Any such allowances shall be in addition to the regular salary of such athletic directors, associate and assistant athletic directors, head coaches and assistant coaches.

It is the Commission's understanding that the standard contract for head coaches provides that outside employment is permitted and encouraged under a specific written policy of the University of Arkansas Board of Trustees. Board Policy 450.1 which, subject to several revisions, has been in existence since June 5, 1916, states in pertinent part, as follows:

While emphasizing the fact that full-time faculty and non-classified administrative staff members of the University are obligated to devote their working time and efforts primarily to University activities, the University recognizes that a limited amount of outside work for private

compensation may be advantageous to all concerned.... Such persons are therefore encouraged to engage in outside employment which will affirmatively contribute to their professional advancement or correlate usefully with their University work.... This employment shall not interfere in any substantial way with the employee's University duties nor conflict with his/her University assignments. Written approval from department head and/or dean shall be obtained in advance of such outside employment.... The employee shall always make it clear the outside employment is his/her own responsibility and that in it he/she does not act as an agent or representative of the University.

With regard to sports camps, Ark. Code Ann. § 6-62-401 specifically authorizes the Board of Trustees of the University to grant permission to coaches to conduct, on and in campus facilities, sports camps under conditions where no conflict of interest with the mission and purpose of the University will occur; where the camp will attract a number of persons who would tend to enroll at the University in the future and where the camp will generate sufficient funds to cover the cost of the support facilities used to conduct the camp. The Board of Trustees of the University has adopted Board Policy 1715.1 governing Extracurricular Camps which is consistent with Ark. Code Ann. § 6-62-401. It is the Commission's understanding that the standard contract for coaches includes a provision permitting head coaches to conduct summer sports camps for private compensation.

The Commission concludes that income which a coach receives from conducting a sports camp is not compensation for performing the duties and responsibilities of his or her position. Instead, it is compensation received for outside work. Accordingly, the receipt of such compensation is not prohibited by Ark. Code Ann. § 21-8-801(1).

Likewise, the Commission concludes that income which a coach receives from television and radio shows would not be compensation for performing the duties and responsibilities of his or her position but rather compensation for outside work. As such, the receipt of such compensation would not be prohibited by Ark. Code Ann. § 21-8-801(1).

This opinion has addressed compensation received by the Men's Head Basketball Coach and the Head Football Coach at the University of Arkansas. The conclusions of this opinion are limited to the application of the statutes and policies referenced herein to the specific elements of compensation discussed. This opinion is issued by the Arkansas Ethics Commission pursuant to Ark. Code Ann. § 7-6-217(g)(2).

ARKANSAS ETHICS COMMISSION

By: _____

Bob Brooks, Director