

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2000-EC-006 Issued May 19, 2000

ISSUE:

Whether it would be permissible for the Arkansas State Employees Association ("ASEA") to present a \$500.00 check to a state employee recognized by the ASEA as the outstanding state employee of the year under its current selection criteria?

BRIEF ANSWER:

Yes. Although Ark. Code Ann. § 21-8-801(1) and § 303 of the Commission's Rules on Gifts serve to prohibit a public servant from receiving a gift intended as a reward for doing his or her job, a public servant is not prohibited from receiving a gift which is not related to the performance of the duties and responsibilities of his or her office or position.

DISCUSSION:

The ASEA is a non-profit organization formed for the purpose of improving state government and state employment. Membership in the ASEA is open to state employees, retired state employees and non-state employees.

Since 1984, the ASEA has annually recognized an outstanding state employee of the year. Eligibility is limited to persons permanently employed by the State of Arkansas on a full-time basis.

Nominations may be made by an ASEA member, a local ASEA chapter, the head of a state agency or institution or an affiliated professional organization. Nominees are screened by a screening committee and the finalists are selected by an outside confidential panel of which only one member may be a member of the ASEA.

There are four (4) criteria considered in selecting the ASEA Outstanding State Employee. Those criteria are as follows:

1. Personal qualities;
2. Distinguished or outstanding non-job related service to the community;
3. Integrity, devotion and contributions to the welfare of Arkansas residents; and
4. Other awards and recognition.

The person selected as Outstanding State Employee will receive a plaque, a traveling trophy and a \$500.00 check. The question presented is whether receipt of the \$500.00 check by a public servant would be prohibited by Ark. Code Ann. § 21-8-801(1) or by § 303 of the Commission's Rules on Gifts.

Ark. Code Ann. § 21-8-801 (1) provides, in pertinent part, that "[n]o public servant shall . . . receive a gift. . .for the performance of the duties and responsibilities of his or her office or position." Section 303 of the Commission's Rules on Gifts provides, in pertinent part, that "[n]o public servant shall receive a gift for the performance of the duties and responsibilities of his or her office or position" and that "[f]or purposes of this rule, a gift shall be prohibited if it is intended to reward a public servant for doing his or job."

It bears noting that this is not the first advisory opinion to specifically address the ASEA's Outstanding State Employee Award. In Advisory Opinion No. 99-EC-012, the Commission opined that receipt of the award was prohibited under Ark. Code Ann. § 21-8-801(1).

The basis for that opinion was that two (2) of the selection criteria were related to job performance. The criteria which were of concern to the Commission were "on the job experience and accomplishment" and "outstanding contribution(s) to . . . state employer."

Since the time that opinion was issued, the ASEA revised the guidelines for the award and submitted another request for an Advisory Opinion. Under the new guidelines the objectionable criteria are no longer given any consideration.

The question to be answered is whether removal of said criteria makes the award allowable. After giving this matter due consideration, the Commission concludes that receipt of the award would not be prohibited by either Ark. Code Ann. § 21-8-801(1) or § 303 of the Commission's Rules on Gifts.

The Commission was initially concerned that an eligibility requirement for the award is permanent employment with the State of Arkansas. A review of the selection criteria shows, however, that the award is based upon non-job related service to the community. The public servant who receives the award is not being recognized for job performance but rather community service.

In rendering this opinion, the Commission notes that matters such as this are reviewed on a case by case basis. In situations where the intent behind a gift is to reward a public servant for doing his or her job, the receipt of the gift is clearly prohibited.

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

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