

ARKANSAS ETHICS COMMISSION

910 West Second Street, Suite 100
Post Office Box 1917
Little Rock, Arkansas 72203-1917
(501) 324-9600 Fax (501) 324-9606
Toll Free (800) 422-7773

Rita Looney
Chairman

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Vice Chairman

Ben Allen
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Commissioners

Graham F. Sloan
Director



ADVISORY OPINION No. 2000-EC-007 Issued May 19, 2000

The Arkansas Ethics Commission has received a written advisory opinion request from Representative Tom Courtway concerning the hosting of a benefit and recognition dinner for a State Senator whose term in office is about to expire. In his opinion request, Representative Courtway asks several questions on behalf of a committee formed to plan and host the event.

According to the opinion request, the cost of the event will be defrayed by selling tickets to members of the public wishing to attend. The questions asked are (i) whether it is permissible to hold such an event, (ii) whether there is a limit on the amount which can be spent for an item to be presented to the Senator at the event as a token of appreciation for his many years of service, and (iii) whether the balance of the proceeds from the event may be donated to a charity which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

With respect to the first of these questions (i.e., whether it is permissible to hold the event), the Commission notes that the statutes under its jurisdiction do not expressly prohibit the hosting of a dinner for a public servant who is leaving his or her office or position. The fact that the purpose of the dinner is to show appreciation for the public servant's job performance, however, requires analysis under Ark. Code Ann. § 21-8-801(1) and the Commission's Rules on Gifts.¹

The statute in question, Ark. Code Ann. § 21-8-801(1), addresses the receipt of gifts by public servants. It 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."

In similar fashion, § 303 of the Commission's Rules on Gifts provides that "[n]o public servant shall receive a gift for the performance of the duties and responsibilities of his or her office or position." It further provides 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 her job."

The term "gift" is defined in both Ark. Code Ann. § 21-8-402(5) and § 300(b) of the Commission's Rules on Gifts to mean "any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor." The

¹ In accordance with Ark. Code Ann. § 7-6-217(g)(1), the Commission promulgated a set of Rules on Gifts to implement and administer the provisions of Ark. Code Ann. § 21-8-801(1) as well as other statutory provisions. Said Rules became effective on February 28, 2000.

definition goes on, however, to exclude certain items from that meaning. Among the items excluded is “[t]he giving or receiving of food, lodging, or travel which bears a relationship to the public servant’s office and when appearing in an official capacity.”²

As recognized in § 301 of the Commission’s Rules on Gifts, there are two (2) conditions which must be met in order for the giving or receiving of food, lodging, or travel to meet the foregoing exclusion. The public servant must be appearing in his or her official capacity and the appearance must bear a relationship to the public servant’s office or position.

The facts presented in the instant situation are that a public servant who is leaving his or her office or position will be attending an event, open to members of the public, which is being held to recognize the public servant for his or her many years of service. Based upon these specific facts, the Commission finds that the public servant would be making an official capacity appearance at an event which bears a relationship to his or her office or position.

In accordance with that finding, any food provided to the public servant in connection with the event would not be considered a gift. Thus, it is the Commission’s opinion that the public servant would be permitted to attend the event in question. Stated differently, the Commission has determined that it would be permissible to hold said event.

Focus will now shift to the second question (i.e., whether there is a limit on the amount which can be spent on an item to be presented to the Senator at the event as a token of appreciation). In that regard, the Commission notes that both 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 for performing the duties and responsibilities of his or her office or position.

As previously mentioned, the term gift is defined, with certain exclusions, to mean “any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor.” One of the items excluded from that definition is “[a]nything with a value of one hundred dollars (\$100) or less.”

The receipt of items intended to show appreciation for a public servant’s job performance is expressly addressed in § 303(c) of the Commission’s Rules on Gifts, which provides as follows:

A public servant is not prohibited from receiving an item conferred to show appreciation for the public servant’s job performance (i.e., to reward the public servant for doing his or her job) so long as the value of the item does not exceed one hundred dollars (\$100.00). Items costing more than one hundred dollars (\$100.00) which are given to public servants to show appreciation for their efforts (i.e., to reward them for doing their job) or to reward them for past or future action are prohibited under this rule.

² As will be discussed later in this Advisory Opinion, the definition of “gift” also excludes “[a]nything with a value of one hundred dollars (\$100) or less.”

In short, there is a limit on the amount which can be spent on an item to be presented to the Senator at the event as a token of appreciation for his many years of service. Anything with a value of more than one hundred dollars (\$100) would be prohibited.

The third question (i.e., whether the balance of the proceeds from the event may be donated to a § 501(c)(3) charity) will now be addressed. With respect to that question, the opinion request states that “none of the monies will pass through [the Senator’s] hands, nor will he have control of any of the proceeds.”

The issue raised by this question is whether the making of a donation to a charity in the name of a public servant constitutes a “gift” to the public servant. The Commission has concluded that the answer to that question depends upon whether or not the public servant exercises any control in regard to the charitable contribution.

In situations where a public servant is allowed to name or approve the recipient of a charitable contribution, the Commission is of the opinion that the public servant has received the equivalent of a gift certificate, something which can be dispensed according to his or her own interests. If, on the other hand, a public servant exercises no control in regard to a charitable contribution but is merely named as an honoree in connection therewith, then he or she may feel flattered but would not have received anything of value to dispense or use.

On the facts presented, the Senator will have no participation in the decision concerning the recipient of the proposed charitable contribution. Accordingly, it is the Commission’s opinion that the balance of the proceeds from the event may be donated to a charity which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

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

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By: 
Graham Sloan, Director