

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 2000-EC-008 Issued August 18, 2000

The Arkansas Ethics Commission has received separate advisory opinion requests from the Arkansas Education Association (the "AEA") and Senator John A. Riggs, IV concerning monetary awards presented to teachers. Both have asked whether the receipt of such awards is prohibited by Ark. Code Ann. § 21-8-801.

The statute in question came into existence as a part of Initiated Act One of 1988 and is entitled "[p]rohibited acts generally." It provides, in pertinent part, as follows:

[n]o public servant shall...[r]eceive a gift or compensation as defined in subchapter 4 of this chapter, other than income and benefits from the governmental body to which he or she is duly entitled, for the performance of the duties and responsibilities of his or her office or position.

The meaning of this statutory provision was first discussed in detail by the Commission in Advisory Opinion No. 99-EC-007. As stated in that opinion, analysis of the provision requires an understanding of the terms "gift" and "compensation."

The term "gift" is defined in Ark. Code Ann. § 21-8-402(5) to mean "any payment, entertainment, advance, services or anything of value, unless consideration of equal or greater value has been given therefor." The definition goes on, however, to specifically exclude the following items:

- (i) Informational material such as books, reports, pamphlets, calendars, or periodicals informing a public servant regarding his or her official duties;
- (ii) The 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;

- (iii) Gifts which are not used and which, within thirty (30) days after receipt, are returned to the donor;
- (iv) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any of these persons, unless the person is acting as an agent or intermediary for any person not covered by this paragraph;
- (v) Campaign contributions;
- (vi) Any devise or inheritance;
- (vii) Anything with a value of one hundred dollars (\$100) or less; or
- (viii) Wedding presents.

The term "compensation" is defined in Ark. Code Ann. § 21-8-402(7) to mean the following:

any money or anything of value received, or to be received as a claim for future services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof.<sup>1</sup>

As recognized in Advisory Opinion No. 99-EC-007, there is an important difference between the definitions of "gift" and "compensation." The former excludes "[a]nything with a value of one hundred dollars (\$100.00) or less" while the latter includes "anything of value received."

This difference presents a quandary in that an item not prohibited as a gift could nevertheless be prohibited as compensation.<sup>2</sup> In order to give meaning to both the prohibition concerning the receipt of gifts and the prohibition concerning the receipt of compensation, the Commission analyzed the prohibitions separately.

As it pertains to the receipt of gifts by public servants, the Ethics Commission concluded that Ark. Code Ann. § 21-8-801 serves to prohibit the receipt of a gift which is

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<sup>1</sup> In Advisory Opinion No. 91-EC-003, the Commission noted that the definition of "compensation" was not clearly defined and went on to state that "the commonly accepted definition is that of a payment made under obligation for services or other value received."

<sup>2</sup> For example, an item worth \$75.00 would not be a "gift" because the value is less than one hundred dollars (\$100.00). Clearly, however, the item would meet the "anything of value" part of the definition of "compensation."

intended to reward a public servant for doing his or her job or which is intended as a reward for past or future action. It was the Commission's opinion that in order for a gift to be prohibited, it need not be shown that the public servant's action was for or because of the gift but merely that the gift was for or because of the action.

With respect to the receipt of compensation by public servants, the Commission interpreted Ark. Code Ann. § 21-8-801 to mean that, except as expressly provided by statute,<sup>3</sup> a public servant can only be compensated for doing his or her job by the governmental body which he or she serves. In other words, a public servant is prohibited from receiving supplemental income from outside sources for performing the duties and responsibilities of his or her office or position.<sup>4</sup>

In discussing the prohibition concerning gifts separately from the prohibition concerning compensation, the Commission did not intend that a particular item be analyzed as both a gift and compensation. Instead, it was the Commission's intention that an item be categorized as one or the other and analyzed accordingly.

In that regard, the Commission notes that a gift is generally something given to show friendship or appreciation. Compensation, on the other hand, is more often thought of as something given as payment or reparation.

Subsequent to the issuance of Advisory Opinion No. 99-EC-007, the Commission promulgated a set of Rules on Gifts (the "Rules") to implement and administer Ark. Code Ann. § 21-8-801 and other statutes under its jurisdiction. Those Rules were approved by the Commission on February 18, 2000, and became effective ten (10) days later.

The receipt of gifts by public servants is addressed in § 303 of the Rules which provides, in pertinent part, as follows:

(a) No public servant shall receive a gift for the performance

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<sup>3</sup> Ark. Code Ann. § 6-62-103 is an example of such a statute. It allows private contributors to endow academic chairs at state-supported colleges and universities for attracting personnel with exceptional qualifications.

<sup>4</sup> Act 313 of 1971, which established a code of ethics for public officials, contained a section aimed at a situation in which Governor Rockefeller sought to use private funds to supplement the salaries of members of his staff in order to obtain more qualified individuals. That section, entitled "[p]ayments between officials prohibited," was codified as Ark. Stat. Ann. § 12-3005 and provided as follows:

No public official or State employee, as herein defined, shall pay to or receive from any other public official or State employee any compensation as a supplement to or in addition to such public official's or State employee's salary.

Act 313 of 1971 was repealed in its entirety by Act 570 of 1979. This later Act also contained a code of ethics for public officers and employees but had no provision prohibiting public servants from receiving nongovernmental compensation for performing their jobs. It is believed that Initiated Act No. 1 of 1988 served to reestablish such a provision.

of the duties and responsibilities of his or her office or position.

- (b) For purposes of this rule, a gift shall be prohibited if it is intended to reward a public servant for doing his or her job or it is intended as a reward for past or future action. In contrast to bribery which requires a showing that a gift and some official action motivated each other, a gift is prohibited by this rule if the gift is for or because of the action. In order for a gift to be prohibited, it need not be shown that the official action was for or because of the gift.
- (c) 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.

The receipt of compensation by public servants is addressed in § 305 of the Rules, which provides as follows:

- (a) Except as expressly provided by statute, no public servant shall receive compensation, other than income and benefits from the governmental body which he or she serves, for the performance of the duties and responsibilities of his or her office or position.
- (b) It is the intent of this rule that a public servant be prohibited from receiving outside compensation for doing his or her job.

In its advisory opinion request, the AEA makes reference to the Milken Family Foundation National Education Awards and also the National Teacher of the Year Program/Arkansas Teacher of the Year Program. The first such awards program, i.e., the Milken Family Foundation National Education Awards, began in 1985 and is now active in 41 states.

Since this program's inception, awards totaling more than \$37 million have been presented to over 1,500 teachers, principals and other teaching professionals. In 1999, more than \$4 million was awarded nationwide, including awards to four (4) Arkansas teachers. The size of each award is \$25,000.

The Milken Family Foundation has prepared an overview of its program. That overview contains the following language:

The Milken Family Foundation National Educator Awards program provides public recognition and *financial rewards* to elementary and secondary school teachers, principals and other education professionals who are furthering excellence in education (emphasis added).

The criteria used in selecting recipients of the award include, among others, the following:

- Exceptional educational talent and promise, as demonstrated by *outstanding practices* in the classroom, school and community.
- *Distinguished achievement* in developing innovative educational curricula, programs and/or teaching methods (emphasis added).

With respect to the second awards program mentioned by the AEA, i.e., the National Teacher of the Year Program/Arkansas Teacher of the Year Program, the opinion request states that the program's mission is to "recognize and honor the contributions of the American classroom teacher." It goes on to state that the selection criteria provide that a candidate should:

- Be an exceptionally dedicated, knowledgeable, and skilled teacher in any state (Arkansas) approved or accredited school, pre-kindergarten through grade twelve who is planning to continue in an active teaching status;
- Inspire students of all backgrounds and abilities to learn;
- Have the respect and admiration of students, parents, and colleagues;
- Play an active and useful role in the community as well as in the school; and
- Be poised, articulate and possess the energy to withstand a taxing schedule.

Regional finalists for the Teacher of the Year award receive \$1,000 each. The candidate named the Teacher of the Year is awarded \$15,000.



In considering whether monetary awards presented to teachers should be analyzed as gifts or compensation, the Commission concludes that they should be analyzed as gifts. The basis for this decision is that the primary purpose of such awards is not to supplement the salary of the recipient but rather to provide public recognition and show appreciation for exceptional efforts.

As previously discussed, Ark. Code Ann. § 21-8-801 serves to prohibit the receipt of a gift which is intended to reward a public servant for doing his or her job. With that in mind, the Commission notes that application of the statute to a particular set of facts is essentially a two-step process.

The first step is to determine whether the item in question meets the definition of a gift. If so, the second step is to determine whether the item was intended to reward the public servant for doing his or her job.

The Commission concludes that monetary awards such as the ones mentioned by the AEA meet the “anything of value” part of the definition of gift and do not fit within the exception for items worth one hundred dollars (\$100) or less. Accordingly, the question becomes whether these awards are intended to reward teachers for doing their jobs.

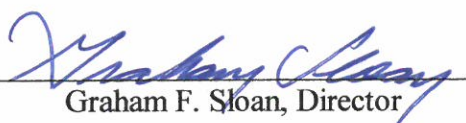
It seems clear to the Commission that the awards are intended to serve that purpose. The overview prepared by the Milken Family Foundation concerning its program goes so far as to describe the awards as “financial rewards” to individuals who are furthering excellence in education. Moreover, the factors considered in selecting the recipients of the awards in question are clearly related to job performance.

Although the Commission is of the opinion that monetary awards such as those mentioned by the AEA are laudable, it cannot escape the fact that Ark. Code Ann. § 21-8-801 prohibits the receipt of a gift which is intended to reward a public servant for doing his or her job. Because this is a question of great importance which is being addressed for the first time by the Commission, this opinion shall be given prospective application only.

Additionally, the Commission wishes to state that it favors the idea of presenting awards to classroom teachers in recognition of their contributions to the teaching profession. Unfortunately, it lacks the power to create a statutory exception for such awards.

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

#### ARKANSAS ETHICS COMMISSION

By:   
Graham F. Sloan, Director