

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 2000-EC-010

Issued October 13, 2000

### ISSUE:

Whether a "private, invitation only" dinner which costs more than \$100 and is paid for by lobbyists would be considered a gift in the situation where a public servant is appearing in his or her official capacity at a conference which bears a relationship to the duties and responsibilities of his or her office or position, but the dinner itself is "purely social" and not a part of the conference?

### BRIEF ANSWER:

Yes. Food provided to a public servant under such circumstances would not fit within the exception to the definition of gift set forth in Ark. Code Ann. § 21-8-402(5)(B)(ii) for "[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." Assuming the dinner was intended to reward the public servant for doing his or her job or as a reward for past or future action, the receipt of same would be prohibited by Ark. Code Ann. § 21-8-801(1).

### DISCUSSION:

The Ethics Commission is issuing this advisory opinion at the request of Senator Doyle Webb. The facts which Senator Webb has presented are that he attended the National Conference of State Legislators ("NCSL") in Chicago, Illinois, on July 15-20, 2000. He states that while he was at that conference he attended a dinner which cost \$116.38 per person and was paid for by lobbyists. According to Senator Webb, the dinner was not an official NCSL event but rather a "private, invitation only event" which was "purely social."

The question presented is whether or not such a dinner would be considered a gift. If so, then it is possible that attending the dinner would be prohibited under Ark. Code Ann. § 21-8-801. That statute 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."

This past February, the Commission promulgated a set of Rules on Gifts to implement and administer Ark. Code Ann. § 21-8-801 and other statutes under its jurisdiction. The receipt of gifts by public servants is addressed in § 303 of those Rules which provides, in pertinent part, as follows:

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

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 exclude certain items from that meaning.

One of 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.” Ark. Code Ann. § 21-8-402(5)(B)(ii). Another is “[a]nything with a value of one hundred dollars (\$100) or less.” Ark. Code Ann. § 21-8-402(5)(B)(vii).

Expenditures for food, lodging or travel which do not exceed \$100 are exempt from the definition of gift pursuant to Ark. Code Ann. § 21-8-402(5)(B)(vii). Accordingly, there is never a need to analyze such expenditures under the exception set forth in Ark. Code Ann. § 21-8-402(5)(B)(ii).

The exception to the definition of gift for food, lodging or travel is addressed in § 301 of the Commission’s Rules on Gifts, which provides as follows:

- (a) The giving or receiving of food, lodging or travel shall not be considered a gift in situations where a public servant is appearing in his or her official capacity and the appearance bears a relationship to the public servant’s office or position.
- (b) For purposes of this rule, a public servant appears in an official capacity when the appearance arises because of the office or position of the public servant. The fact that an appearance is one for which a public servant would be subject to expense reimbursement from the governmental body which he or she serves shall be conclusive proof that the public servant is appearing in his or her official capacity.

(c) For purposes of this rule, an appearance at an event bears a relationship to the public servant's office or position when such appearance furthers a purpose of the governmental body served by the public servant and the interest of such governmental body outweighs the likelihood that attending the event will improperly influence the public servant in the performance of his or her official duties and responsibilities. Factors to be considered in making a determination as to whether or not an appearance bears a relationship to a public servant's office or position shall include, but not be limited to: the nature of any pending matter affecting the interest of the person paying for the food, lodging, or travel; the importance of the event to the governmental entity; the significance of the public servant's role in the event; the timing of the event; the identity of other expected participants; and, the cost of the public servant attending the event. If a public servant is invited to attend a purely social event with no or a de minimis nexus to the programs or operations of the governmental entity which he or she serves, then the public servant's attendance would not bear a sufficient relationship to his or her office or position to meet the exception contained in subsection (a) of this rule.

In short, there are two conditions which must be met in order for the giving or receiving of food, lodging or travel worth more than \$100 to be excluded from the definition of gift. 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.

There are no express restrictions in either Ark. Code Ann. § 21-8-402(5)(B)(ii) or § 301 of the Commission's Rules on Gifts concerning who may pay a public servant's expenses for food, lodging or travel when the foregoing conditions are met. Pursuant to Ark. Code Ann. § 21-8-701(9), however, a public servant filing a Statement of Financial Interest is required to identify:

Each nongovernmental source of payment of the public servant's expenses for food, lodging, or travel which bears a relationship to the public servant's office when the public servant is appearing in his or her official capacity when the expenses incurred exceed one hundred fifty dollars (\$150). The public servant shall identify the name and business address of the person or organization paying the public servant's expenses and the date and nature of that expenditure if not compensated by the entity for which the public servant serves.

Moreover, there are reporting requirements applicable to lobbyists who pay a public servant's expenses for food, lodging, or travel. In accordance with Ark. Code Ann. § 21-8-604(b)(2)(A)(ii), a lobbyist must report each "[p]ayment for food, lodging, or travel in excess of forty dollars (\$40) on behalf of a public servant."<sup>1</sup>

It is clear that Senator Webb was appearing in his official capacity at the NCSL and that the conference bore a relationship to the duties and responsibilities of his office. In such context, it might appear that any food provided to him in connection with that event would be exempt from the definition of gift under Ark. Code Ann. § 21-8-402(5)(B)(ii).

The Commission has concluded, however, that food provided to Senator Webb at a private, invitation only dinner which was purely social would not fit within that exception.<sup>2</sup> Accordingly, it is the Commission's opinion that such food would be a gift unless it was worth \$100 or less. If the dinner in question cost more than \$100 and was intended to reward Senator Webb for doing his job or as a reward for past or future action, then the receipt of same would be prohibited by Ark. Code Ann. § 21-8-801.

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

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<sup>1</sup> This provision has been interpreted by the Commission to even require itemization in the situation where a payment in excess of \$40 is split between two or more lobbyists and the amount paid toward the total expenditure is less than \$40 per lobbyist. See § 511 of the Commission's Rules on Lobbyist Registration and Reporting.

<sup>2</sup> Although Senator Webb was appearing in his official capacity at the NCSL and such appearance bore a relationship to the duties and responsibilities of his office, § 301(c) of the Commission's Rules on Gifts specifically provides that:

[i]f a public servant is invited to attend a purely social event with no or a de minimis nexus to the programs or operations of the governmental entity which he or she serves, then the public servant's attendance would not bear a sufficient relationship to his or her office or position to meet the exception contained in subsection (a) of this rule.