

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2000-EC-011 Issued November 9, 2000

The Ethics Commission has received a written advisory opinion request from Senator Doyle Webb. Therein, he asks two (2) additional questions related to the dinner which was the subject matter of Advisory Opinion No. 2000-EC-010. The first such question is whether or not food and beverages provided to the spouse, family member or friend of a public servant who accompanies the public servant to a private, invitation only dinner counts as money spent on the public servant for purposes of determining whether or not the value of the dinner exceeded one hundred dollars (\$100).

The valuation of food and beverages is addressed in subsections (b) and (c) of § 306 of the Commission's Rules on Gifts. Those subsections provide as follows:

(b) When multiple items, each individually worth less than \$100 but in the aggregate worth more than \$100, are simultaneously offered by a donor to a public servant, the gift being offered is deemed to be the aggregate of all the items. Food and beverages offered to a public servant's spouse do not count toward the \$100 aggregate.
(EXAMPLE: If a public servant is given eight (8) tickets worth \$20/each, the value of the gift to the public servant would be \$160.00.)

(c) Tickets to sporting events and shows are valued at their face price except for tickets that the donor obtains pursuant to a lease (such as tickets for an "executive suite" or "skybox"). The value of a ticket obtained pursuant to a lease shall be the price of the highest individually priced for the event. The fair market value of benefits accepted by the public servant from the donor in connection with the event, including food and beverages, must be added to the value of a ticket to determine the overall value of the gift.
(EXAMPLE: If a public servant is given two (2) skybox tickets to an event, and takes a guest, the value of the gift

to the public servant is twice the price of the highest individually priced ticket for the event plus the value of any food or beverages consumed by the public servant, but not his or her guest.) (Emphasis added.)

In accordance with the foregoing, the Commission concludes that food and beverages provided to the spouse, family member or friend of a public servant who accompanies the public servant to a social function do not constitute money spent on the public servant. The Commission notes, however, that there are situations in which expenditures for food and beverages provided to a person who accompanies a public servant to a social function must be reported.

For example, § 511(a) of the Commission's Rules on Lobbyist Registration and Reporting requires a lobbyist who takes a public servant and his or her spouse to dinner and spends more than forty dollars (\$40) on the public servant or more than eighty dollars (\$80) on the public servant and his or her spouse to itemize the expenditure. Additionally, Ark. Code Ann. § 21-8-701(d)(8) requires a public servant filing a statement of financial interest to report "each gift of more than one hundred dollars (\$100) received by the public servant or his or her spouse."

The second question asked by Senator Webb is whether a public servant who has received a meal valued at more than one hundred dollars (\$100) may reimburse the host within thirty (30) days for either the cost of the meal or the amount exceeding one hundred dollars (\$100) in order to avoid a possible violation of Ark. Code Ann. § 21-8-801.¹ This question is one of first impression and requires analysis of Ark. Code Ann. § 21-8-402(5)(A) and (5)(B)(iii).

The latter of these subsections, Ark. Code Ann. § 21-8-402(5)(B)(iii), provides that the term "gift" does not include "[g]ifts which are not used and which, within thirty (30) days after receipt are returned to the donor." The Commission finds that said exception does not provide authority for the proposition that a public servant who has attended a dinner valued at more than one hundred dollars (\$100) may reimburse the host for all or part of the cost of the meal to avoid a possible violation of Ark. Code Ann. § 21-8-801.

Turning to the other subsection, Ark. Code Ann. § 21-8-402(5)(A), the Commission notes that it defines the term "gift" to mean "any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor." (Emphasis added.) This raises a question as to whether such consideration must be given contemporaneously or may be given after the fact.

In Advisory Opinion No. 97-EC-013, the Ethics Commission addressed the question of whether or not a public servant could reimburse a lobbyist for expenses related to food, lodging or travel and thereby avoid such expenses being itemized in the lobbyist's activity report. The Commission noted several pitfalls inherent in such a practice and

¹ Ark. Code Ann. § 21-8-801 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."

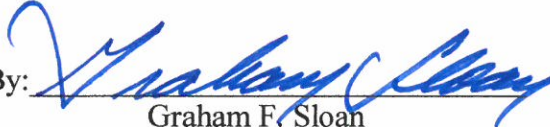
opined that the only way for a public servant to be able to exclude his or her name from a lobbyist activity report when a lobbyist will be incurring expenses for food, lodging or travel is to prepay the expense or pay the expense at the time and place the expense is incurred.

Although closely related, the question posed by Senator Webb is whether or not a public servant who has received a meal worth more than one hundred dollars (\$100) may reimburse the host within thirty (30) days for all or part of the cost of the meal to avoid violating Ark. Code Ann. § 21-8-801. A review of Ark. Code Ann. § 21-8-402(5)(A) shows that it makes no mention of a thirty (30) day period.

The Commission is aware that there may be situations in which the value of a meal is not readily ascertainable and a public servant faces the possibility of committing an unintentional violation of Ark. Code Ann. § 21-8-801. Due to the number of situations possible, the Commission is not prepared to provide a procedure for reimbursement in the form of an advisory opinion. Any such procedure would need to be addressed through the rule making process.

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

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By: 
Graham F. Sloan
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