

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 2000-EC-013 Issued November 9, 2000

The Ethics Commission has received a written advisory opinion request from the Pulaski County Bar Association concerning its practice of presenting judicial robes to members of the Association who have been elected to a judgeship position. The question asked is whether or not receipt of the robe is prohibited by Ark. Code Ann. § 21-8-801 which 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.”

The first step in determining whether receipt of the robe is prohibited by Ark. Code Ann. § 21-8-801 is to determine whether the robe meets the definition of a “gift.” Said term is defined in Ark. Code Ann. § 218-402(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. Among the items excluded is “[a]nything with a value of one hundred dollars (\$100) or less.”

The Commission concludes that a judicial robe meets the “anything of value” part of the definition of gift. Thus, the question of whether or not the robe constitutes a gift turns on the value of the robe itself.

In the event the value of the robe did not exceed one hundred dollars (\$100), then it would not constitute a gift and no further analysis would be required under Ark. Code Ann. § 21-8-801. If, on the other hand, the robe was worth more than one hundred dollars (\$100), then it would constitute a gift and focus would shift to whether or not the gift was prohibited.

The prohibition set forth in Ark. Code Ann. § 21-8-801 concerning gifts was first discussed in detail by the Commission in Advisory Opinion No. 99-EC-007. As recognized in that opinion, the statute in question serves to prohibit the receipt of a gift which is intended to reward a public servant for doing his or her job.

Subsequent to the issuance of Advisory Opinion No. 99-EC-007, 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. 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.

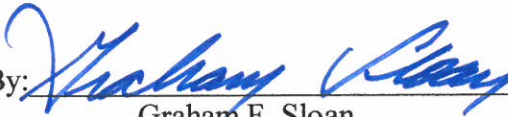
As recognized in both Advisory Opinion No. 99-EC-007 and § 303(d) of the Commissions Rules on Gifts, a public servant is not prohibited from receiving all gifts. A gift is not prohibited under Ark. Code Ann. § 21-8-801 unless it is intended to reward a public servant for doing his or her job or it is intended as a reward for past or future action.

The Pulaski County Bar Association has informed the Commission that it is the Association's practice to present a judicial robe to each of its members elected to a judgeship position. In its advisory opinion request, the Association states that it is understood that the robe "would be strictly worn while doing the job of the judge and not given as a reward for the performance of the job."

On those specific facts, the Commission concludes that receipt of the robe would not be prohibited. In essence, the robe would be an official capacity gift to be used by the recipient in performing the duties and responsibilities of his or her office and not for personal purposes.

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  
Director