

ARKANSAS ETHICS COMMISSION

2020 WEST THIRD, SUITE 300

LITTLE ROCK, AR 72205

(501) 324-9600

JACK R. KEARNEY

Director/Chief Counsel

RICHARD L. MAYS

Commission Chairman



Commissioners:

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RONALD A. MAY

KEMAL E. KUTAIT

MARY LYNN REESE

Opinion No. 91-EC-003

June 24, 1991

Mr. Jerry Clark, Director
State Governmental Affairs
Association of Milk Producers, Inc.
P. O. Box 5040
Arlington, TX 76005

Dear Mr. Clark:

On June 14, 1991, this office received your request for an official opinion under authority of Initiated Act 1 of 1990 and Initiated Act 1 of 1988 (as amended). Your questions deal with reimbursement of travel related expenses of a public official by an organization. I have paraphrased your question number one as:

If an Arkansas legislator, acting in his official capacity as a member of a subcommittee of the Arkansas State General Assembly, appears before a subcommittee of the United States Congress to testify on behalf of (or against) legislation in which a "producing organization" is interested, may the "producing organization" reimburse the legislator's travel, lodging, and meal expenses without violating Arkansas Conflict of Interest laws?

The portions of Arkansas law pertinent to your question are these:

ACA Section 21-8-801: No public servant shall:

(1) Receive 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.

ACA Section 21-8-402: As used in subchapters 4-8 of this chapter, unless the context otherwise requires:

(5)(A) "Gift" means any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefore.

(B) The term "gift" does not include:

(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

(7) "Income" or "compensation" means 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

(17) "Public Servant" means all public officials, public employees, and public appointees"

As your question suggests that the legislator is "acting in his official capacity", I will assume for purposes of this opinion that he or she attended the hearing at the United States Congress on some subject of interest to the subcommittee to which he or she is assigned, or to the Arkansas General Assembly as a whole. I will also assume, for purposes of this opinion, that the legislator referred to did not attend the hearing to testify specifically at the request of or on the specific behalf of the "producing organization" to which you refer.¹ Given those assumptions, it is my opinion that the granting or accepting of reimbursement for actual expenses does not violate Arkansas law in the situation you describe.

As our law points out, the legislator would be in violation of

¹The public official should, as a wise course, and must, if challenged on his or her claim that the appearance for which reimbursement is sought was "official business", have proof that his employing agency requested or authorized the appearance for which reimbursement is sought.

Arkansas' law only if he accepted a "gift" or "compensation" for performing the duties and/or responsibilities incumbent to his office. [ACA Section 21-8-801(1)] The reimbursement of the costs you list is specifically exempted from the definition of "gifts". The definition of "compensation" is not so clearly defined in our statutes, however, the commonly accepted definition is that of a payment made under obligation for services or other value received. That definition does not encompass, in my opinion, reimbursement for travel and related expenses of a public official who is acting in his or her professional capacity, provided the reimbursement does not exceed the amount the official actually expended to conduct his or her official duties.²

Your second question, paraphrased is:

If the reimbursement of food, travel and lodging expenses does not violate Arkansas law, what is the proper procedure for legislator, as well as the "producing organization", to disclose the expenditure?

The portions of Arkansas law pertinent to this question are:

ACA Section 21-8-701. "Persons required to file - exemptions - contents"

(a) The following persons shall file a written statement of financial interest:

(1) A public official, as defined in subchapter 4 of this chapter

ACA Section 21-8-402 "Definitions."

(16) "Public Official" means a legislator or any other person holding an elective office of any governmental body, whether elected or appointed to the office.

ACA Section 21-8-701

(c) The statement of financial interest shall be filed by January 31 of each year . . . The statement of financial interest shall include the

²It is a clear violation of the ethics laws of Arkansas, and possibly other criminal laws, for a public official to accept "reimbursement" for an expense for which he has already been paid.

following:

(8) 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 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;"

As the above statutes dictate, a legislator whose expenses are reimbursed when he or she is on official business must report that fact on the next Financial Disclosure Statement. Arkansas statute does not require any entity, which is not a registered lobbyist, to report the reimbursement of a public official's job related expenses. However, allow this opportunity to caution that an attempt to routinely engage in such a practice in order to influence an official's actions may be viewed as illegal lobbying, with significant consequences. Further, your questions suggest that the legislator's determination to attend the hearing at the United States Congress, and the subject matter of his testimony, were made independent of the reimbursement of his or her expenses. If it appears otherwise, in a particular fact situation, this opinion would not apply.

Sincerely,

Jack R. Kearney
Director/Chief Counsel

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