

ARKANSAS ETHICS COMMISSION

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Opinion No. 91-EC-008

August 22, 1991

Mr. William B. Brady
Brady & Associates
920 West 2nd Street, Suite 204
Little Rock, AR 72201

Dear Mr. Brady:

On August 1, 1991, this office received your request for an official opinion, under authority of Initiated Act 1 of 1988 (as amended) and Initiated Act 1 of 1990. You first describe an annual "event" sponsored by your company, which is a two-day golf tournament in which Arkansas House of Representative members compete against members of the Arkansas Senate. You explain that the House of Representative team is not selected by you or your company, but instead is selected by the Speaker of the House or some other House member appointed by the Speaker to make the selections. Likewise the President Pro-Tem of the Senate either selects the Senate team or appoints a senator to do so.

Your question number one is as follows:

"May I consider this a 'special event' as defined in ACA § 21-8-604(C), and thereby report only the total cost of the event, rather than listing each participant by name?"

The term "special event" as used in your opinion request (also appearing in the statute referenced and on the officially approved

disclosure form) is not defined.¹ The only reference to "special event" in the entire set of Arkansas Ethics and Disclosure Statutes is in subsection (C) of 21-8-604. The entire statute reads as follows:

The lobbyist activity reports shall be signed and sworn to by the registered lobbyist. The reports shall contain:

(1) The total of all expenditures made or incurred by the registered lobbyist or on behalf of the registered lobbyist by his or her employer during the preceding period. These totals shall be itemized according to financial category and employers and clients, including food and refreshments, entertainment living accommodations, advertising, printing, postage, travel, telephone, and other expenses or services. Registered lobbyists shall not be required to report office expenses other than office expenses specifically required to be reported under this section. Registered lobbyists are not required to report unreimbursed personal living and travel expenses not incurred directly for lobbying;

(2)(A) An itemized listing of each:

(i) Gift given to a public servant or on behalf of the public servant;
(ii) Payment for food, lodging, or travel in excess of twenty-five dollars (\$25.00) on behalf of a public servant; and

¹The term "special event" in connection to lobbyist activity, is not defined anywhere in Arkansas law. Likewise, it is not defined in the Council of State Government model lobbyist disclosure legislation, nor anywhere in Federal legislation controlling lobbying activity. Further, though the term has been used frequently in Arkansas Attorney General's opinions interpreting these statutes, there has been no specific definition of the term. The attached Attorney General's opinion, the first issued under the act, comes nearest to defining a "special event". The response to request #3 therein (which this commission does not accept as the controlling opinion with regards to your request) appears to accept two named parties as "special events". There is, however, no explanation for applying the terms to these functions.

(iii) Any other item paid or given to a public servant or on behalf of the public servant, except for campaign contributions, having a value in excess of twenty-five (\$25.00) unless consideration of equal or greater value has been given therefor.

(B) Each item shall be identified by date, amount paid or value, and the name of the individual receiving or to be benefitted by the item, and a description of the item.

(C) In the case of special events, including parties, dinners, athletic events, entertainment, and other functions, expenses need not be allocated by individuals, but the date of the event, location, name of the governmental body or groups of public servants invited, and total expense shall be stated;

(3) A detailed statement of any money loaned or promised or line of credit established to a public servant or to anyone on behalf of the public servant in excess of twenty-five (\$25.00) per individual. Money loaned or a line of credit established that is issued in the ordinary course of business by a financial institution or a person who regularly and customarily extends credit shall not be required to be disclosed;

(4) A statement detailing the direct business association or partnership with any public servant before whom the lobbyist may engage in lobbying.

The language of the statute appears to anticipate a pre-planned, publicly-announced occasion to which the general public or entire defined groups may be invited or allowed to attend. Such an interpretation of the statute would preclude an occasion to which only public officials who are the subject of lobbying are participants. Under this interpretation of the law, the occasion you describe, and which has as its only participants elected members of the legislature, could not be reported as a "special event".

The reasoning upon which this interpretation rests is that

Ethics and Disclosure laws, taken as a whole clearly are an instrument requiring those who use the tools of money and other benefits to influence the actions of state officials to report their activity to the public. A lobbyist sponsored occasion which allows only legislative officials to participate raises the suspicion that the sponsor seeks to influence the officials.

The fact that the benefits of the occasion are not directed toward any particular legislator or any particular legislative measure is and must be considered. However, under the scenario you describe, clearly the Speaker of the House of Representatives and the President Pro-Tem of the Senate will have received tangible benefits. They have, by virtue of their positions, been directed extra benefits or privilege, or been given a valuable opportunity to distribute the benefits among those legislators of their own choosing and for their own reasons. All of the participants receive benefits of the sponsor for no other reason than that they are elected officials.

Therefore, it is my opinion that a lobbyist-sponsored occasion to which only legislators/public officials are invited to participate may not be declared a "special event". It follows, of course, that the names of the beneficiaries of the event must be reported on the Lobbyist Activity Report.

Your second opinion request is as follows:

"Would the answer to question #1 change
if I, or my associates, selected the participants?"

As it is our opinion that the occasion you describe may not be reported as a "special event" because the group is already too select, that opinion would remain the same if you selected the participants.

Your question number three, paraphrased, is as follows:

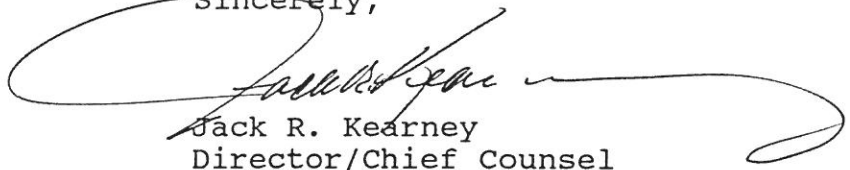
If the occasion described may not be reported as a "special event", could a legislator under the same circumstances detailed avoid having his name reported by paying all or a portion of the expenses of his participation of the occasion?
(Could he or she, for instance, pay \$130.00 of a \$150.00 full expense, thereby allowing the lobbyist to pay less than the \$25.00 per person which the statute sets as a minimum required to be reported?)

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It is my opinion that should any government official pay the full cost of participating in any event, then he received nothing of special benefit from a lobbyist which requires reporting. Though the benefit bestowed upon the legislative participant may be significant, our lobbyist disclosure statutes specifically identifies the expenditures which must be reported. The only criteria made in the law is the amount of money expended on a government official before reporting is required.² In the circumstances you describe, if no money is expended on the individual legislator there would be no requirement to report.

The logic of reporting only upon the criteria of money expended would extend to any instance where the threshold of twenty-five (\$25.00) is not met. As to the second part of your question, if the official paid an amount that left the lobbyist or sponsor less than \$25.00 to expend upon him no report is required.

Sincerely,



Jack R. Kearney
Director/Chief Counsel

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²Under the laws in existence in some states the question of whether the participation in the occasion you describe is considered a benefit granted to the legislator should be the determinant of whether it must be reported as a gift. Therefore, under the circumstances you describe, unless persons other than the eight members of each house of congress may participate in the occasion if they pay and choose to do so, then the occasion benefits the congressmen to the exclusion of others. Such an event would have to be reported as a gift to these participants. This would hold true whether the legislator paid all or part of his expenses.