

Arkansas Ethics Commission
Opinion No. 97-EC-013
July 14, 1997

ARKANSAS ETHICS COMMISSION
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DATE ISSUED: July 14, 1997

ISSUE PRESENTED:

May a public official reimburse a lobbyist for food, lodging and/or travel thereby permitting a lobbyist to exclude from reporting the payment of food, lodging and/or travel in excess of \$25 on the lobbyist's activity report?

BRIEF RESPONSE:

No. The Lobbyist Registration and Reporting Rules issued by the Commission on December 4, 1996, clearly express the intent that the public have disclosure of contact between lobbyists and public officials. The only way for a public official to avoid his/her name appearing in a lobbyist activity report due to the receipt of food, lodging and/or travel in excess of \$25 is to prepay the expense or pay the expense at the time and place the expense is incurred.

FACTS PRESENTED:

A legislator intends to ride on a corporate aircraft provided by a lobbyist. The lobbyist who provided the transportation will be reimbursed by the legislator for the fair market value of the trip.¹ The lobbyist who is reimbursed for the fair market value of the transportation wants to exclude from reporting the payment of such travel expenses for the legislator on his/her lobbyist activity report.

DISCUSSION:

Arkansas law provides that a registered lobbyist must report any payment for food, lodging and/or travel on behalf of a public servant which exceeds \$25. Ark. Code Ann. §21-8-604(b)(2)(A)(ii). Arkansas law further excludes from the definition of "gift", 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. Arkansas Code Ann. §21-8-402(5)(B)(ii). Public officials are required to report the source, date and description of any gift received of more than \$100. Ark. Code Ann. §21-8-701(d)(7). Public officials are required to report on their annual Statement of Financial Interest

¹ Please see Arkansas Ethics Commission Opinion No. 97-EC-011 for the valuation of rides on private aircraft.

each non-governmental source of payment of expenses for food, lodging and/or travel in excess of \$150 which bears a relationship to the public servant's office when the public servant is appearing in his or her official capacity. Ark. Code Ann. §21-8-701(d)(8). Reimbursement for food, lodging and/or travel expenses in excess of \$25 by public officials is a permissible practice.

The Commission is mindful that reimbursement does, from time to time, occur between public officials and lobbyists for food, lodging and/or travel expenses in excess of \$25. The Commission rules on lobbyist registration and reporting, however, express a very strong and unmistakable intent that the public have full disclosure of the contacts between lobbyists and public officials.²

Reimbursement can lead to several problems in reporting by lobbyists and public officials that necessitates the prepayment rule adopted herein. In the most recent meeting of the General Assembly, the Legislature passed Act 114 of 1997 [to be codified at Ark. Code Ann. §21-8-604(c)] which requires lobbyists to notify any public servant whose name will appear in an activity report of a lobbyist no later than seven (7) working days prior to the date for filing the activity report.³

If the Commission were to opine that a public servant could exclude his/her name from a lobbyist activity report through reimbursement, a number of problems could arise which could make compliance and enforcement virtually impossible. Specifically, how long does a public servant have to reimburse for food, lodging and/or travel expenses? What if the public servant reimburses the lobbyist after the lobbyist has already filed his/her activity report? What if the public servant promises to reimburse but fails to make payment? The rule adopted herein avoids these pitfalls.

More importantly, however, is the public's right to know how its business is being conducted. When the Commission issued the rules governing lobbyist disclosure, it recognized the need for the public to have full disclosure. Reimbursement, while a worthy gesture, does not and can not take

² Please see Section 502(a) and Section 510(a) of the Lobbyist Registration and Reporting Rules:

Section 502(a): It is the intent of the Arkansas Ethics Commission that the public have full disclosure of the items required to be reported under this subchapter.

Section 510(a): It is the intent of the Arkansas Ethics Commission that the public have disclosure of the contact between lobbyists and public officials and to that end, the Commission encourages lobbyists not to avoid reporting through the use of technicalities or ambiguities.

³ Because Act 114 of 1997 did not include an emergency clause it does not go into effect until August 1, 1997, which is ninety (90) days after *sine die* of the 81st General Assembly.

precedence over the public's need to know how its business is being conducted. Thus, the only way for a public servant to be able to exclude his/her name from a lobbyist activity report when a lobbyist is going to pay for food, lodging and/or travel expenses in excess of \$25 is for the public servant to prepay the expense or pay the expense at the time and place the expense is incurred.⁴

The Commission wishes to remind public servants that they have a duty to report payment of food, lodging and/or travel in excess of \$150 from non-governmental sources on their annual Statement of Financial Interest (due on January 31) if it bears a relationship to the public servant's office and when appearing in an official capacity.⁵ If not appearing in an official capacity, public servants have a duty to report the payment of such expenses in excess of \$100 under the gift section of the Statement of Financial Interest. Lobbyist compliance with Act 114 of 1997 should help public officials with this task.

In the present example, public servants who wish to pay for the travel may prepay the fair market value of the transportation or pay simultaneously upon presentation of the bill for food or lodging, as any member of the public could do. If the public servant pays for the travel before taking it, there has been nothing provided at anytime by the lobbyist and nothing need be reported. On the other hand, the public servant may wish to wait until after the food, lodging and/or travel has been provided and reimburse the lobbyist for all or part of the expenses. In this scenario, by allowing the public servant the benefits of the travel without receipt of payment, the lobbyist has provided something outside the normal course of business. If the public servant later decides to reimburse the lobbyist, the lobbyist must still report the expenditure although the lobbyist could note, on the applicable activity report, that the value provided had been reimbursed by the public servant. The Commission is mindful that an activity report should report fully the financial relationships between the lobbyist and the public servant and noting reimbursement for expenses on the report would be in furtherance of this purpose.

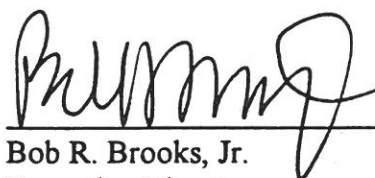
⁴ A lobbyist is allowed to charge expenses to a credit card and a legislator may reimburse the lobbyist later, but this procedure will not defeat the rules requiring itemization.

⁵ The Commission realizes that some trips are not itemized (i.e., the public official's name does not appear in the lobbyist activity report) because of the special event exception. Please see §513(f) of the Lobbyist Registration and Reporting Rules. However, even when a public official attends a special event, the reporting requirements on the annual Statement of Financial Interest remain intact.

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SUMMARY:

When a lobbyist pays the food, lodging and/or travel expenses of a public servant in excess of \$25, the public servant may reimburse the lobbyist for the expense but cannot avoid the expenses being itemized in the lobbyist's activity report. To avoid reporting, the public servant must prepay the expense or pay the expense at the time and place the expense is incurred.

A handwritten signature in black ink, appearing to read "Bob Brooks", is written over a horizontal line.

Bob R. Brooks, Jr.
Executive Director