

ARKANSAS ETHICS COMMISSION

910 West Second Street, Suite 100
Little Rock, Arkansas 72201
(501) 324-9600 Fax (501) 324-9606
Toll Free 1-800-422-7773

Troy Burris
Chairman

Rita Looney
Vice Chairman

Tom Alexander
Ben Allen
Jack Kearney
Commissioners



Bob R. Brooks, Jr.
Executive Director

Graham F. Sloan
Staff Attorney

Annette Leach
Director of Compliance

ADVISORY OPINION NO. 99-EC-005 **Issued May 21, 1999**

The Arkansas Ethics Commission has been asked to address a number of issues concerning the provisions of Act 553 of 1999 (hereinafter "Act 553"). Said Act goes into effect on July 30, 1999.

ISSUE #1:

With respect to the requirement under Ark. Code Ann. § 21-8-701(d)(8) that persons filing a Statement of Financial Interest ("SFI") report the "reasonable fair market value" of each gift of more than \$100.00 received by the public servant or his or her spouse or more than \$250.00 received by his or her dependent children, how is such value determined, who has the burden of proving same, and can the reported value be challenged by way of complaint and, if so, what factors will the Commission consider in determining whether the value has been correctly reported?

ANSWER:

When reporting gifts received from registered lobbyists, valuation should not be an issue. Pursuant to Ark. Code Ann. § 21-8-604(c), registered lobbyists are required to furnish a public servant¹ with written notification of the information to be reported in a lobbyist activity report prior to the report being filed. When a lobbyist gives a gift to a public servant, Ark. Code Ann. § 21-8-604(b)(2)(A)(i) requires the registered lobbyist to report an itemized listing of each "[g]ift given to a public servant or on behalf of a public servant." This itemization includes the value of the gift given.²

¹ "Public servant" is defined in Ark. Code Ann. § 21-8-402(17). The term encompasses all public employees, all public appointees and all public officials.

² The Lobbyist Activity Report form, which was revised by the Commission in August of 1997, requires lobbyists to report under oath the "amount paid or value" of each gift exceeding \$100.00. See Section 16 on page four (4) of the form.

Arkansas Ethics Commission
Advisory Opinion 99-EC-005
May 21, 1999--Page Two

When reporting gifts received from persons who are not registered lobbyists, a public servant should make a reasonable estimate of the fair market value of the gift if not readily ascertainable. The Arkansas Supreme Court has defined fair market value to mean the price the good or service would bring between a willing seller and a willing buyer in the open market after negotiations.³ The requester of this opinion has cited “an overnight trip to a duck hunting club that is not commercially operated and therefore for which there is no clearly established ‘value’” as an example of a gift that would be difficult to value for purposes of reporting it on the public servant’s annual SFI form.

The value of a trip to a noncommercial duck club can be estimated by researching the rates of a commercially operated duck club in the same area. If, for example, the “going” commercial rate for overnight lodging and hunting at duck clubs in the Stuttgart area is \$300 a night per person, then that rate may be used as a basis for valuing the trip to a noncommercial duck club.

The requester asked whether a citizen complaint may be lodged against a public servant challenging the reported value of a gift if the public servant has made a “good faith attempt to determine ‘fair market value’” of the gift. Any citizen of the state of Arkansas may file a complaint against a public official. If the complaint meets certain requirements (i.e., it is signed under oath, filed against a person over which the Commission has jurisdiction and alleges a violation of law(s) over which the Commission has jurisdiction) the executive director must cause an investigation of the complaint to commence. It should be noted, however, that persons who file frivolous complaints before the Commission can be sanctioned up to \$1,000 per violation under Act 553.⁴ Complaints containing false material allegations may also subject such persons to criminal prosecution for false swearing⁵ under Ark. Code Ann. § 5-53-103.

The requester inquired where the burden of proof lies in these types of cases. The complainant has the initial burden of proof to demonstrate a material difference in the reported value of the gift and the actual value of the gift. If the complainant makes a *prima facie* case that the reported value is materially different than the actual value of the gift, then the burden of proof would shift

³ *Minerva Enterprises, Inc. v. Howlett*, 308 Ark. 291, 824 S.W.2d 377 (1992). The Commission has adopted this definition of fair market value for purposes of valuing “in-kind contributions” in the context of campaign finance. See § 205(b) of the Commission’s Rules on Campaign Finance & Disclosure effective January 16, 1998.

⁴ Act 553 amends Ark. Code Ann. § 7-6-218(b)(1) to provide that in cases where the Commission has dismissed a citizen complaint, the respondent may request that the Commission make a finding as to whether or not the complaint was frivolous. If found to be frivolous, the respondent may then file a complaint seeking sanctions under Ark. Code Ann. § 7-6-218(b)(4).

⁵ False swearing is a Class A misdemeanor punishable by a fine of up to \$1,000 and imprisonment not to exceed one (1) year.

**Arkansas Ethics Commission
Advisory Opinion 99-EC-005
May 21, 1999--Page Three**

to the public servant to demonstrate the reasonableness of his or her estimate. If the public servant can show that he or she made a reasonable attempt to ascertain the fair market value of a gift reported on his or her SFI, a complaint based on failure to report the correct value of the gift would likely fail at the preliminary stage of the proceedings.

In addition to the information submitted by the complainant, some of the factors that the Commission would consider in deciding whether the public servant correctly reported the gift in question would be the actual value of the gift, the basis for the valuation that the public servant assigned to the gift, and whether there is an established market for items of that type. This list is not exhaustive, merely illustrative of some of the factors. Such complaints would be adjudicated on a case-by-case basis.

In the judgment of the Commission, a little common sense in this area should go a long way. The public servant may ask the donor of the gift the fair market value of the item prior to accepting it. If the public servant believes that he or she cannot place a reasonable valuation on the gift, he or she is free to return the gift to the donor unused within thirty (30) days of receipt and the gift is not required to be reported. *See Ark. Code Ann. § 21-8-402(5)(B)(iii).*

ISSUE #2:

With respect to the requirement under Ark. Code Ann. § 21-8-701(d)(8) that persons filing a SFI report the "reasonable fair market value" of each gift of more than \$250.00 received by his or her dependent children, what constitutes a "gift", does something given to the child which is completely unrelated to the parent have to be reported, how are school-related trips valued, and is it a reporting violation if the child is not aware of the financial details?

ANSWER:

The requester asked whether Act 553 requires a gift given to the dependent child of a public servant to be reported on the SFI if the gift is "completely unrelated to the relationship to the parent." The answer is yes. The gift does not have to be related to the public servant [parent] to be reportable.

During the debate on Act 553, it was pointed out that current law contains a loophole in that persons seeking to influence public servants may give gifts to their dependent children which would go unreported. In light of the scandal facing the Salt Lake Organizing Committee over alleged bribes to members of the International Olympic Committee,⁶ the General Assembly took action to fill this reporting void. In so doing, the General Assembly recognized that routine gifts

⁶ For a detailed report of the allegations, see the Report of the Board of Ethics of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 dated February 8, 1999. Salt Lake's Bid Committee apparently

**Arkansas Ethics Commission
Advisory Opinion 99-EC-005
May 21, 1999--Page Four**

from boyfriends or godparents are not reportable unless they exceed \$250.00. It is not this type of gift which the law seeks to expose, but rather the ones which could be reasonably perceived to influence the official actions of a public servant. It should be noted that the original ethics legislation which was considered in the Third Extraordinary Session of the 76th General Assembly contained a reporting requirement for gifts to “children under age sixteen.”⁷

The requester has inquired about the method to be used in valuing school-related trips in which a donor or donors assist in the group travel. School-related trips should be reported from the ultimate source, not the individual underlying sources. So, for example, if a high school band is invited to play at half time of the Citrus Bowl and undertakes to raise funds from numerous sources to pay for the trip, the gift of the trip should be reported from the band club, booster club or other group which oversaw the fundraising, not from the individual donors.⁸ If the child is not aware of the financial details, then the public servant [parent] should take steps to find out.

The requester has asked whether scholarships, no matter the source, constitute a reportable gift. Academic or athletic scholarships received from an institution of higher education attended by a dependent child are not reportable, but all other scholarships are reportable. For example, the receipt of a \$1,000 Rotary Scholarship to attend the college or university of a dependent child’s choice would be reportable.

ISSUE #3:

With respect to the requirement under Ark. Code Ann. § 21-8-701(d)(8) that persons filing a SFI report the “reasonable fair market value” of each gift or more than \$250.00 received by his or her dependent children, can the parent be found to have committed a violation if child did not make the parent aware of the gift?

ANSWER:

Public servants have a duty under Act 553 to report the “source, date, reasonable fair market value, and description of each gift of ... more than two hundred fifty dollars (\$250.00) received by his or her dependent children.” Public servants should exercise good judgment and caution when

arranged to have the daughter of an International Olympic Committee (IOC) member perform at the Utah Symphony for the sum of \$5,000.00. According to the report, members of the IOC were “eager” to have their children receive “grant money” from the Bid Committee by paying tuition and living expenses at American colleges and universities. According to news reports, over \$1 million in cash, gifts and scholarships were given to influence IOC members to select Sale Lake City’s bid for the 2002 Olympic Winter Games.

⁷ See, e.g., House Bill 1032 by Representatives Schexnayder and Gibson and Senate Bill 8 by Senator Chaffin.

⁸ This answer assumes that the trip is for school-related group travel, not a trip for an individual, albeit related to a school activity.

Arkansas Ethics Commission
Advisory Opinion 99-EC-005
May 21, 1999--Page Five

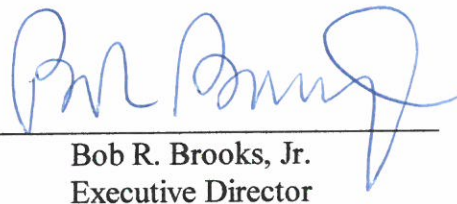
reporting matters required to be listed on the annual SFI and err on the side of disclosure when in doubt.

In discharging his or her duty to report gifts received by spouses or dependent children, public servants should make a reasonable inquiry of both his or her spouse and his or her dependent children to ascertain whether or not they have received any reportable gifts. If a spouse or child concealed the receipt of a gift, that fact might constitute "good cause" for the violation and thereby result in no sanction(s) being imposed under Ark. Code Ann. § 7-6-218(b)(4).

Some of the factors that would be considered by the Commission include the size of the gift to the public servant's dependent child, whether the public servant made a reasonable inquiry concerning gifts and whether the public servant knew or should have known of the existence of the gift. This list is not exhaustive, merely illustrative. Complaints would be adjudicated on a case-by-case basis.

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

ARKANSAS ETHICS COMMISSION

By: 
Bob R. Brooks, Jr.
Executive Director