

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 99-EC-008

Issued July 30, 1999

### ISSUE:

Do dinners, golf outings or similar functions<sup>1</sup> paid for by lobbyists at the National Conference of State Legislatures or the Southern Legislative Conference qualify under the so-called "special event" exception for purposes of reporting on the lobbyist activity report?

### BRIEF ANSWER:

No. These types of activities fall outside the special event exception and should be itemized in the lobbyist activity report if exceeding \$40 per person.<sup>2</sup>

### FACTS PRESENTED:

Each year, members of the Arkansas General Assembly attend conferences such as the National Conference of State Legislators ("NCSL")<sup>3</sup> or the Southern Legislative Conference ("SLC").<sup>4</sup> It is the Commission's understanding that the House and the Senate each send members to attend such conferences as does the Legislative Joint Auditing Committee and the Legislative Council.<sup>5</sup> The process of selecting which members will attend the conferences is under the exclusive control of the Speaker of the House and the President Pro Tempore of the Senate, respectively, as well as the chairman of the Joint Auditing Committee and the Legislative Council.

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<sup>1</sup> This advisory opinion does not deal with hospitality rooms, which are popular at these types of conferences. Hospitality rooms may be reported as a special event pursuant to § 512(d) of the Commission's Rules on Lobbyist Registration and Reporting.

<sup>2</sup> Act 553 of 1999 increased the itemization threshold contained in Ark. Code Ann. § 21-8-604 from \$25.00 to \$40.00, effective July 30, 1999.

<sup>3</sup> This year the NCSL was held in Indianapolis, Indiana from July 24-29. Last year the NCSL was held in Las Vegas, Nevada.

<sup>4</sup> This year the SLC was held in Kansas City, Missouri from July 17-21. Last year the SLC was held in Kiawah Island, South Carolina.

<sup>5</sup> Some members do attend these conferences at their own expense or through the use of carryover funds.  
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**LEGAL ANALYSIS AND DISCUSSION:**

The “special event” exception is contained in Ark. Code Ann. § 21-8-604(b)(2)(C), which provides as follows:

- (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 the total expense shall be stated;

While addressed in earlier opinions, the term “special event” is not statutorily defined.<sup>6</sup> In December of 1996, the Commission promulgated a rule intended to more fully explain the reporting of functions under the special event exception. The rule is contained in § 513 of the Commission’s Rules on Lobbyist Registration and Reporting and provides as follows:

**§ 513. Reporting Special Events**

- (a) Generally, expenses related to lobbying activity are categorized and itemized as detailed in §§ 510-512 of these rules. In case of special events, as defined in paragraph (b), where the expenses related to the event are incurred by the lobbyist, the lobbyist need not allocate the expenses by individual but may categorize them on a group basis as listed herein in paragraph (e).
- (b) A special event is a planned activity where a specific governmental body or identifiable groups of public servants are invited. The expenditures incurred for special events shall be for the purpose of hosting receptions, benefits and other large gatherings held for the purposes of goodwill or to otherwise influence legislative, executive or administrative action to which 20 or more public servants are invited. Special events include parties, dinners, athletic events, entertainment, and charity events.
- (c) A gathering or event will not be considered a special event for the purposes of this section if less than 20 public servants are invited. If less than 20 public servants are invited, the registered lobbyist shall report that gathering or event under § 510 or § 511 of these rules and itemize the expenditures accordingly.
- (d) In the case of a special event, expenses need not be allocated by individuals.
- (e) The information reported for a special event shall include:

- (1) the date of the event;

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<sup>6</sup> See Attorney General Opinion No. 89-E-1 which was issued on January 24, 1989, and Arkansas Ethics Commission Opinion No. 91-EC-008 which was issued on August 22, 1991.

- (2) the name of the event;
  - (3) the location of the event;
  - (4) the name of the group(s) invited;
  - (5) the name of the registered lobbyist who made the expenditure; and
  - (6) the total amount of the expense.
- (f) When a lobbyist invites or is in attendance with seven or more public officials at any social event or activity where the lobbyist makes expenditures on behalf of these public officials, it is presumed that the lobbyist will either itemize the expenditures pursuant to § 511 of these rules or list the event as a special event and categorize the expenditures pursuant to § 513.
- (g) Whether an event is a special event under the meaning of this section is a factual determination made by the Arkansas Ethics Commission on a case-by-case basis. (emphasis in original)

The plain language of the statute which instructs lobbyists how to disclose under the “special event” exception uses the terms “governmental body” or “groups of public servants invited.”<sup>7</sup> “Governmental body” is a broadly defined term in the code.<sup>8</sup> The term encompasses all levels of government from state to local. To illustrate, if a lobbyist invited all members of the Arkansas General Assembly to attend a dinner during the last legislative session, the event would have qualified as a special event. The portion of the lobbyist activity report requiring the “name of the governmental body” to be disclosed would be completed by the lobbyist filling in the following language in the appropriate portion of section 12 of the lobbyist activity report: “all members of the 82<sup>nd</sup> General Assembly.”

The obvious rationale behind the special event exception is to avoid the need of the lobbyist to itemize on his or her lobbyist activity report all the names of the members of the Arkansas General Assembly which is a known group of 35 members the Senate and 100 members of the House. The same would be true if the lobbyist was entertaining the “Joint City, County & Local Affairs Committees.”<sup>9</sup> These committees are standing committees of the House and Senate, respectively. The public can easily discern that the House Committee on City, County & Local Affairs is comprised of twenty (20) specific members of the House and that the Senate Committee on City, County & Local Affairs Committee is comprised of eight (8) specific members of the Senate.

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<sup>7</sup> Ark. Code Ann. § 21-8-604(b)(2)(C).

<sup>8</sup> “Governmental body means any office, department, commission, council, board, committee, legislative body, agency or other establishment of the executive, judicial, or legislative branch of the state, municipality, county, school district, improvement district, or any political district or subdivision thereof.” Ark. Code Ann. § 21-8-402(6).

<sup>9</sup> This example is from an actual Lobbyist Activity Report recently filed covering the second quarter of 1999.



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“Groups of public servants” is not a defined term in the code. However, § 513(b) Commission’s Rules on Lobbyist Registration and Reporting requires that, to qualify for the special event exception, lobbyists must invite “identifiable groups of public servants.” It is the considered judgment of the Commission that members of the General Assembly<sup>10</sup> in attendance at the NCSL or the SLC do not fit within the term “identifiable groups of public servants.” This group of members is not “identifiable” because they have been selected by the lobbyists as opposed to being members of an existing group.

To illustrate, an example of an “identifiable group” would be the Third District Caucus of Arkansas General Assembly. This group includes all members of the Arkansas General Assembly whose districts covers a portion of Arkansas’ Third Congressional District, which includes sixteen (16) counties. To be “identifiable”, the public must be able to readily ascertain the specific members of the invited group at the time of the event. To hold otherwise would defeat the public disclosure requirements of Initiated Act One of 1988.<sup>11</sup>

A lobbyist who selects a group which is not “identifiable” for a dinner or golf outing would not be able to report such a function under the special event exception contained in Ark. Code Ann. § 21-8-604(b)(2)(C). Such activities would need to be itemized on the lobbyist activity report under Ark. Code Ann. § 21-8-604(b)(2)(A) if more than \$40.00 is spent on a public servant.

Lobbyists who wish to employ the “special event” exception on their lobbyist activity report should exercise good judgment and caution in order to avoid a reporting violation under The Disclosure Act for Lobbyists and State and Local Officials. To this end, the Commission is cognizant of the fact that the 1999 conferences of the NCSL and the SLC have already occurred. Even though the report for the third quarter of 1999, is not due until October 15, 1999, it would be unfair to hold lobbyists to a standard of which they were arguably unaware when the conferences actually took place. Accordingly, this opinion is effective for special events held from this date forward and does not include the 1999 conferences of the NCSL or the SLC.<sup>12</sup>

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

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by: \_\_\_\_\_

Bob Brooks, Director

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<sup>10</sup> Members of the Arkansas General Assembly are statutorily defined as “public officials” for purposes of “The Disclosure Act for Lobbyists and State and Local Officials.” See Ark. Code Ann. § 21-8-402(16). The term “public servant”, however, necessarily encompasses the term “public official.” See Ark. Code Ann. § 21-8-402(17).

<sup>11</sup> Initiated Act One of 1988 was passed by the people in November of 1988 and is sometimes cited as “The Disclosure Act for Lobbyists and State and Local Officials.”

<sup>12</sup> The Commission is also considering the promulgation of a revised rule dealing with the special event exception.