

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 99-EC-014 Issued September 17, 1999

The Arkansas Ethics Commission has been asked to answer a number of questions regarding an annual event called "Legislative Day" which is hosted by Arkansas State University ("ASU"). This year, the event is scheduled on October 2, 1999.

As stated in the opinion request, ASU was created by the legislature and is funded by legislative appropriation. The opinion request goes on to state that ASU believes it is important that legislators see how the monies appropriated to ASU are put to good use and ASU hosts the event to acquaint the legislators with its programs and facilities.<sup>1</sup>

Most of the questions which have been asked by ASU pertain to various expenditures being made in connection with the event. Those expenditures are as follows:

Hotel Room	52.05
Brunch	18.00
Tailgate Party	5.00
Dessert	4.00
Game Ticket	<u>20.50</u>
Total	\$99.55

### QUESTION #1:

Since ASU is funded by legislative appropriation, are legislators who attend acting in their official capacity and/or conducting official business?

### ANSWER:

The Commission recently issued Advisory Opinion No. 99-EC-007 which discussed the meaning of the term "official capacity" as it is used in Ark. Code Ann. § 21-

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<sup>1</sup> A review of ASU's appropriation bill for the 1999-2001 biennium, Act 376 of 1999, shows that it is currently authorized to have 2112 regular employees and that the total amount appropriated for personal services and operating expenses this fiscal year is \$141,370,000.00.

8-402(5)(B)(ii). The statutory provision in question contains an exclusion from the statutory definition of “gift” for the receiving of food, lodging, or travel by a public servant when such food, lodging, or travel “bears a relationship to the public servant’s office and when appearing in an official capacity.”

As recognized in Opinion No. 99-EC-007, there are two conditions which must be met in order for the giving or receiving of food, lodging, or travel to meet the foregoing exclusion. The public servant must be appearing in his or her official capacity and the appearance must bear a relationship to the public servant’s office or position.

It was the Commission’s opinion that, as used in Ark. Code Ann. § 21-8-402(5)(B)(ii), “when appearing in an official capacity” means an appearance which arises because of the office or position of a public servant. In the instant situation, the Commission concludes that a legislator attending ASU’s Legislative Day would be appearing in his or her official capacity.

Because it has a bearing on the questions which follow, the Commission has also considered whether a legislator’s appearance at ASU’s Legislative Day bears a relationship to his or her office. The question of whether or not an appearance bears a relationship to a public servant’s office or position turns upon whether the public servant’s appearance at an event furthers a purpose of the governmental entity which he or she serves.

In addition, the interest of the governmental entity which employs the public servant must outweigh the likelihood that attending the event will improperly influence the public servant in the performance of his or her official duties and responsibilities. In this case, the Commission finds that attending Legislative Day does bear a relationship to a legislator’s office and that such attendance would not unduly influence a legislator in the performance of his or her official duties and responsibilities.

#### **Question #2**

ASU will extend an invitation to every member of the General Assembly. Will this constitute consideration as a special event?

#### **Answer:**

A special event is a planned activity to which a specific governmental body or an identifiable group (or groups) of public servants is invited. As stated in § 513(b) of the Commission’s Rules on Lobbyist Registration and Reporting, “[s]pecial events may include parties, dinners, athletic events, entertainment, and charity events.”

The Commission recently discussed special events in Advisory Opinion No. 99-EC-008. In that opinion, it was recognized that in order for an event to qualify for the special event exception a specific governmental body or identifiable group of public servants must be invited.

It is the Commission's opinion that "Legislative Day" does qualify as a special event. Accordingly, ASU would not be required to allocate the expenses by individual but could categorize them on a group basis.

**Question #3**

Will each activity be considered a separate event? If so, since no event exceeds \$100.00, could the legislator accept the value of each activity and not violate Arkansas law or 99-EC-007?

**Answer:**

The various activities planned for "Legislative Day" would be considered one event. However, food, lodging, and travel provided to the legislators in connection with the event would not be considered a gift.

As discussed above, a legislator who attends "Legislative Day" would be appearing in his or her official capacity and the appearance would bear a relationship to his or her official duties and responsibilities. ASU would still need to report expenses incurred in connection with the special event but such expenses would not have to be allocated by individual.

Although the food, lodging, and travel being provided in connection with "Legislative Day" would not be considered a gift, legislators would be required to report same as a nongovernmental source of payment for food, lodging or travel on their Statement of Financial Interest ("SFI") if the value was more than one hundred and fifty dollars (\$150.00) Ark. Code Ann. § 21-8-701(d)(9).

Items other than food, lodging and travel provided to legislators in connection with the event would be considered a gift if the value exceeded one hundred dollars (\$100.00). As long as the value of such items did not exceed one hundred dollars (\$100.00), Ark. Code Ann. § 21-8-801(1) would not be implicated.

**Question #4**

Will the activities be combined? If so, since the total "value" received would not exceed \$100.00, could a legislator attend all of the above activities and receive their "value" without having received a "gift" as prohibited by 99-EC-007?

**Answer:**

While the activities would be combined, food, lodging and travel provided to legislators in connection with the event would not be considered a gift since the legislators would be appearing in their official capacity and their appearance would bear a relationship to their official duties and responsibilities. As long as the value of items other than food, lodging and travel did not exceed one hundred dollars (\$100.00), Ark. Code Ann. § 21-8-801(1) would not be implicated.

**Question #5**

ASU has arranged to charter a bus from Little Rock to Jonesboro and return. The cost of the bus is \$779.00. Will the legislators be "charged" a portion of the rental costs as a value received to them? If the legislators will be "charged" for the value of the charter bus trip, will that value be added to the activities or will it be treated as a separate expenditure? If the value of the charter bus trip is added to the value of the activities so that the total exceeds \$100.00, will the entire Legislative Day event be disallowed?

**Answer:**

Transportation provided to legislators in connection with "Legislative Day" would not be considered a gift since the legislators would be appearing in their official capacities and their appearance would bear a relationship to their official duties and responsibilities. ASU would need to include transportation expenses in its reporting of the special event. Pursuant to Ark. Code Ann. § 21-8-701(d)(9), a legislator would be required to report on his or her SFI food, lodging and travel received in connection with "Legislative Day" if the value exceeded one hundred and fifty dollars (\$150.00).

**Question #6**

ASU will transport legislators from the Holiday Inn to the stadium on an ASU cruiser. Will the legislators be "charged" a portion of the costs of this transportation? Again, will the "value" of the cruiser trip be added to the other activity expenditures or will it stand alone?

**Answer:**

As previously discussed, transportation provided to legislators in connection with "Legislative Day" would not be considered a gift. Accordingly, same would not be considered in determining whether there had been a gift subject to analysis under Ark. Code Ann. § 21-8-801(1).

**Question #7**

ASU will provide entertainment and written programs for the brunch and dessert events. Will the legislators be "charged" a portion of the costs of the entertainment or the costs of the programs?

**Answer:**

The cost of the entertainment would be considered in determining whether or not a gift was received. The question of whether or not the written programs would be considered turns upon the nature of the programs.

Pursuant to Ark. Code Ann. § 21-8-402(5)(B)(i)(a), informational materials such as books, reports, pamphlets, calendars and periodicals are excluded from the definition of gift provided they inform a public servant regarding his or her official duties. If the written programs did not contain such information, the cost of such programs would be considered in determining whether or not a gift was received.

**Question #8**

ASU honors one senator and one representative. They will receive a plaque with a value of \$15.00. May they accept this gift if they have already accepted "value" of \$99.55.

**Answer:**

The cost of the plaque would be considered in determining whether or not a gift had been received. As long as the value of items other than food, lodging and travel received in connection with "Legislative Day" did not exceed one hundred dollars (\$100.00), Ark. Code Ann. § 21-8-801(1) would not be implicated.

**Question #9**

ASU has offered each legislator two season tickets to ASU football games. The value of each ticket is \$90.00. May the legislator accept each ticket as a separate item not exceeding the value of \$100.00?

**Answer:**

If given to one person, the two season tickets would be considered one item. In such a situation, the value of the tickets would be one hundred and eighty dollars (\$180.00).

The Commission is aware that ASU is not the only institution of higher education which has traditionally given legislators season tickets to football games. This opinion marks the first time the giving of season tickets has been analyzed under Ark. Code Ann. § 21-8-801(1).

As stated in Advisory Opinion No. 97-EC-007, it is the Commission's opinion that Ark. Code Ann. § 21-8-801(1) prohibits the receipt of a gift intended to reward a public servant for doing his or her job. The term "gift" is defined in Ark. Code Ann. § 21-8-402(5)(A) to mean "any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor." The definition goes on, however, to exclude certain items from that meaning.

Among the items excluded is "[a]nything with a value of one hundred dollars (\$100.00) or less." Ark. Code Ann. § 21-8-402(5)(B)(vii). The tickets would not come within that exclusion since their value is one hundred and eighty dollars (\$180.00).

During the 82<sup>nd</sup> General Assembly, the Commission assisted in the preparation of an amendment to Senate Bill 943. Said amendment would have created a specific exclusion from the definition of gift for "[t]ickets to in-state athletic, sporting, or charitable events, regularly attended by members of the public, which are received from the organizer of the event."

The legislative session ended without the opportunity for SB 943 to be presented for consideration. If it had become law, receipt of the season tickets would not have been prohibited by Ark. Code Ann. § 21-8-801(1).

As it stands, the Commission concludes that legislators would be prohibited from receiving two complimentary season tickets to ASU football games. Because this opinion marks the first time the Commission has spoken on the issue, it will be given prospective application only.

**Question #10**

If “value” is provided to a legislator’s spouse, by way of Legislative Day or season tickets, does that value add to the legislator’s total for calculation of a gift? Is a legislator’s spouse likewise precluded from accepting “value” in excess of \$100.00?

**Answer:**

The answer to this question depends upon the nature of the item being conferred upon the spouse. In accordance with Ark. Code Ann. § 21-8-604(b)(2)(A), lobbyist activity reports must contain an itemized listing of each:

- (i) Gift given to a public servant or on behalf of a public servant;
- (ii) Payment for food, lodging or travel in excess of forty dollars (\$40.00) on behalf of a public servant; and
- (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 forty dollars (\$40.00) unless consideration of equal or greater value has been given therefore.

With respect to the reporting of payments for food, lodging, and travel, the Commission’s Rules on Lobbyist Registration and Reporting contain an example in § 511 which provides, in part, as follows:

If a lobbyist takes a public servant and his or her spouse to dinner and spends more than \$40.00 on the public servant or more than \$80.00 on the public servant and his or her spouse, the lobbyist shall itemize the expenditure.

Based upon the foregoing example, the Commission concludes that the “value” provided to a legislator’s spouse in connection with “Legislative Day” would not be counted in determining whether or not the legislator had received an item worth more than one hundred dollars (\$100.00). The football tickets, however, are a different matter.

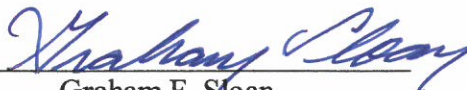
Items which a public servant receives from certain family members are excluded from the definition of “gift” pursuant to Ark. Code Ann. § 21-8-402(5)(B)(iv). That exclusion does not cover situations where the family member is acting as an agent or intermediary for someone who is not also a family member covered by the exclusion.



In the instant situation, the Commission concludes that giving one season ticket to a legislator and one season ticket to his or her spouse is tantamount to giving two season tickets to the legislator. Accordingly, it is the Commission's opinion that receipt of the tickets would be prohibited by Ark. Code Ann. § 21-8-801(1).

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

#### ARKANSAS ETHICS COMMISSION

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