

# ARKANSAS ETHICS COMMISSION

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## **ADVISORY OPINION NO. 99-EC-015** **Issued September 17, 1999**

The Arkansas Environmental Federation ("AEF") has asked several questions concerning its annual convention and trade show currently scheduled for October 19-21, 1999. The AEF is a private, non-profit business association which has about 400 member companies. It was formed in 1967.

The AEF has submitted a brochure concerning the event. According to the brochure, the AEF's efforts are focused on educating environmental, health, and safety professionals through workshops. The agenda for this year's event denotes that there will be keynote addresses, technical sessions and workshops, a general membership meeting, and various meals and refreshment breaks. A golf tournament is also being held.

The brochure states that more than 60 exhibitors are expected to take part in this year's trade show. Vendors from throughout Arkansas and the country will be exhibiting the latest in environmental, safety, and health products and services. Exhibit booths are available to exhibitors at a cost of \$500 for AEF members and \$700 for non-members.

Two registration options are available for persons wishing to attend the event. Full registration includes all meals and refreshment breaks, attendance at technical sessions and workshops, and all materials. Full registration costs \$235 for AEF members and \$335 for non-members. A \$25.00 discount is available to both members and non-members for registering early.

One-day only registration includes meal functions to be held that day, technical sessions and workshops for that day, and materials for that day. One-day only registration costs \$135 for AEF members and \$235 for non-members. Again, a \$25.00 discount is available for registering early.

Registration for the golf tournament is separate and costs either \$75 or \$100, depending upon when a person registers. According to the brochure, proceeds from the tournament support the AEF's public education programs, such as scholarships, science fairs, and collegiate student sponsorship at the convention. Tournament sponsorship is

available at a cost of \$100 per hole and includes signage on the course, announcements during the convention, and recognition in the convention program book.

The AEF's advisory opinion request appears have been precipitated by the issuance of Advisory Opinion No. 99-EC-007. In that opinion, the Commission set forth its interpretation of Ark. Code Ann. §§ 21-8-402(5)(B)(ii) and 21-8-801(1). The former excludes certain food, lodging and travel from the definition of "gift" and the latter contains a prohibition on the receipt of gifts and compensation by public servants.

With respect to gifts, the Commission concluded 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 Commission went on to point out, however, that the definition of "gift" specifically excludes anything with a value of one hundred dollars (\$100) or less.

In its advisory opinion request, the AEF states that it has traditionally extended complimentary registration to the Pollution Control & Ecology Commission ("PCEC") and its staff (a total of 15 individuals) and to the director, three deputy directors, and nine division chiefs of the Arkansas Department of Environmental Quality ("ADEQ"). In addition, the AEF provides complimentary registration to individuals who speak or make presentations at the event. These individuals include public servants from time to time.

The complimentary registration includes participation in all technical sessions and workshops, access to the trade show, and all meals and refreshment breaks. It does not include the golf tournament or any lodging or travel.

The opinion request goes on to state that, in order to encourage ADEQ participation, the AEF offers its member rates to all ADEQ staff who do not receive complimentary registration. These persons are selected by the ADEQ division chiefs and their registration is paid for by the ADEQ from its education fund.

The opinion request states further that the AEF periodically recognizes individuals and groups for their outstanding service to the citizens of Arkansas and to the AEF. In some instances, persons selected for recognition are state employees or legislators. The awards are presented at the annual convention and persons being recognized are given complementary registration to allow them to enter the convention facility in order to receive their awards.

#### **QUESTION #1:**

May the AEF provide complimentary registration to the PCEC and its staff for a three day convention? Is such action considered a special event? If not a special event, how should such action be reported?

#### **ANSWER:**

Complimentary registration to the AEF's annual contention and trade show represents the giving of food, information, and entertainment. As will be discussed, it is permissible for the AEF to provide complimentary registration to the members of the

PCEC and its staff so long as the value of entertainment does not exceed one hundred dollars (\$100.00) per person.

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 “[i]nformational material such as books, reports, pamphlets, calendars, or periodicals informing a public servant regarding his or her official duties.” Ark. Code Ann. § 21-8-402(5)(B)(i). Also excluded is “[t]he 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.” Ark. Code Ann. § 21-8-402(5)(B)(ii).

The Commission discussed the second of these exclusions at length in Advisory Opinion No. 99-EC-007. As recognized in that advisory opinion, there are two conditions which must be met in order for the giving or receiving of food, lodging, or travel to be excluded from the definition of gift.

The first such condition is that the public servant must be appearing in his or her official capacity. The second is that the appearance must bear a relationship to the public servant’s office or position.

With respect to the first of these conditions, the Commission opined that “when appearing in an official capacity” means an appearance which arises because of the office or position of a public servant. The Commission went on to note that if an appearance is one for which a public servant would be subject to expense reimbursement from the governmental entity which he or she serves, then it is clear that the public servant is appearing in an official capacity.

Turning to the second of these conditions, the Commission stated that in order for a public servant’s appearance to bear a relationship to his or her office or position, the public servant’s appearance must serve a purpose of the governmental entity which he or she serves. Moreover, 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 the instant situation, the Commission finds that members of the PCEC and its staff who attend the AEF’s annual convention and trade show would be appearing in their official capacities and that their appearance would bear a sufficient relationship to their office or position. Accordingly, food which is received as a part of the complimentary registration would not be considered a gift.

In addition to food, persons receiving complimentary registration are given information in the form of written materials as well as technical sessions and workshops. The written materials clearly fit within the exclusion in Ark. Code Ann. § 21-8-

402(5)(B)(i) for “informational material . . . informing a public servant regarding his or her official duties.”

Although less clear, the Commission believes that the accompanying technical sessions and workshops would meet that exclusion. Accordingly, neither the written materials nor the technical sessions and workshops would be considered a gift to the PCEC members and staff receiving complimentary registration.

The only remaining question is whether or not the entertainment provided at the AEF’s annual convention and trade show would constitute a gift. The answer to that question depends upon the value of the entertainment. As long as the entertainment was not worth more than one hundred dollars (\$100.00) per person, members of the PCEC and its staff could receive complimentary registration to the AEF’s annual convention and trade show without implicating Ark. Code Ann. § 21-8-801(1).

With respect to the reporting of the complimentary registration given to the members of the PCEC and its staff, the Commission finds that the PCEC is a specific governmental body. As to the members of the PCEC, the complimentary registration could be reported as a “special event”.<sup>1</sup>

The members of the staff of the PCEC do not constitute an identifiable group of public servants. Complimentary registration given to those individuals would need to be reported as “other items” in accordance with Ark. Code Ann. § 21-8-604(b)(2)(A).<sup>2</sup>

#### **QUESTION #2:**

May the AEF provide complimentary registration to ADEQ director, deputy directors, and division chiefs and, if so, how should such action be reported?

#### **ANSWER:**

In accordance with the analysis set forth in the preceding answer, the Commission concludes that it would be permissible for the AEF to provide complimentary registration to the ADEQ director, deputy directors and division chiefs provided that the value of

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<sup>1</sup> The Commission recently discussed special events in Advisory Opinion No. 99-EC-008. As recognized in that opinion, a specific governmental body or identifiable group of public servants must be invited to an event in order for that event to qualify for the special exception.

<sup>2</sup> Pursuant to this section, 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 therefor.

As previously mentioned, complimentary registration to the AEF’s annual convention and trade show represents the giving of food, information, and entertainment. The Commission concludes that same should be reported under the third category as other items paid or given to or on behalf of a public servant.



entertainment does not exceed one hundred dollars (\$100.00). The Commission is of the opinion that the individuals in question do not constitute a specific governmental body or identifiable group of public servants and, therefore, the giving of complimentary registration to said individuals would need to be reported under the category for "other items."

**QUESITON #3:**

May the AEF provide complimentary registration to PCEC members and staff and ADEQ staff who are speakers/presenters in the normal function of their duties, and if so, how should such action be reported?

**ANSWER:**

Again, the Commission concludes that it would be permissible for the AEF to provide complimentary registration to PCEC members and staff and ADEQ staff who speak or make presentations at the annual convention and trade show as long as the value of the entertainment does not exceed one hundred dollars (\$100.00) per person. The giving of such complimentary registration should be reported under the category for "other items."

**QUESTION #4:**

May the AEF provide complimentary booth space at its trade show to state agencies and institutions of higher education, and if so, how should such action be reported?

**ANSWER:**

It is the Commission's understanding that various state agencies with regulatory authority set up booths at the trade show for purposes of disseminating information to members of the regulated community. In such instances, the state agencies are, in essence, performing a service to trade show attendees. The complimentary booth space would not need to be reported under Ark. Code Ann. § 21-8-604(b)(2)(A).

With respect to the giving of complimentary booth space to institutions of higher education, it is the Commission's understanding that such institutions use the booth space to promote educational programs which may be of interest to trade show attendees. On those facts, the Commission concludes that the giving of the complimentary booth space would not need to be reported under Ark. Code Ann. § 21-8-604(b)(2)(A).

**QUESITON #5:**

May the AEF provide discounted registration to ADEQ staff, and if so, how should such action be reported?

**ANSWER:**

It would be permissible for the AEF to charge member rates for ADEQ staff whose registration is being paid for by the ADEQ from its education fund. The discount

would inure to the benefit of the State of Arkansas and would not need to be reported under Ark. Code Ann. § 21-8-604(b)(2)(A).

**QUESTITON #6:**

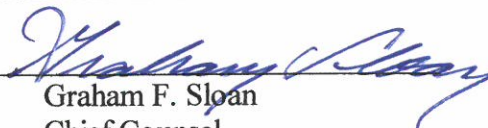
May the AEF provide recognition awards to legislators and/or state employees (actual value of less than \$100) and complimentary registration (actual value of \$310) to allow them to enter the convention facility in order to receive their awards, and if so, how should such action be reported?

**ANSWER:**

As recognized in Advisory Opinion No. 99-EC-007, it is permissible for a public servant to receive an item conferred to show appreciation for the public servant's job performance so long as the item is not worth more than one hundred dollars (\$100.00). Accordingly, a legislator or state employee would be allowed to receive a recognition award and complimentary registration to the annual convention and trade show provided the value of the award and entertainment portion of the event did not exceed one hundred dollars (\$100.00).<sup>3</sup>

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

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By:   
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<sup>3</sup> It must be noted, however, that Ark. Code Ann. § 5-52-108 prohibits a member of the General Assembly from soliciting or accepting compensation for speeches or other appearances, unless the appearance is made in the normal course of business in his or her private occupation.