

# ARKANSAS ETHICS COMMISSION

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## **ADVISORY OPINION NO. 99-EC-021** **Issued December 17, 1999**

The Arkansas Ethics Commission has received an advisory opinion request from Senator Doyle Webb concerning the receipt of free passes from Oaklawn Jockey Club. Senator Webb was recently sent 300 season passes, 100 daily passes, and 2 VIP passes for the 2000 season. In essence, he asks whether the receipt of such passes constitutes a gift prohibited by Ark. Code Ann. § 21-8-801(1).<sup>1</sup>

It is the Commission's understanding that, in accordance with Ark. Code Ann. § 23-110-105,<sup>2</sup> Oaklawn Jockey Club issues passes for free admission into its horse racing facility. For many years, these passes have been distributed to public servants, including members of the General Assembly, who then give them to members of the public.

The number of passes issued has remained constant for several seasons and consists of 39,000 season passes, 30,000 daily passes, 1,300 VIP passes, 4,000 press passes, 5,850 owner/trainer/jockey passes, and 2,600 employee passes. Without a pass, the price of admission to Oaklawn Park is two dollars (\$2.00).

The holder of a daily pass may obtain free admittance once, whereas the holder of any other type of pass may obtain free admission each day of the season. The number of days for the 2000 live meet has been set at fifty-two (52).<sup>3</sup>

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<sup>1</sup> With respect to the receipt of gifts, the operative language of Ark. Code Ann. § 21-8-801(1) is that "[n]o public servant shall...receive a gift...for the performance of the duties and responsibilities of his or her office or position."

<sup>2</sup> Ark. Code Ann. § 23-110-105 provides as follows:  
[t]he Director of the Department of Finance and Administration shall set a maximum number of racing passes to be printed and issued annually and it shall not be less than the number printed in 1990.

<sup>3</sup> The dates for the 2000 race meet were approved by the Arkansas State Racing Commission at its meeting on March 27, 1999.

It is the Ethics Commission's opinion that Ark. Code Ann. § 21-8-801(1) serves to prohibit the receipt of a gift which is intended to reward a public servant for doing his or her job or which is intended as a reward for past or future action. In order for a gift to be prohibited, it need not be shown that the public servant's action was for or because of the gift but merely that the gift was for or because of the action.

The first step in deciding whether receipt of the passes is prohibited by Ark. Code Ann. § 21-8-801(1) is to determine whether the passes meet the definition of a "gift." The term "gift" is defined in Ark. Code Ann. § 21-8-402(5) 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."

The passes meet the "anything of value" part of the definition of gift and the question becomes whether they are worth more than one hundred dollars (\$100.00). With respect to the daily passes, which are good for free admittance once, the Commission concludes that each such pass is worth two dollars (\$2.00), which is the price of admission.

Season passes and VIP passes are clearly worth more than daily passes. The question of how much more has proven difficult to answer. Neither season passes nor VIP passes are offered for sale to the public.

Pursuant to Ark. Code Ann. § 23-110-412, Oaklawn Jockey Club is required to keep records showing the number of admissions and the amount of money received from admission fees. From those records, it can be determined that, during the 1999 season, 226,339 people paid the \$2.00 price of admission and 429,253 used passes to enter the facility.

Records are not kept concerning the number of admissions for each type of pass. Assuming all 30,000 daily passes were used, 399,253 people entered the facility using season passes, VIP passes, press passes, owner/trainer/jockey passes, and employee passes. The total number of all such passes (excluding daily passes) was 52,750 for the 1999 meet. On average, each such pass was used approximately seven and one-half (7 1/2) times in 1999. From this figure, it can be concluded that, for the 1999 meet, season passes and VIP passes were worth fifteen dollars (\$15.00) each.<sup>4</sup>

The Commission is of the opinion that when multiple items, each individually worth less than \$100.00 but in the aggregate worth more than \$100.00, are simultaneously offered by a donor to a public servant, the value of the gift being offered is the aggregate of all the items. The value of 100 daily passes would be two hundred dollars (\$200.00). Accordingly, the Commission is of the opinion that the 100 daily passes received by Senator Webb would constitute a gift within the meaning of Ark. Code Ann. § 21-8-402(5).

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<sup>4</sup> The Commission is aware that this number is only a rough estimate. In the absence of more specific information, this figure is the best available and should be used for reporting purposes.

Based upon the figures from 1999, the value of 300 season passes would be four thousand five hundred dollars (\$4,500.00). The Commission concludes that the 300 season passes received by Senator Webb would clearly meet the statutory definition of gift.

The value of 2 VIP passes would be thirty dollars (\$30.00). Although this amount falls within the exception to the definition of gift for items worth \$100.00 or less, the aggregate of all passes received would be considered in determining whether or not there was a gift. Accordingly, the Commission is of the belief that the 2 VIP passes received by Senator Webb would be a gift since they were offered simultaneously with the 100 daily passes and the 300 season passes.

As discussed above, it is the Commission's opinion that the 300 season passes, 100 daily passes, and 2 VIP passes offered to Senator Webb by Oaklawn Jockey Club constitute a gift. Assuming the passes were intended to reward Senator Webb for doing his job or as a reward for past or future action, the receipt of same would be prohibited by Ark. Code Ann. § 21-8-801(1).

The fact that a public servant who receives the racing passes distributes them to members of the public would not keep them from being considered a gift to the public servant. See Advisory Opinion No. 98-EC-003 (issue #6). In accordance with Ark. Code Ann. § 21-8-402(5)(B)(iii), items which are not used and which, within thirty (30) days after receipt, are returned to the donor are excepted from the definition of gift.

The Commission is aware that Oaklawn Jockey Club has offered free passes to members of the General Assembly and other public servants for a number of years. Because this is the first occasion the Commission has analyzed the receipt of such passes under Ark. Code Ann. § 21-8-801(1), this opinion will be given prospective application only.

On October 5, 1999, the Director of the Department of Finance and Administration sent a letter to Oaklawn Jockey Club instructing it to distribute the passes for the 2000 race meet "not later than mid-December." It is the Commission's understanding that those passes have already been distributed by Oaklawn Jockey Club.

In the event a public servant who is required to file a Statement of Financial Interest ("SFI") received more than one hundred dollars (\$100.00) worth of such passes and did not return them within thirty (30) days after receipt, then he or she would be required to report the passes as a gift on his or her SFI for 1999. The same would be true with respect to passes received during calendar year 1999 for the 1999 race meet.

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

**ARKANSAS ETHICS COMMISSION**

By:   
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