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The Honorable Eugene "Bud" Canada
President Pro Tempore of the Senate
The Honorable B.G. Hendrix
Speaker of the House
State Capitol
Little Rock, AR 72201

Dear President Canada and Speaker Hendrix:

You have requested an opinion under the authority granted in Initiated Act 1 of 1988 which is cited as "The Disclosure Act for Lobbyists and State Officials". You ask a series of questions involving a variety of issues and sections of the Act; therefore, I will restate your questions, and then answer them in the order presented.

1. What must a legislator disclose, and when?

Under subchapter 7 of the Act, a legislator must disclose a variety of financial information, including the receipt of gifts, pertaining to himself and his spouse. The required statement of financial interest shall be filed with the Secretary of State by January 31st of each year.

Subchapter 8 of the Act requires a legislator to disclose any conflict of interest as soon as the legislator becomes aware of the conflict.

This subchapter also permits a legislator to make an appearance before an entity of state government for compensation on behalf of a third party if the appearance is disclosed as a matter of public record. An appearance is considered to be a matter of public record if the legislator

files a written statement with, or notifies by telephone, an agency head within twenty-four (24) hours prior to the appearance. The legislator may also file a quarterly statement with the agency head in order to make the appearance a matter of public record.

> 2. Must a campaign contribution received after the final campaign report date be disclosed as a "gift" on a financial disclosure form, or as a campaign contribution on a supplemental campaign contribution report?

Campaign contributions are exempt from reporting by both lobbyists and public officials by the plain language of the Act. Therefore, any campaign contribution received after the due date for final campaign contribution reports should be reported in accordance with the campaign finance laws, which are codified at A.C.A. §7-6-201 et seq. (1987).

> 3. What are the reporting responsibilities of a legislator who attends a lobbyist sponsored event, i.e., Speaker's Party, President Pro Tem's Party and other legislative receptions?

Initiated Act 1 of 1988 places no reporting responsibilities on legislators who attend special events such as the two special events described above. Whether other legislative receptions are special events is subject to a case by case determination. Any responsibility to file a report in connection with lobbyist sponsored receptions which are special events lies with the lobbyist.

> 4. What are the reporting responsibilities of an individual legislator in the following circumstances: A small group of legislators participates in a non-special event where a lobbyist spends an amount that on the average exceeds $25 per legislator?

The Act places no responsibilities on a legislator to report items purchased on his behalf unless the amount exceeds $100. If the amount exceeds $100, the legislator should report the item(s) as a "gift" as defined by the Act.

> 5. What are the reporting responsibilities of a legislator who attends a special event sponsored by a governmental entity, i.e., a legislative weekend at a state university?

The circumstances you describe here are, for purposes of this discussion, identical to question #3. Therefore, a legislator who attends a government sponsored special event has no responsibility to report items received, unless he is in receipt of some item not afforded to the rest of the attendees. Anything of value given a legislator not afforded the remainder of the invitees that has a value in excess of $100 would be reported as a "gift", unless specifically excepted from the definition of "gifts" in the Act.

> 6. What are the reporting responsibilities of a legislator who receives a gift with a fair market value in excess of $100? How is fair market value determined? Please answer the above questions in light of the fact that some legislators routinely receive athletic tickets, racing passes and "duck prints".

Section 21-9-401(d) defines what is, and is not a gift for the purposes of the Act.

Section 21-8-701(g) requires a legislator to disclose the source, date, and description of each gift of more than one hundred dollars ($100.00) received by the public official or his or her spouse.

No report is necessary if a gift is returned, not used, within thirty (30) days of receipt of the gift.

The Act provides no definition of "fair market value". In some instances, the "fair market value" of a gift is readily apparent, such as in the case of a gift which bears a face value printed on the item. In cases where the value is not readily apparent, I believe a recipient must make some effort to determine the worth of the gift, i.e. through a formal appraisal or evaluation process, simple inquiry of the donor or some other method of valuation. I also believe that the value assigned a gift is based on the value of the gift at the time of a donation, not any future value.

Please be aware that the Act does not require the specific value of a gift be disclosed; rather it must be disclosed if the value is in excess of $100.

You ask how this provision operates in relation to three specific instances; athletic tickets, racing passes and "duck prints".

Most athletic tickets have a "price" printed on the face of the ticket. Therefore, if the aggregate total of the tickets accepted exceeds $100, then the tickets would be reportable as a "gift". For example, if a legislator who accepts over the course of a season, 22 tickets to a state college's football games that have a face value of $10 each, then the legislator would report the tickets as follows:

> Source: State University
> Date: Sept.-Dec. 1989
> Description: Football tickets in excess of $100.

With regard to racing passes and "duck prints", a legislator would report such a gift in the same manner as items which carry a face value. Once the fair market value of the item has been determined, the source, date and a description of the gift would be filed by January 31st of each year. For example, these items would be reported as follows:

> Source: Arkansas Racing Commission
> Date: January 28, 1989
> Description: Season/Daily Oaklawn Racing Passes in excess of $100. Season/Daily Southland Racing Passes in excess of $100.
>
> Source: Arkansas Game and Fish Commission
> Date: December 15, 1988
> Description: Duck stamp print in excess of $100.

7. The 1988 Act requires that legislators list the name of every business in which they or their spouse have "an investment or holding". How does your office define the terms "investment" and "holding" and

> specifically does this language encompass stocks, bonds and certificates of deposit?

The Act does not provide a specific definition, therefore, I must rely on the common meaning and usage of the terms used by the Act. Black's Law Dictionary, Fifth Edition, defines both of the terms in question here.

> Investment: An expenditure to acquire property or other asset in order to produce revenue; the asset so acquired.
>
> Holdings: Extent of ownership of investments (real estate, securities, etc.)

Applying these definitions to the provision of the Act regarding investments and holdings, it is clear that the Act intends for a legislator to report any expenditure which, for instance, results in the acquisition of a business' assets in order to produce income.

You specifically inquire about stocks, bonds and certificates of deposit. It is my opinion that stocks and bonds do fall under the definition of an investment or holding, since the purpose is to produce income as a result of purchasing a portion of a business.

I do not believe that a certificates of deposit, or a CD as it is commonly known, is a reportable investment for purposes of the Act.

> 8. Must a legislator file two forms - the "Statement of Financial Interest" and "Code of Ethics Law, Act 570, of 1979"?

Initiated Act 1 of 1988 contains language which relates specifically to the requirements of Act 570 of 1979, which is codified at A.C.A. §21-8-301 -- 21-8-309.

> Section 21-8-701. A public official, as defined in subchapter four of this chapter, or a candidate for state elective office shall file a statement of financial interest pursuant to this subchapter instead of the statement of financial interest required by A.C.A.

§21-8-301 -- 21-8-309.

Clearly, then, a public official who files under Initiated Act 1 of 1988 is exempt from filing a "Code of Ethics" form.

This provision does not exempt other public officials not covered by the initiative from filing a report required by the "Code of Ethics Act"

> 9. When a legislator files a statement of financial interest, how is a potential conflict of interest made apparent so that no additional reports need be filed?

Your question specifically refers to "potential" conflicts of interest. The Act places no responsibility on a legislator to report conflicts which do not actually exist, therefore he has no duty to disclose any information relating to the potential conflict.

Sincerely,

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Attorney General

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