

DEPARTMENT: *Arkansas Ethics Commission*

DIVISION:

PERSON COMPLETING THIS STATEMENT: *Graham F. Sloan*

TELEPHONE NO.: *(501) 324-9600*

FAX NO.: *(501) 324-9606*

FINANCIAL IMPACT STATEMENT

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE: *Rules on Gifts*

1. Does this proposed, amended, or repealed rule or regulation have a financial impact? Yes No *X*
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain. *N/A*
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. *N/A*

1999-2000 Fiscal Year

2000-01 Fiscal Year

General Revenue	-	General Revenue	-
Federal Funds	-	Federal Funds	-
Cash Funds	-	Cash Funds	-
Special Revenue	-	Special Revenue	-
Other	-	Other	-
Total	-	Total	-

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation?

1999-2000 Fiscal Year

2000-01 Fiscal Year

0

0

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

1999-2000 Fiscal Year

2000-01 Fiscal Year

0

0

FILED
 AR. REGISTER DIV.
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 SHANNON FERRIST
 SECRETARY OF STATE
 STATE FARM INSURANCE
 BY _____
 July 28, 1995

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM
COMMITTEE

DEPARTMENT / AGENCY: *Arkansas Ethics Commission*
DIVISION:
DIVISION DIRECTOR:
CONTACT PERSON: *Graham F. Sloan*
ADDRESS: *Post Office Box 1917, Little Rock, Arkansas 72203-1917*
PHONE NO.: *324-9600* FAX NO.: *324-9602*

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire attached to the front of two (2) copies of your proposed rule and mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

- 1. What is the short title of this rule?
Rules on Gifts
- 2. What is the subject of the proposed rule?
Gifts to public servants
- 3. Is this rule required to comply with federal statute or regulations?
Yes No *X*

If yes, please provide the federal regulation and/or statute citation.

- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes No *X*

If yes, what is the effective date of the emergency rule?

When does the emergency rule expire?

Will this emergency rule be promulgated under the regular provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No If yes, please provide a copy of the repealed rule.

Is this an amendment to an existing rule? Yes No If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes.

6. What state law grants the authority for this proposed rule? If codified, please give Arkansas Code citation.

Ark. Code Ann. § 7-6-217(g)(1)

7. What is the purpose of this proposed rule? Why is it necessary?

To clarify the law concerning gifts.

8. Will a public hearing be held on this proposed rule? Yes No If yes, please give the date, time, and place of the public hearing.

10:00 a.m. on January 21, 2000, at the Commission office, 910 West Second Street, Suite 100, Little Rock, Arkansas.

9. When does the public comment period expire?

January 6, 2000

10. What is the proposed effective date of this proposed rule?

February 28, 2000

11. Do you expect this rule to be controversial? Yes No If yes, please explain. *The majority of the text of these rules came from statutes and previous advisory opinions issued by the Commission. There has been much public debate over the meaning of the statutes and the advisory opinions.*

12. Please give the names of persons, groups, or organizations which you expect to comment on these rules? Please provide their position (for or against) if known.

Arkansas Society of Association Executives

Arkansas Society of Professional Lobbyists

Associated Industries of Arkansas

Common Cause/Arkansas

Constitutional Officers

Members of the General Assembly

PLEASE ANSWER ALL QUESTIONS COMPLETELY

July 28, 1995

RULES ON GIFTS

ARKANSAS ETHICS COMMISSION
910 West Second Street, Suite 100
Post Office Box 1917
Little Rock, Arkansas 72203-1917
501.324.9600 or 800.422.7773
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FILED
ARK. REGISTER DIV.
00 FEB 18 PM 4:21
SHARON PRIEST
SECRETARY OF STATE
STATE OF ARKANSAS
BY _____

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§ 300 Definitions

- (a) **Compensation** – As used in these rules, the term “compensation” means any money or anything of value received, or to be received as a claim for future services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof. It includes a payment made under obligation for services or other value received.
- (b) **Gift** – As used in these rules, the term “gift” means any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor. It does not include:
- (1) Informational material such as books, reports, pamphlets, calendars, or periodicals informing a public servant regarding his or her official duties. (NOTE: payments for travel or reimbursement for any expenses are not informational material);
 - (2) The 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;
 - (3) Gifts which are not used and which, within thirty (30) days after receipt, are returned to the donor;
 - (4) Gifts from an individual’s spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any of these persons, unless the person is acting as an agent or intermediary for any person not covered by this paragraph;
 - (5) Campaign contributions;
 - (6) Any devise or inheritance;
 - (7) Anything with a value of \$100.00 or less; or
 - (8) Wedding presents.
- (c) **Governmental Body** – As used in these rules, the term “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.

- (d) **Legislator** – As used in these rules, the term “legislator” means any person who is a member of the General Assembly, a quorum court of any county, or the city council or board of directors of any municipality.
- (e) **Person** – As used in these rules, the term “person” means a business, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.
- (f) **Public Appointee** – As used in these rules, the term “public appointee” means an individual who is appointed to a governmental body. It does not include an individual appointed to an elective office.
- (g) **Public Employee** – As used in these rules, the term “public employee” means an individual who is employed by a governmental body or who is appointed to serve a governmental body. It does not include public officials or public appointees.
- (h) **Public Official** – As used in these rules, the term “public official” means a legislator or any other person holding an elective office of any governmental body, whether elected or appointed to the office, and shall include such persons during the time period between the date they were elected and the date they took office.
- (i) **Public Servant** – As used in these rules, the term “public servant” means all public officials, public employees, and public appointees.
- (j) **Registered Lobbyist** – As used in these rules, the term “registered lobbyist” means a person who is registered as a lobbyist pursuant to the provisions of Ark. Code Ann. § 21-8-601 et seq.

§ 301 Payment of Public Servant’s Expenses for Food, Lodging or Travel

- (a) The giving or receiving of food, lodging or travel shall not be considered a gift in situations where a public servant is appearing in his or her official capacity and the appearance bears a relationship to the public servant’s office or position.
- (b) For purposes of this rule, a public servant appears in an official capacity when the appearance arises because of the office or position of the public servant. The fact that an appearance is one for which a public servant would be subject to expense

reimbursement from the governmental body which he or she serves shall be conclusive proof that the public servant is appearing in his or her official capacity.

- (c) For purposes of this rule, an appearance at an event bears a relationship to the public servant's office or position when such appearance furthers a purpose of the governmental body served by the public servant and the interest of such governmental body outweighs the likelihood that attending the event will improperly influence the public servant in the performance of his or her official duties and responsibilities. Factors to be considered in making a determination as to whether or not an appearance bears a relationship to a public servant's office or position shall include, but not be limited to: the nature of any pending matter affecting the interest of the person paying for the food, lodging, or travel; the importance of the event to the governmental entity; the significance of the public servant's role in the event; the timing of the event; the identity of other expected participants; and, the cost of the public servant attending the event. If a public servant is invited to attend a purely social event with no or a de minimis nexus to the programs or operations of the governmental entity which he or she serves, then the public servant's attendance would not bear a sufficient relationship to his or her office or position to meet the exception contained in subsection (a) of this rule.

§ 302 Reporting of Payments for Public Servant's Expenses for Food, Lodging or Travel

- (a) In situations where a registered lobbyist pays all or part of an expenditure in excess of forty dollars (\$40.00) on behalf of a public servant for food, lodging or travel, such lobbyist shall be required to report an itemized listing of the payment on a Lobbyist Activity Report pursuant to § 511 of the Commission's Rules on Lobbyist Registration and Reporting. Those reporting requirements apply regardless of whether the public servant is appearing in his or her official capacity or the event bears a relationship to the public servant's office or position.
- (b) If a nongovernmental source makes an expenditure for food, lodging or travel in excess of one hundred and fifty dollars (\$150.00) on behalf of a public servant who is (i) appearing in his or her official capacity at an event which bears a relationship to his or her office or position and (ii) required to file a Statement of Financial Interest pursuant to Ark. Code Ann. § 21-8-701(a), then such payment would need to be reported by the public servant in Section 9 of his or her Statement of Financial Interest.
- (c) In situations where a public servant makes an appearance which is not an appearance in his or her official capacity or which does not bear a relationship to his or her office or position, a payment for food, lodging or travel in excess of one hundred dollars (\$100.00) on behalf of the public servant would be considered a

gift, unless such payment is otherwise excepted from the definition of gift. Assuming the public servant is required to file a Statement of Financial Interest pursuant to Ark. Code Ann. § 21-8-701(a), the receipt of such food, lodging or travel would need to be reported as a gift in Section 8 of his or her Statement of Financial Interest.

§ 303 Receipt of Gifts by Public Servants

- (a) No public servant shall receive a gift for the performance of the duties and responsibilities of his or her office or position.
- (b) For purposes of this rule, a gift shall be prohibited if it is intended to reward a public servant for doing his or her job or it is intended as a reward for past or future action. In contrast to bribery which requires a showing that a gift and some official action motivated each other, a gift is prohibited by this rule if the gift is for or because of the action. In order for a gift to be prohibited, it need not be shown that the official action was for or because of the gift.
- (c) A public servant is not prohibited from receiving an item conferred to show appreciation for the public servant's job performance (i.e., to reward the public servant for doing his or her job) so long as the value of the item does not exceed one hundred dollars (\$100.00). Items costing more than one hundred dollars (\$100.00) which are given to public servants to show appreciation for their efforts (i.e., to reward them for doing their job) or to reward them for past or future action are prohibited under this rule.
- (d) A public servant is not prohibited from receiving all gifts. For example, a public servant may accept a gift conferred on account of a bona fide personal, professional, or business relationship independent of his or her official status. In determining whether a gift was conferred on account of an independent relationship, the Commission will consider such factors as when the relationship began (i.e., before or after the public servant obtained his or her office or position), the prior history of gift giving between the individuals, whether the gift was given in connection with a holiday or other special occasion, and whether the same gift was given to other public servants.

§ 304 Reporting of Gifts Received by Public Servants

A public servant required to file a Statement of Financial Interest shall report the source, date, reasonable fair market value, and description of each gift of more than \$100 received by the public servant or his or her spouse or more than \$250 received by his or her dependent children.

§ 305 Receipt of Compensation by Public Servants

- (a) Except as expressly provided by statute, no public servant shall receive compensation, other than income and benefits from the governmental body which he or she serves, for the performance of the duties and responsibilities of his or her office or position.
- (b) It is the intent of this rule that a public servant be prohibited from receiving outside compensation for doing his or her job.

§ 306 Valuation of Gifts

- (a) Except as otherwise provided below, the value of a gift for purposes of these rules shall be its fair market value at the time the gift was conferred. Fair market value means the price the good or service would bring between a willing seller and a willing buyer in the open market after negotiations. In determining fair market value, the actual price paid for the gift will be given strong consideration. It is recognized, however, that in many instances, e.g., the giving of handmade items, no purchase price will have been paid.
- (b) When multiple items, each individually worth less than \$100 but in the aggregate worth more than \$100, are simultaneously offered by a donor to a public servant, the gift being offered is deemed to be the aggregate of all the items. Food and beverages offered to a public servant's spouse do not count toward the \$100 aggregate.

(EXAMPLE: If a public servant is given eight (8) tickets worth \$20/each, the value of the gift to the public servant would be \$160.00.)

- (c) Tickets to sporting events and shows are valued at their face price except for tickets that the donor obtains pursuant to a lease (such as tickets for an "executive suite" or a "skybox"). The value of a ticket obtained pursuant to a lease shall be the price of the highest individually priced ticket for the event. The fair market value of benefits accepted by the public servant from the donor in connection with the event, including food and beverages, must be added to the value of a ticket to determine the overall value of the gift.

(EXAMPLE: If a public servant is given two (2) skybox tickets to an event, and takes a guest, the value of the gift to the public servant is twice the price of the highest individually priced ticket for the event plus the value of any food or beverages consumed by the public servant, but not his or her guest.)

- (d) Transportation on a private aircraft shall be valued by dividing the total cost of the aircraft trip by the number of passengers (excluding crew). The total cost of the

aircraft trip includes the expenses for the crew on board the plane (and for the crew to stay overnight, if applicable), the cost of fuel to operate the aircraft, repairs to the aircraft, depreciation, landing fees and any applicable catering. Normally, these costs are expressed in terms of a per hour operational expense. In other words, what it actually costs to operate the particular aircraft on an hourly basis.

(EXAMPLE: A corporation owns a jet which it has determined costs \$900/hour to operate, given historical expenses for crew, fuel, repairs, depreciation, fees and catering. The corporation takes six (6) passengers (excluding crew) on a trip with actual flight time of four (4) hours. The total cost of the aircraft trip is computed by multiplying \$900/hour times four (4) hours. This computation (\$3600) is then divided by the number of passengers (6) which yields a value of \$600/per passenger.)

- (e) For purposes of these rules, the value of a ticket to a charitable event shall not include the tax deductible portion of the ticket.