

DRAFT

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
Facsimile (501) 324-9606**

TABLE OF CONTENTS

- § 300. Definitions
- § 301. Payment of Public Servant's Expenses for Food, Lodging, or Travel
- § 302. Reporting of Payments for Public Servant's Expenses for Food, Lodging, or Travel
- § 303. Receipt of Gifts by Public Servants
- § 304. Providing Gifts to Public Servants
- § 305. Reporting of Gifts and Awards Received by Public Servants
- § 306. Receipt of Compensation by Public Servants
- § 307. Providing Compensation to Public Servants
- § 308. Gifts to Governmental Entities
- § 309. Reporting of Gifts to Governmental Entities
- § 310. Valuation of Gifts

§ 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. The term “compensation” does not include anything of value presented to an employee of a public school district, the Arkansas School for the Blind, the Arkansas School for the Deaf, the Arkansas School for Mathematics, Sciences, and the Arts, a university, a college, a technical college, a technical institute, a comprehensive life-long learning center, or a community college in recognition of the employee’s contribution to education.
- (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 or less (NOTE: The value of an item shall be considered to be less than \$100 if the public servant reimburses the person from whom the item was received any amount over \$100 and the reimbursement occurs within ten (10) days from the date the item was received.);

- (8) Wedding presents and engagement gifts;
- (9) A monetary or other award presented to an employee of a public school district, the Arkansas School for the Blind, the Arkansas School for the Deaf, the Arkansas School for Mathematics, Sciences, and the Arts, a university, a college, a technical college, a technical institute, a comprehensive life-long learning center, or a community college in recognition of the employee's contribution to education;
- (10) Tickets to charitable fundraising events held within this state by a non-profit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;
- (11) A personalized award, plaque, or trophy with a value of one hundred fifty dollars (\$150) or less;
- (12) An item which appointed or elected members of a specific governmental body purchase with their own personal funds and present to a fellow member of that governmental body in recognition of public service;
- (13) Food or beverages provided at a conference scheduled event that is part of the program of the conference;
- (14) Food or beverages provided in return for participation in a bona fide panel, seminar, speaking engagement at which the audience is a civic, social, or cultural organization or group;
- (15) A monetary or other award publicly presented to an employee of state government in recognition of his or her contributions to the community and State of Arkansas when the presentation is made by the employee's supervisor or peers, individually or through a non-profit organization which is exempt from taxation under Section 501(c) of the Internal Revenue Code, and the employee's receipt of the award would not result in or create the appearance of the employee using his or her position for private gain, giving preferential treatment to any person, or losing independence or impartiality. (NOTE: This exception shall not apply to an award presented to an employee of state government by a person having economic interests which may be affected by the performance or nonperformance of the employee's duties or responsibilities.);
- (16) Any work of art, contracted for prior to January 1, 1998, for public service recognition for members of the Arkansas General Assembly; or

(17) Racing passes provided to and accepted by members of the General Assembly and other constitutional officers for redistribution to their constituents and persons residing outside the State of Arkansas to promote tourism and advance the economic interests of the State.

(18) Anything of value provided by a political party under § 7-1-101 or § 7-7-205 when serving as the host of the following events to all attendees as part of attendance at the event:

(A) The official swearing-in, inaugural, and recognition events of constitutional officers and members of the General Assembly; and

(B) An official event of a recognized political party so long as all members of either house of the General Assembly affiliated with the recognized political party are invited to the official event.

- (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, or a member of a school district board of directors.
- (e) **Official Capacity** – As used in these rules, the term “official capacity” means activities which arise solely because of the position held by the public servant, which would be subject to expense reimbursement by the agency with which the public servant is associated, and which involve matters falling within the official responsibilities of the public servant.
- (f) **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.
- (g) **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.
- (h) **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.
- (i) **Public Official** – (1) 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.

(2) "Public official" includes without limitation a member of a school district board of directors.

(j) Public Servant – As used in these rules, the term “public servant” means all public officials, public employees, and public appointees.

(k) Recognized political party- (1) As used in these rules, the term “recognized political party” means a political party that:

(A) At the last preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office; or

(B) Has been formed by the petition process under § 7-7-205.

(2) When a recognized political party fails to obtain three percent (3%) of the total votes cast in an election for the office of Governor or nominees for presidential electors, it shall cease to be a recognized political party.

(k) (l) 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 solely because of the position held by the public servant, would be subject to expense reimbursement by the agency with which the public servant is associated, and involves matters which fall within the official responsibility of the public servant.

(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 \$40 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 \$150 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 10 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 \$100 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 \$100. Items costing more than \$100 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 Providing Gifts to Public Servants

- (a) No person shall confer a gift to any public servant, the receipt of which is prohibited by § 303 of these rules.
- (b) The first violation of this section by any person other than a registered lobbyist shall result in a written warning. Upon a second and subsequent violations by persons other than registered lobbyists and upon a first violation by registered lobbyists, the sanctions provided for in Ark. Code Ann. § 7-6-218 shall apply.

§ 305 Reporting of Gifts and Awards Received by Public Servants

- (a) A public servant required to file a Statement of Financial Interest shall report the source, date, description, and a reasonable estimate of the fair market value 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.
- (b) A public servant required to file a Statement of Financial Interest shall report the source, date, description, and a reasonable estimate of the fair market value of each monetary or other award of more than \$100 received by the public servant in his or her capacity as an employee of a public school district, the Arkansas School for the Blind, the Arkansas School for the Deaf, the Arkansas School for Mathematics, Sciences, and the Arts, a university, a college, a technical college, a technical institute, a comprehensive life-long learning center, or a community college in recognition of his or her contribution to education.

§ 306 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.

§ 307 Providing Compensation to Public Servants

- (a) No person shall confer compensation to any public servant, the receipt of which is prohibited by § 306 of these rules.
- (b) The first violation of this section by any person other than a registered lobbyist shall result in a written warning. Upon a second and subsequent violations by persons other than registered lobbyists and upon a first violation by registered lobbyists, the sanctions provided for in Ark. Code Ann. § 7-6-218 shall apply.

§ 308 Gifts to Governmental Entities

- (a)(1) The Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Commissioner of State Lands, and Attorney General, in their official capacity, may accept gifts, grants, and donations of money or property on behalf of the state for any lawful public purpose.
- (2) The President Pro Tempore of the Senate, in his or her official capacity, may accept gifts, grants, and donations of money or property on behalf of the Senate for any lawful public purpose.
- (3) The Speaker of the House, in his or her official capacity, may accept gifts, grants, and donations of money or property on behalf of the House of Representatives for any lawful public purpose.
- (4) The Chief Justice of the Supreme Court, in his or her official capacity, may accept gifts, grants, and donations of money or property on behalf of the Supreme Court for any lawful public purpose.
- (b)(1) Except as provided in subdivision (2) of this subsection, the item received shall not be of such a personal nature that its use is limited to a specific person or persons, shall be available to be enjoyed by the public at large, and shall become property of the governmental entity to which it was donated.
- (2) The designated officials may accept donations of money for purposes of hosting the:
 - (A) Official swearing-in and inaugural events of the constitutional officers, Senate, House of Representatives, and Supreme Court justices;
 - (B) Official recognition event for the President Pro Tempore; and
 - (C) Official recognition event for the Speaker of the House.

§ 309 Reporting of Gifts to Governmental Entities

A public official accepting a gift, grant, or donation of money on behalf of a governmental entity in accordance with § 308 of these rules shall, on a quarterly basis, disclose to the Ethics Commission:

- (i) The gift, grant, or donation of money or property received;
- (ii) The person donating the gift, grant, or donation of money or property; and
- (iii) The estimated value of the gift, grant, or donation of money or property.

§ 310 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.)

- (c) The value of an item shall be considered to be less than \$100 if the public servant reimburses the person from whom the item was received any amount over \$100 and the reimbursement occurs within ten (10) days from the date the item was received.
- (d) 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.)

- (e) 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 (\$3,600) is then divided by the number of passengers (6) which yields a value of \$600/per passenger.)

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