

ARKANSAS ETHICS COMMISSION

910 West Second Street, Suite 100
Post Office Box 1917
Little Rock, Arkansas 72203-1917
(501) 324-9600 Fax (501) 324-9606
Toll Free (800) 422-7773

Larry Ross
Chairman

Stuart Vess
Vice Chairman

Elaine Black
Catherine Johnson
Steve Bryant, PD
Commissioners



Graham F. Sloan
Director

Rita S. Looney
Chief Counsel

Robert L. Roddey
Staff Attorney

Todd Elder
Teresa Keathley
Directors of Compliance

ADVISORY OPINION NO. 2008-EC-006 Issued June 20, 2008

The Arkansas Ethics Commission has received a written advisory opinion request from Scott Henderson, Director of the Arkansas Game and Fish Commission. Therein, Director Henderson has asked the following question:

[W]hether it would be permissible under state ethics rules for the private, non-profit Campbell Award Trust to present a \$5,000 award to each of three Arkansas Game and Fish Commission ("AGFC") employees annually selected by the trustees as Employees of the Year...[or] [w]ould Ark. Code Ann. § 21-8-801 or § 303 of the Ethics Commission's Rules on Gifts prohibit receipt of the \$5,000 award by the AGFC employees selected by the trustees as Employees of the Year?

The Campbell Award originated with Arkansas Game and Fish Commissioner Craig Campbell to "honor his grandfather, a former AGFC commissioner, and his father a great outdoorsman." As stated on the application form, employees from any division of the Arkansas Game and Fish Commission are eligible to be nominated and an employee may nominate himself. The three (3) Employees of the Year are to be selected on "overall merit without regard to categories of job duties." The employees selected as Employees of the Year will each receive a \$5,000 payment.

Nominees must have been employed by the AGFC for at least 12 months, must have an above-average rating or higher on the Employee Performance Evaluation, and must not have disciplinary action on file within the last 12 months prior to the date of the nomination. Other attributes of the nominees include:

Leadership – Nominees should be recognized for promoting hunting, fishing, watchable wildlife and conservation to all AGFC constituents.

Spirit – Nominees should be recognized for encouraging every person they come in contact with, building morale and showing team support.

Community Service – Nominees volunteer outside of AGFC duties in the community to help build a positive public perception of the AGFC.

Service – Nominee consistently go above and beyond to assist the public.

The Commission has previously addressed the topic of employee awards in Advisory Opinion Nos. 99-EC-012 and 2000-EC-006 which were sought by the Arkansas State Employees Association (“ASEA”) regarding the permissibility of giving a \$500.00 check to a state employee recognized by the ASEA as the outstanding state employee of the year. In 99-EC-012, the Commission opined that receipt of the award was prohibited under Ark. Code Ann. § 21-8-801(1) because two of the selection criteria were related to job performance, i.e., “on the job experience and accomplishment” and “outstanding contribution(s) to ...state employer.”

Thereafter, the ASEA revised the guidelines for the award and submitted another request to the Commission for an Advisory Opinion. Under the new guidelines, the referenced criteria were no longer included and the award was to be based upon non-job related service to the community. In Advisory Opinion No. 2000-EC-006, the Commission concluded that receipt of the award would not be prohibited by either Ark. Code Ann. § 21-8-801 or § 303 of the Commission’s Rules on Gifts. In reaching that conclusion, the Commission specifically noted that in “matters such as this are reviewed on a case by case basis. In situations where the intent behind a gift is to reward a public servant for doing his or her job, the receipt of the gift is clearly prohibited.”

Subsequent to the issuance of the above-referenced opinions, the statutory definition of “gift” was amended. That amendment is codified as Ark. Code Ann. § 21-8-402(5)(B)(xv) and is the subject of Subsection 15 of Section 300(b) of the Commission’s Rules on Gifts which creates an exception to the definition of “gift” for the following:

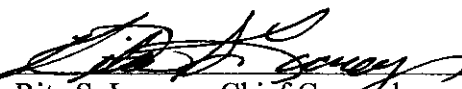
A monetary or other award publicly presented to an employee of state government in recognition of his or her contributions to the community and State of Arkansas when the presentation is made by the employee’s supervisor or peers, individually or through a non-profit organization which is exempt from 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.)

The AGFC Campbell award application encourages employees to nominate their peers, subordinates or supervisors, and the award recipients are selected by trustees of the Campbell Award Trust, which is registered with the Internal Revenue Service as the "Oliver Charitable Corporation," a tax-exempt organization under Section 501(c) of the Internal Revenue Code. Although a person must be an eligible AGFC employee to be nominated, recipients are selected based upon "other attributes" related to community service and/or constituent service. Moreover, it does not appear that receipt of the award would 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.

Based upon the foregoing, the Commission concludes that the Campbell Award fits squarely within the referenced gift exception and, therefore, is not prohibited by either Ark. Code Ann. § 21-8-801(1) or § 303 of the Commission's Rules on Gifts.

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

ARKANSAS ETHICS COMMISSION

By: 
Rita S. Looney, Chief Counsel