

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 2008-EC-007

Issued July 18, 2008

The Arkansas Ethics Commission has received a written advisory opinion request from Joan Cash, State Representative, District 75. In her opinion request, Representative Cash asks if it is permissible for a Justice of the Peace to accept an honorarium for performing a marriage ceremony.

The statute applicable to this question is Ark. Code Ann. § 21-8-801 which provides, in pertinent part, as follows:

[n]o public servant shall...[r]eceive a gift or compensation as defined in subchapter 4 of this chapter, other than income and benefits from the governmental body to which he or she is duly entitled, for the performance of the duties and responsibilities of his or her office or position.

The term "public servant" is defined in Ark. Code Ann. § 21-8-402(18) to include any person holding an elective office of any governmental body. A person holding the office of Justice of the Peace meets that definition and, therefore, is subject to the foregoing statutory prohibition.

In Advisory Opinion 99-EC-007, the Commission specifically addressed the scope and meaning of Ark. Code Ann. § 21-8-801. As explained in that opinion, the Commission has determined that a gift is prohibited by Ark. Code Ann. § 21-8-801 if there is a unidirectional relationship between the gift and the action – i.e., the gift is for or because of the action.

The Commission went on to note that the statute does not speak in terms of a public servant performing a specific act or duty. Instead, it uses the language "for the performance of the duties and responsibilities of his or her office or position." The Commission interpreted that language to mean "for doing his or her job." Thus, Ark. Code Ann. § 21-8-801 prohibits the receipt of a gift intended to reward a public servant for doing his or her job.

The Commission subsequently promulgated a set of Rules on Gifts and the statutory prohibition in question is encompassed within § 303 those rules. The definition of "gift," as set forth in Ark. Code Ann. § 21-8-402(5) and in § 300 (b) of the Rules on Gifts, specifically excludes anything with a value of one hundred dollars (\$100.00) or less. Accordingly, a public servant may receive an item conferred to show appreciation for the public servant's job performance so long as the item is not worth more than one hundred dollars (\$100.00).

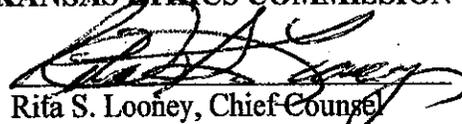
Pursuant to Ark. Code Ann. § 9-11-213, a person holding the office of Justice of the Peace is vested with the power to solemnize marriages. Although a Justice of the Peace is not required to conduct marriage ceremonies, the power to do so flows directly from the holding of that office. Accordingly, the Commission finds that performing marriage ceremonies constitutes a "duty or responsibility" of the office of Justice of the Peace.

Based on the foregoing, the Commission concludes that a Justice of the Peace is prohibited from receiving a gift for performing a marriage ceremony. Because the definition of "gift" excludes anything with a value of \$100 or less, it would be permissible for a Justice of the Peace to receive an honorarium for performing a marriage ceremony provided such honorarium does not exceed \$100. Stated conversely, acceptance of an honorarium in excess of \$100 would be a prohibited gift pursuant to Ark. Code Ann. § 21-8-801.

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

**ARKANSAS ETHICS COMMISSION**

By:

  
Rifa S. Looney, Chief Counsel