

# ARKANSAS ETHICS COMMISSION

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## ADVISORY OPINION NO. 2008-EC-010

Issued September 19, 2008

The Arkansas Ethics Commission has received a written advisory opinion request from Hon. Gilbert Baker, State Senator-District 30. In his request, Senator Baker has asked whether or not Ark. Code Ann. § 7-1-103(a)(3)(A) serves to prevent a governmental entity from renting such things as rooms, tents, and equipment to a candidate for use in conjunction with a campaign event.

The statutory provision in question, Ark. Code Ann. § 7-1-103(a)(3)(A), provides as follows:

It shall be unlawful for any public servant, as defined in § 21-8-402<sup>1</sup>, to use any office or room furnished at public expense to distribute any letters, circulars, or other campaign materials unless such office or room is regularly used by members of the public for such purposes without regard to political affiliation. It shall further be unlawful for any public servant to use for campaign purposes any item of personal property provided with public funds.

The first part of this statutory provision addresses using real property (e.g., offices or rooms) for campaign purposes. Pursuant thereto, it is permissible for an office or room furnished at public expense to be used for campaign purposes so long as it is "regularly used by members of the public for such purposes without regard to political affiliation." Accordingly, it would be permissible for a campaign to rent a room belonging to a governmental entity if the room is regularly used by the public for such purposes and it is equally available to all members of the public, without regard to political affiliation.

The second part of this statutory provision addresses using personal property (e.g., tents and equipment) for campaign purposes. It serves to prohibit personal property *provided with public funds* from being used for campaign purposes. After studying this provision, the Commission finds that using a tent or equipment belonging to a governmental entity for campaign purposes would be permissible if the governmental

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<sup>1</sup> The term "public servant" is defined in Ark. Code Ann. § 21-8-402(18) to include "all public officials, public employees and public appointees."

entity makes such personal property available for rental to members of the public and does so without regard to political affiliation.

It is clear that the law prohibits a public servant from using public property for campaign purposes when the access to the property is acquired solely by virtue of the public servant's position. However, when items of personal property such as a tent or a portable barbecue grill are available for rental on an equal basis by members of the public and consideration is paid, it is the Commission's opinion that the items are not being "provided with public funds" within the meaning of the prohibition.

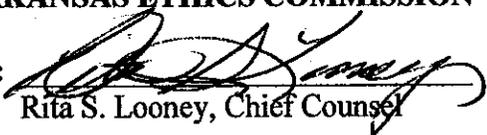
The Commission is aware that the usage of personal property is often times less noticeable and therefore the potential for abuse is greater. Accordingly, the Commission urges extreme caution by any public servant using a public facility or its equipment for campaign purposes.

Finally, the Commission seeks to clarify that the advisory opinion process is not a vehicle designed to make factual findings regarding events which have already occurred. An advisory opinion, by its very nature, is intended to provide guidance related to future conduct—not past events—and is prospective in its application. Accordingly, the Commission will refrain from opining about the permissibility of a specific past event.

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