

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2009-EC-003

Issued September 18, 2009

The Arkansas Ethics Commission has received a written advisory opinion request from Nick Thompson and Ark Monroe, both of whom are registered lobbyists and attorneys with the Mitchell Williams law firm in Little Rock, Arkansas. They have previously contacted the Commission, by phone and in person, seeking guidance as to how to properly report a special event¹ which was held on March 31, 2009. In order to ensure they have clear guidance with respect to special events held in the future, they have requested an advisory opinion concerning the information that should be reported under three (3) different scenarios.

At the outset, it is noted that the reporting of special events is addressed in Ark. Code Ann. § 21-8-604(b)(2)(C) and Section 513(c) of the Commission's Rules on Lobbyist Registration and Reporting. Both provide that, in the case of a special event, expenses need not be allocated by individuals and the information reported shall include the following six (6) items:

- (1) the date of the event;
- (2) the name of the event;
- (3) the location of the event;
- (4) the name of the governmental body or group of public servants invited;
- (5) the exact amount paid by the lobbyist towards the total expenditure; and
- (6) the name of the lobbyist's employer or client making the expenditure and, if applicable, the names of all other lobbyists sharing in the cost of the payment.

¹ A "special event" means a planned activity to which a specific governmental body or identifiable group of public servants is invited. Ark. Code Ann. § 21-8-402(20).

1. What information must be included about a special event honoring public servants on a Lobbyist Activity Report when the lobbyist has a client that is a contributor to the event, along with other contributors who are not registered lobbyists or do not otherwise employ a lobbyist?

Under this first scenario, the lobbyist would be required to report all six (6) items of information with respect to the special event. The first five (5) of these items are straight forward. Only the last one presents any real need for discussion.

With respect to that item, a lobbyist is required to disclose the "name of the lobbyist's employer or client making the expenditure and, if applicable, the names of all other lobbyists sharing in the cost of the payment." To comply with the first part of this provision, the lobbyist would need to simply report the name of each employer or client making payment toward the cost of the event.

It is noted that the second part of this provision speaks in terms of disclosing "other *lobbyists* sharing in the cost of the payment." The Commission questions, however, whether it was specifically contemplated that persons other than lobbyists would share in the cost of hosting a special event. As discussed below, persons who contribute \$400 or more in a calendar year toward the hosting of one or more special events may actually trigger lobbyist registration and reporting.

The term lobbyist is defined in Ark. Code Ann. § 21-8-402(11) to include a person who "[e]xpend[s] four hundred dollars (\$400) or more in a calendar quarter for lobbying one (1) or more governmental bodies." Because the hosting of special events is a core lobbying activity, it seems logical that a person who spends four hundred dollars (\$400) in a calendar quarter to engage in such activity would meet the definition of a lobbyist.

In order to make sure proper disclosure is made, it is the Commission's opinion a lobbyist should list all other sponsors who contribute toward the cost of a special event. Otherwise, the lobbyist would be left in the difficult position of having to determine which of those sponsors had engaged in activities subjecting them to lobbyist registration and reporting.

2. What information must be included on a Lobbyist Activity Report if the lobbyist's client is a trade association or chamber of commerce that sponsors or co-sponsors an event honoring a public servant and the cost of the event is paid by the trade association or chamber of commerce from the regular dues structure or operating income of the trade association/chamber of commerce? In this hypothetical, no monies are raised from the trade association/chamber of commerce membership or from others to pay for the costs of the reception.

Under this second scenario, the lobbyist would again be required to report all six (6) items of information with respect to the special event. In situations where a lobbyist's client is a trade association or chamber of commerce and the cost of the event is paid by

the trade association or chamber of commerce from its regular dues structure or operating income, then the lobbyist would be required to list the trade association or chamber of commerce as his or her client but would not be required to list each of its members.

In addition to listing the trade association or chamber of commerce as his or her client, the lobbyist would need to report other sponsors of the event. Although the statute speaks in terms of disclosing "other *lobbyists* sharing in the cost of the payment," it is the Commission's opinion that a lobbyist should also report the names of all other sponsors who contributed toward the cost of the event.

Again, it is noted that persons who contribute \$400 or more in a calendar year toward the hosting of one or more special events may be subject to lobbyist registration and reporting. By reporting all other sponsors of the event, the lobbyist avoids the risk of failing to disclose a sponsor who has to meet the definition of a "lobbyist."

3. What information must be included on a Lobbyist Activity Report if the lobbyist's client is a trade association or chamber of commerce that sponsors or co-sponsors an event honoring a public servant and the cost of the event is not paid by the trade association or chamber of commerce from the regular dues structure or operating income of the trade association/chamber of commerce? In this hypothetical, monies are raised from the trade association/chamber of commerce membership or others specifically to pay for the costs of the reception.

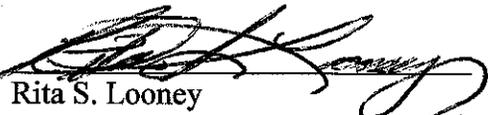
Under this third scenario, the lobbyist would still be required to report all six (6) items of information concerning the special event. If the lobbyist's client is a trade association or chamber of commerce and the cost of the event is not paid from regular dues structure or operating income but rather from monies raised from members of the trade association/chamber of commerce or others specifically to pay for the costs of the event, then it is the Commission's opinion that the lobbyist would need to list the trade association or chamber of commerce as his or her client, list the name of each member of the trade association or chamber of commerce who contributed toward the cost of the event and, finally, list the names of all other sponsors sharing in the cost of the event.

Once again, the Commission notes that persons who contributed \$400 or more during a calendar year towards the cost of one or more special events would likely meet the definition of a lobbyist. It is the Commission's opinion, however, that members of the trade association or chamber of commerce listed on the lobbyist's report would not be required to register and report as lobbyists by virtue of their participation in the event.

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

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By:


Rita S. Looney