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ADVISORY OPINION NO. 2014-EC-001 Issued February 21, 2014

The Arkansas Ethics Commission (the "Commission") has received a written advisory opinion request from Ms. Bilenda Harris-Ritter, an attorney in Maumelle, Arkansas. In her request, Ms. Harris-Ritter asks the following questions under Ark. Code Ann. § 21-8-701(d)(3)(A):

- (i) Whether a Justice of the Peace who receives more than \$1,000 in a calendar year from fees received for conducting marriage ceremonies, as part of his or [her] duties as a Justice of the Peace, is required by law to report that income on his or her Statement of Financial Interest ["SFI"]? and, if so,
- (ii) Is the Justice of the Peace listed as the employer since he or she alone retains the fee?

As an initial matter, the Commission notes that there does not appear to be any authority which empowers a Justice of the Peace to charge a "fee" for performing a marriage ceremony. The term "fee" is defined in *Black's Law Dictionary, Ninth Edition (2009)* to mean:

[a] charge for labor or services, esp. professional services.

With respect to fees, the Attorney General has issued an opinion, Op. Att'y Gen. 2008-032, which specifically addressed whether it was permissible for a Justice of the Peace to legally charge a "fee" for performing a marriage ceremony. The answer to that question was "no." The opinion went on to state that there is no state statute or any county ordinances that currently authorizes Justices of the Peace to charge fees for solemnizing marriages. It also cited Amendment 55 to the Arkansas Constitution, specifically § 5 thereof, which provides as follows:

Compensation of each county officer shall be fixed by the Quorum Court within a minimum and maximum to be determined by law. Compensation may not be decreased during a current term; provided, however, during the interim, from the date of adoption of this Amendment until the first day of the next succeeding month following the date of approval of salaries by the Quorum Court, salaries of county officials shall be determined by law. *Fees of the office shall not be the*

basis of compensation for officers or employees of county offices. Per diem compensation for members of the Quorum Court shall be fixed by law.

It is noted that the Commission has addressed the topic of Justices of the Peace performing marriages in a previous advisory opinion. That opinion, No. 2008-EC-007, focused on the receipt of an "honorarium" by a Justice of the Peace for performing a marriage ceremony.

The analysis in Advisory Opinion No. 2008-EC-007 centered around the gift prohibition statute, 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.

In that particular opinion, the Commission recognized that performing marriage ceremonies constitutes a "duty or responsibility" of the office of Justice of the Peace in accordance with Ark. Code Ann. § 9-11-213. Said statute vests a person holding the office of Justice of the Peace with the power to solemnize marriages.

As the Commission has recognized numerous times, Ark. Code Ann. § 21-8-801 serves to prohibit a public servant from receiving a gift for performing the duties and responsibilities of his or her office or position. Because the definition of "gift" specifically excludes anything with a value of \$100 or less, the Commission concluded in Advisory Opinion No. 2008-EC-007 that it would be permissible for a Justice of the Peace to receive an honorarium for performing a marriage ceremony provided such honorarium did not exceed \$100.

In keeping with that prior opinion, the Commission affirms that a Justice of Peace may receive an honorarium for performing a marriage ceremony and concludes that he or she would not be required to list the honorarium as a source of income on his or her annual SFI. It is noted, however, that accepting an honorarium in excess of \$100 in value for performing a marriage ceremony would constitute a prohibited gift.

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

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By: 
Todd Elder, Senior Staff Attorney