

DRAFT

ARKANSAS ETHICS COMMISSION

RULES ON PROHIBITION OF GIFTS FROM LOBBYISTS TO CERTAIN PUBLIC OFFICIALS UNDER Ark. Const. Art. 19, § 30

**ARKANSAS ETHICS COMMISSION
Post Office Box 1917
Little Rock, Arkansas 72203-1917
(501) 324-9600 or (800) 422-7773
Facsimile (501) 324-9606**

TABLE OF CONTENTS

§ 1900 Definitions1
§ 1901 Gifts from Lobbyists4
§ 1902 Penalties4
§ 1903 Complaints5
§ 1904 Affirmative Defense Concerning Discovery of Unintentional Violation5

§ 1900 Definitions

As set forth in Ark. Const. Art. 19, § 30(b), the following terms are defined:

(a) **Administrative action** – As used in these rules, the term “administrative action” means a decision on, or proposal, consideration, or making of a rule, regulation, ratemaking proceeding, or policy action by a governmental body. “Administrative action” does not include ministerial action.

(b) **Gift** – (1) As used in these rules, the term “gift” means:

(A) Any payment, entertainment, ~~advance~~, service, or anything of value, unless consideration of equal or greater value has been given therefor; or

(B) Advance or loan.

(2) “Gift” does not include:

~~(i)(a)~~ (A) Informational material such as books, reports, pamphlets, calendars, or periodicals informing a person elected or appointed to an office under § 1901 of these rules regarding his or her official duties; (b) payments for travel or reimbursement for any expenses are not informational material;

~~(ii)~~ (B) Gifts that are not used and which, within thirty (30) days after receipt, are returned to the donor;

~~(iii)~~ (C) Gifts from the spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin of a person elected or appointed to an office under § 1901 of these rules, or the spouse of any of these persons, unless the person is acting as an agent or intermediary for any person not covered by this § 1900~~(b)(iii)~~ (2)(c);

~~(iv)~~ (D) Anything of value that is readily available to the general public at no cost;

~~(v)(a)(1)~~ (E)(1)(a) Food or drink available at a planned activity to which a specific governmental body is invited, including without limitation a governmental body to which a person elected or appointed to an office under § 1901 of these rules is not a member.

(b)(2) If a committee of the General Assembly is invited to a planned activity under this subdivision Ark. Const. Art. 19, § 30~~(b)(2)(B)(v)(a)(1)~~, only members of the committee of the General Assembly may accept food or drink at the planned activity.

~~(2)(a)(b)(1)~~ As used in §1900 (b)(2)(E)(1)(a) ~~Ark. Const. Art. 19, § 30(b)(2)(B)(v)~~, “planned activity” means an event for which a written invitation is distributed electronically or by other means to the lobbyist, person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist to the members of the specific governmental body at least twenty-four (24) hours before the event.

~~(2)(b)~~ As used in ~~Ark. Const. Art. 19, § 30(b)(2)(B)(v)~~ § 1900(2)(E)(1)(a), “planned activity” does not include food or drink available at a meeting of a specific governmental body for which the person elected or appointed to an office under § 1901 of these rules is entitled to receive per diem for attendance at the meeting.

~~(e)(3)~~ A lobbyist, a person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist shall not offer or pay for food or drink at more than one (1) planned activity in a seven-day period;

~~(vi)(a)~~ (F)(1) Payments by regional or national organizations for travel to regional or national conferences at which the State of Arkansas is requested to be represented by a person or persons elected or appointed to an office under § 1901 of these rules.

~~(b)(2)~~ As used in Ark. Const. Art. 19, § 30(b)(2)(B)(vi), “travel” means transportation, lodging, and conference registration fees.

~~(e)(3)~~ This section does not prohibit the acceptance of: (1) Food, drink, informational materials, or other items included in the conference registration fee; and (2) Food and drink at events coordinated through the regional or national conference and provided to persons registered to attend the regional or national conference;

~~(vii)~~ (G) Campaign contributions;

~~(viii)~~ (H) Any devise or inheritance;

(I) Salaries, benefits, services, fees, commissions, expenses, or anything of value in connection with:

~~(a)(1)~~ The employment or occupation of a person elected or appointed to an office under § 1901 of these rules or his or her spouse so long as the salary, benefit, service, fee, commission, expense, or anything of value is solely connected with the person’s employment or occupation and is unrelated to and does not arise from the duties and responsibilities of the office to which the person has been elected or appointed; or

~~(b)(2)~~ Service as an officer, director, or board member of a corporation, a firm registered to do business in the state, or other organization that

files a state and federal tax return or is an affiliate of an organization that files a state and federal tax return by a person elected or appointed to an office under § 1901 of these rules or his or her spouse so long as the salary, benefit, service, fee, commission, expense, or anything of value is solely connected with the person's service as an officer, director, or board member and is unrelated to and does not arise from the duties and responsibilities of the office to which the person has been elected or appointed; and

~~(*)~~(J) A personalized award, plaque, or trophy with a value of one hundred fifty dollars (\$150) or less.

~~(*)~~(a)(K)(1) The use of one (1) or more rooms or facilities owned, operated, or otherwise utilized by a state agency or political subdivision of the state for the purpose of conducting a meeting of a specific governmental body.

(2) As used in this subdivision §1900(K)(1):

(a) "Rooms or facilities" includes without limitation property belonging to a state agency or political subdivision used in connection with a meeting of a specific governmental body such as projectors, microphones, and computer equipment; and

(b) "State agency" means every department, division, office, board, commission, and institution of this state, including state-supported institutions of higher education;

(L) Nonalcoholic beverages provided to attendees at a meeting of a civic, social, or cultural organization or group;

(M) Food and nonalcoholic beverages provided to participants in a bona fide panel, seminar, or speaking engagement at which the audience is a civic, social, or cultural organization or group; and

(N) Anything of value provided by a recognized political party when serving as the host of the following events to all attendees as part of attendance at the event:

(1) The official swearing-in, inaugural, and recognition events of constitutional officers and members of the General Assembly; and

(2) An official event of a recognized political party so long as all members of either house of the General Assembly affiliated with the recognized political party are invited to the official event;

- (c) **Governmental body or governmental bodies** – As used in these rules, the term “governmental body” or “governmental bodies” means an office, department, commission, council, board, committee, legislative body, agency, or other

establishment of the executive, judicial, or legislative branch of the state, municipality, county, school district, improvement district, or any political district or subdivision thereof.

- (d) **Income** – As used in these rules, the term “income” means any money or anything of value received or to be received as a claim for future services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof. “Income” includes a payment made under obligation for services or other value received.
- (e) **Legislative action** – As used in these rules, the term “legislative action” means introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto, or any other official action or nonaction on any bill, ordinance, law, resolution, amendment, nomination, appointment, report, or other matter pending or proposed before a committee or house of the General Assembly, a quorum court, or a city council or board of directors of a municipality.
- (f) **Legislator** – As used in these rules, the term “legislator” means a person who is a member of the General Assembly, a quorum court of a county, or the city council or board of directors of a municipality.
- (g) **Lobbying** – As used in these rules, the term “lobbying” means communicating directly or soliciting others to communicate with a public servant with the purpose of influencing legislative action or administrative action.
- (h) **Lobbyist** – As used in these rules, the term “lobbyist” means a person who: (i) Receives income or reimbursement in a combined amount of four hundred dollars (\$400) or more in a calendar quarter for lobbying one (1) or more governmental bodies; (ii) Expends four hundred dollars (\$400) or more in a calendar quarter for lobbying one (1) or more governmental bodies, excluding the cost of personal travel, lodging, meals, or dues; or (iii) Expends four hundred dollars (\$400) or more in a calendar quarter, including postage, for the express purpose of soliciting others to communicate with a public servant to influence any legislative action or administrative action of one (1) or more governmental bodies unless the communication has been filed with the Secretary of State or the communication has been published in the news media. If the communication is filed with the Secretary of State, the filing shall include the approximate number of recipients.
- (i) **Person** – As used in these rules, the term “person” means a business, individual, union, association, firm, committee, club, or other organization or group of persons. “Business” includes without limitation a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, receivership, trust, or any legal entity through which business is conducted.

- (j) **Public appointee** – As used in these rules, the term “public appointee” means an individual who is appointed to a governmental body. “Public appointee” does not include an individual appointed to an elective office.
- (k) **Public employee** – As used in these rules, the term “public employee” means an individual who is employed by a governmental body or who is appointed to serve a governmental body. “Public employee” does not include a public official or a public appointee.
- (l) **Public official** – As used in these rules, the term “public official” means a legislator or any other person holding an elective office of any governmental body, whether elected or appointed to the office, and shall include such persons during the time period between the date they were elected and the date they took office.
- (m) **Public servant** – As used in these rules, the term “public servant” means all public officials, public employees, and public appointees.
- (n) **Recognized political party-** As used in these rules, the term “recognized political party” means a political party that:

(1)(A)(i)At the last preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office; or

(ii) Has been formed by the petition process under § 7-7-205.

(B) When a recognized political party fails to obtain three percent (3%) of the total votes cast in an election for the office of Governor or nominees for presidential electors, it shall cease to be a recognized political party; and

- (o) **Advance or Loan-** As used in these rules, the term “advance or loan” means a sum of money that is borrowed with the expectation that it be paid back, regardless of whether interest is charged. (B) “Advance or loan” does not include an advance or loan made in the ordinary course of business by a: (i) Financial institution; or (ii) Business that regularly and customarily extends credit.

§ 1901 Gifts from Lobbyists

As set forth in Ark. Const. Art. 19, § 30(a), persons elected or appointed to the following offices shall not knowingly or willfully solicit or accept a gift from a lobbyist, a person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist: (i) Governor; (ii) Lieutenant Governor; (iii) Secretary of State; (iv) Treasurer of State; (v) Auditor of State; (vi) Attorney General; (vii) Commissioner of State Lands; (viii) Members of the General Assembly; (ix) Chief Justice of the Supreme Court; (x) Justice of the Supreme Court; (xi) Chief Judge of the Court of Appeals; (xii) Judge of the Court of Appeals; (xiii) Circuit Court Judge; (xiv) District Court Judge; (xv) Prosecuting Attorney;

and (xvi) Member of the independent citizens commission for the purpose of setting salaries of elected constitutional officers of the executive department, members of the General Assembly, justices, and judges under Ark. Const. Art. 19, § 31.¹

§ 1902 Penalties

As set forth in Ark. Const. Art. 19, § 30(c)(1), a person who knowingly violates § 1901 of these rules is guilty of a Class B misdemeanor. In addition to the foregoing penalty, the General Assembly shall provide by law for Ark. Const. Art. 19, § 30 to be under the jurisdiction of the Arkansas Ethics Commission, including without limitation authorization of the following actions by the Arkansas Ethics Commission: (i) Promulgating reasonable rules to implement and administer Ark. Const. Art. 19, § 30 as necessary; (ii) Issuing advisory opinions and guidelines on the requirements of Ark. Const. Art. 19, § 30; and (iii) Investigating complaints of alleged violations of Ark. Const. Art. 19, § 30 and rendering findings and disciplinary action for such complaints.

§ 1903 Complaints

- (a) In accordance with Ark. Code Ann. § 7-6-218, a complaint alleging a violation of Ark. Const. Art. 19, § 30 may be filed with the Arkansas Ethics Commission. The complaint process is the subject of Sections (V) – (X) of the Arkansas Ethics Commission’s Rules of Practice and Procedure.
- (b) If the Arkansas Ethics Commission finds a violation of Ark. Const. Art. 19, § 30, then it may (i) impose a fine of not less than fifty dollars (\$50) and not more than two thousand dollars (\$2,000), (ii) issue a public letter of caution, warning, or reprimand, (iii) order the filing or amendment of a statutorily-required disclosure form, and/or (iv) report its findings, along with such information and documents as it deems appropriate, and make recommendations to the proper law enforcement authorities.
- (c) When exercising the authority set forth in subparagraph (b)(iv), the Arkansas Ethics Commission is not required to make a finding of a violation of Ark. Const. Art. 19, § 30.

§ 1904 Affirmative Defense Concerning Discovery of Unintentional Violation

- (a) It is an affirmative defense to prosecution or disciplinary action under Ark. Const. Art. 19, § 30(c)(1) and (2) that a person elected or appointed to an office under § 1901 of these rules takes one (1) of the following actions within thirty (30) days of discovering or learning of an unintentional violation of Ark. Const. Art. 19, § 30: (i) Returns the gift to the donor; or (ii) If the gift is not returnable, pays the donor consideration that is equal to or greater than the value of the gift.

¹ This prohibition is also the subject of Ark. Code Ann. § 21-8-310.

- (b) The Arkansas Ethics Commission shall not proceed with an investigation of an alleged violation of Ark. Const. Art. 19, § 30 if the Arkansas Ethics Commission determines that a person would be eligible to raise the affirmative defense under Ark. Const. Art. 19, § 30(c)(3)(A). If the Arkansas Ethics Commission does not proceed with an investigation of an alleged violation, the person shall not be considered to have committed a violation.
- (c) This affirmative defense provision shall not be construed to authorize a person to knowingly or willfully solicit or accept a gift in violation of Ark. Const. Art 19, § 30.