



STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-125

November 21, 2014

The Honorable Davy Carter
State Representative
500 Woodlane Avenue
State Capitol, Suite 350
Little Rock, Arkansas 72201-1037

Dear Speaker Carter:

You have asked for my opinion regarding Ballot Issue No. 3, which was passed by a majority of the voters on November 4, 2014. Ballot Issue No. 3, which amended several Articles of the Arkansas Constitution, contained the following popular name: "An Amendment Regulating Contributions to Candidates for State or Local Office, Barring Gifts from Lobbyists to Certain State Officials, Providing for Setting Salaries of Certain State Officials, and Setting Term Limits for Members of the General Assembly." The provisions of Issue 3 that are most relevant to your question amended Article 19 of the Arkansas Constitution.

You provide the following background for your request:

Traditionally, associations, public interest groups, individuals and chambers of commerce have hosted legislative receptions during legislative sessions. A calendar of such events was maintained in order to organize events so that citizens could meet legislators. These events cost money, which was paid by the host organization. For example, the chamber of commerce from a given city would host an event for legislators where food, beverages and a bar would be provided. The host organization would pay for facility rental, caterers, bartenders, servers and other expenses. The event would typically be open to all legislators and other invitees.

You ask whether “such events [are] now expressly prohibited under this constitutional amendment [effect by the passage of Issue No. 3].”

RESPONSE

No.

Section 1 of Issue No. 3 makes it illegal for certain elected officials to “knowingly or willfully solicit or accept a gift from a lobbyist.”¹ But Issue No. 3 defines “gift” in such a way that it does not include “[f]ood or drink available at a planned activity to which a specific governmental body is invited.” Therefore, if “a specific governmental body” is invited to attend “a planned activity,” then the food and drink available at that activity are not considered “gifts” subject to the foregoing prohibition.

The term “governmental body” is defined in such a way that it includes the General Assembly: “‘Governmental body’ ... means an office, department, commission, council, board, committee, [or] *legislative body*, agency, or other establishment of the executive, judicial, or legislative branch....”² You say that the reception “would typically be open to all legislators.” Thus, in the scenario you describe, a “specific governmental body” has been invited to “a planned activity.” Therefore, because the food and drink at the receptions you describe are not considered “gifts,” nothing in Issue No. 3 prohibits the legislators from accepting them.

Further, I note that you say the receptions “would *typically* be open to all legislators.” (Emphasis added.) It is important to note that, in order to fall into the exception to the definition of “gift,” which was explained above, three elements must be met: (1) an invitation must be extended to the *entire* (2) “governmental body” (3) to attend a “planned activity.” That the invitation must be extended to the entire body is clear because each item in the foregoing definition of “governmental body” is a collective noun, which is a “noun that names a group of

¹ The specific provision at issue here will be codified as Ark. Const., Art. 19, sec. 30.

² This definition will be codified as Ark. Const., Art. 19, § 30(b)(3) (emphasis added).

people” and thus “is grammatically singular but has a plural sense.”³ A stock example of a collective noun is the word “Congress.” Though grammatically singular, it conceives of several persons as one unit. Likewise, when examining the items in the definition of “governmental body,” one can see that they are all collective nouns because they all conceive of a group of persons as a single unit. Even the term “office,” when read in context, clearly refers—not to the *person* holding the office—but to a *group* of persons who, collectively, form a single office. This reading of the term “office” is bolstered by the fact that the term “legislator” is separately defined to refer to the individual officeholder and is not included in the definition of a “governmental body.”⁴

Further, regarding the second element, the fact that the group invited must consist of a “governmental body” means that—given the way the term is defined, and in the context of your question—only groups created by the General Assembly qualify as “governmental bodies.” Thus, groups like the Joint Budget Committee or Legislative Council qualify as governmental bodies, but not affinity-based groups such as (for example) the various caucus groups. This conclusion is grounded in the text of Issue 3. The term “**governmental** bodies” is defined as an “**establishment** of the executive, judicial, or legislative **branch** of the state.” (Emphases added.) The various caucus groups are not “governmental” in the way that the Joint Budget Committee or Legislative Council are because they are not established by official action of the legislative *branch* of government as a whole. In order for any “office, department, commission, council, board, [or] committee” to be an “establishment of the executive, judicial, or legislative branch of the state” it would need to be officially created by the one of the three branches of the State. This would occur when the “establishment” was created by law (whether constitutional or statutory) or rule.

Therefore, in response to your specific question, Issue No. 3 neither expressly nor impliedly prohibits the scenario you ask about.

³ *Garner’s Modern American Usage* 906 (Bryan A. Garner, ed., 3d ed., Oxford Univ. Press 2009).

⁴ Issue No. 3 defines “legislator” as, among other things, “**a person** who is a member of the General Assembly....” (Emphasis added.) This definition will be codified as art. 19, § 30(b)(6).

Assistant Attorney General Ryan Owsley prepared this opinion, which I hereby approve.

Sincerely,



DUSTIN MCDANIEL
Attorney General

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