

INSTITUTE FOR JUSTICE

DEC 06 2017

December 5, 2017

Via UPS

Ashley Kemp
Executive Director
Oklahoma Ethics Commission
2300 N. Lincoln Blvd., B-5
Oklahoma City, OK 73105

Re: Request for advisory opinion regarding the application of Oklahoma's gift ban to books and reports provided to government officials

Dear Ms. Kemp,

I am writing on behalf of the Institute for Justice (IJ) to seek the Ethics Commission's guidance about the potential application of Oklahoma's gift ban, Ethics Rule 5.6, to informational material that IJ wishes to provide to government officials in Oklahoma. Specifically, I am writing to confirm whether this provision prevents IJ from providing legislative and executive branch officials with books and reports on public policy that IJ believes are relevant and useful to our lobbying efforts in Oklahoma.

Background

IJ is a 501(c)(3) nonprofit public-interest law firm founded in 1991 that litigates across the country to promote economic liberty, freedom of speech, educational choice, and property rights. Although IJ's work consists predominately of litigation and communications with the public about policy issues, IJ also engages in a limited amount of lobbying at the federal, state, and local level. IJ has had registered lobbyists in Oklahoma in the past and intends to lobby members of the Oklahoma executive branch in the future.

As part of IJ's mission, IJ employees also write books and reports on public-policy issues. Last December, for example, Encounter Books published *Bottlenecks: Gaming the Government for Power and Private Profit* by William Mellor and Dick M. Carpenter II, which discusses the problem of politically powerful groups using government power to limit competition and thereby reap monopoly profits and other benefits. And last month, IJ

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published *License to Work 2*, a report that examines the burdens of occupational licensing laws in all 50 states and the District of Columbia.

IJ believes that both of these publications would be helpful to government officials trying to understand the issue of occupational licensing, and, as part of our lobbying efforts, we would like to provide copies of these materials to executive branch officials in Oklahoma. But we wish to make certain that doing so will not implicate Oklahoma's gift ban.

Bottleneckers is a commercially available book. Although its list price is \$27.99, it is available for purchase on Amazon.com at the discounted price of \$19.03.¹ IJ also receives an author's discount that brings our purchase price for the book to less than \$17.

License to Work 2 is available for free download through IJ's website, though at some time in the future may be available for download on Amazon Kindle devices for a nominal charge (likely \$2.00). IJ's per-unit cost for printing *License to Work 2* is approximately \$6-10.

Questions Presented

1. Do *Bottleneckers* and *License to Work 2* fall within the statutory definition of gift?
2. If they are considered gifts, do *Bottleneckers* and *License to Work 2* qualify for any statutory exception to the gift ban?

Discussion

Under Oklahoma's lobbying rules, lobbyists are prohibited from making any gift to an executive or legislative official unless that gift is specifically exempted from the state's gift ban.² Oklahoma's lobbying rules do not specifically define the term "gift," but that term is defined in the Commission's conflict-of-interest rules as encompassing any "property transferred to . . . another without compensation of equal value."³ Assuming

¹ <https://www.amazon.com/Bottleneckers-Gaming-Government-Private-Profit/dp/1594039070/>

² Okla. Stat. Ann. tit. 74, Appx. 1, Rule 5.6.

³ Okla. Stat. Ann. tit. 74, Appx. 1, Rule 4.2.

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that the Commission interprets the word “gift” identically for purposes of the lobbying rules, this definition would seem to encompass *Bottleneckers* and may encompass *License to Work 2* if it is later made available for commercial sale.

Having reviewed the exceptions to the gift ban, the only one that appears potentially applicable is Rule 5.13, which exempts gifts of a single item with a fair market value not exceeding \$10. This exception appears to cover *License to Work 2*, which has a fair market value of no more than \$2, but does not cover *Bottleneckers*, which retails for more than \$10.

Because imposing burdens or prohibitions on sending informational materials to state officials would hamper IJ’s mission and raise serious questions under the Free Speech and Petition Clauses of the First Amendment, we would be most appreciative if you could please provide answers to the two questions presented in this request, directed to psherman@ij.org. If you need additional information, please don’t hesitate to email or call at (703) 682-9320.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Sherman", written in a cursive style.

Paul Sherman
Senior Attorney
Institute for Justice

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