

**Advisory Opinion 2018-01 (Cite as: 2018 OK Ethics 01)**

Dear Mr. Sherman:

We are responding to your advisory opinion request concerning the Oklahoma Ethics Rules' application to gifts lobbyists and lobbyist principals may provide to executive branch officials. You ask, in effect, the following questions:

1. May an executive or legislative<sup>1</sup> lobbyist give to a state officer or employee a book which the lobbyist principal may purchase at a discounted author rate of approximately \$15.00?
2. May an executive or legislative lobbyist give to a state officer or employee a report published by the lobbyist principal which is available for free on the lobbyist principal's website or the lobbyist or lobbyist principal may print for \$10.00 or less and provide to the official?

Your questions relate to the gifts state officers and employees may receive from executive and legislative lobbyists or their lobbyist principals under Ethics Rule 5.<sup>2</sup>

In September, 1990, the people of Oklahoma voted by way of Initiative Petition No. 341 and State Question No. 627 to create the Oklahoma Ethics Commission.<sup>3</sup> One of the Ethics Commission's constitutionally-imposed duties is to promulgate rules for the ethical conduct of state officers and employees.<sup>4</sup> Within the Ethics Commission's rulemaking jurisdiction to

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<sup>1</sup> You have asked about lobbyist gifts to *executive* branch officials. Legislative lobbyists are included in this opinion because legislative lobbying by legislative lobbyists is defined as including lobbying of the Governor and her staff, and executive lobbying by executive lobbyists is defined as excluding lobbying of the Governor and her staff. Ethics Rule 5.2(3); 5.2(7). Neither "executive lobbying" nor "legislative lobbying" means a speech, article, publication or other material that is widely distributed, published in newspapers, magazines or similar publications or broadcast on radio or television. *Id.*

<sup>2</sup> It should be noted that a state officer or employee may be subject to more restrictive gift rules implemented by his or her employing agency or with more restrictive provisions of the statutes of the State of Oklahoma, neither of which are enforced by the Ethics Commission. (Ethics Rule 4.3.) Additionally, some state officers and employees do not accept gifts from lobbyists or lobbyist principals as a matter of personal preference. Consequently, it is best practice for lobbyists and lobbyist principals to check with state officers and employees before making a gift.

<sup>3</sup> *Ethics Commission v. Cullison*, 850 P.2d 1069, 1071 (Okla. 1993).

<sup>4</sup> Okla. Const. art. 29, §3; *Id.* at 1076.

regulate the ethical conduct of state officers and employees is the authority to promulgate rules regarding lobbyists and lobbyist principals and their interactions with state officers and employees.<sup>5</sup>

The Ethics Rules prohibit state officers and employees from accepting a gift or anything of value from an executive or legislative lobbyist or their lobbyist principals except as otherwise provided by the Ethics Rules.<sup>6</sup> The Ethics Rules authorize state officers and employees to accept from executive and legislative lobbyists or their lobbyist principals non-meal gifts under three Ethics Rules: 5.8, establishing limits for gifts from legislative lobbyists and liaisons for infrequently occurring occasions of personal significance; 5.11, establishing limits for gifts from executive lobbyists for infrequently occurring occasions of personal significance; and 5.13, allowing lobbyist principals to provide certain gifts to individual state officers and employees in recognition of their public service.

**I. Gift of Books Costing More Than \$10.00**

*A. Ethics Rules 5.8 and 5.11: Gifts Given for Infrequently Occurring Occasions of Personal Significance*

A legislative lobbyist may give to the Governor or any employee of the Governor, and an executive lobbyist may give to a state officer or employee of an agency for which the lobbyist is registered or should be registered to lobby, a gift “in recognition of infrequently occurring occasions of personal significance.” These gifts may not exceed \$100.00 in the aggregate in any calendar year.<sup>7</sup> Any such gifts are reported by the lobbyist to the Ethics Commission and

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<sup>5</sup> 1993 OK AG 25, *citing Cullison, supra*.

<sup>6</sup> Ethics Rule 5.6.

<sup>7</sup> Ethics Rules 5.8, 5.11.

aggregated with meals, and the aggregate total of meals and other gifts provided to an individual recipient by an executive or legislative lobbyist may not exceed \$500.00 in any calendar year.<sup>8</sup>

Consequently, an executive or legislative lobbyist may give a gift to a state officer or employee in recognition of an occasion that is: (1) infrequently occurring; and (2) personally significant.

i. Infrequently Occurring

Ethics Rules 5.8 and 5.11 authorize gifts to be given by executive and legislative lobbyists to state officers and employees for personally significant occasions that are “infrequently occurring.” In general, an occasion is *not* “infrequently occurring” if it occurs annually or more frequently than annually. There may be occasions that are personally significant to a state official but gifts are not permitted by the Ethics Rules if the occasion occurs annually or more frequently, such as anniversaries, birthdays, and holidays.

ii. Personal Significance

Infrequently occurring occasions of “personal significance” are numerous and often subjective to the recipient of the gift. The Ethics Rules do not provide a specific list of occasions of personal significance, but some examples are listed within the Rules. For instance, gifts to a state official’s family members may be given for an infrequently occurring occasion of personal significance “provided the family member is a party to a marriage, serious illness, birth or adoption of a child, or retirement.” Consequently, the Ethics Rules expressly recognize gifts, not to exceed \$100.00 in the aggregate in any calendar year, may be given by a legislative or executive lobbyist for a marriage, serious illness, birth or adoption of a child, or retirement.

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<sup>8</sup> *Id.*

There may be other occasions considered personally significant to a state officer or employee if the occasion is a major life event personally significant to the recipient.

iii. Gift Must Be Given Contemporaneously With The Occasion or At Times Gifts are Traditionally Given

As previously discussed, gifts not to exceed \$100.00 in the aggregate in any calendar year may be given by an executive or legislative lobbyist to a state officer or employee in recognition of infrequently occurring occasions of personal significance. Ethics Rules 5.8 and 5.11 require lobbyists to give such gifts in recognition of these occasions “contemporaneously with the occasion or at times when such gifts are traditionally given.”<sup>9</sup> For example, a gift to commemorate the birth of a state official’s child given one year after the child’s birth would not be considered to have been given contemporaneously with the occasion, or at a time when gifts are traditionally given, and would not be permitted to be given under Ethics Rules 5.8 and 5.11. However, a gift given to a state official at a wedding shower held two months before the state official’s marriage would be considered to be given at a time when gifts are traditionally given and would be permitted to be given under Ethics Rules 5.8 and 5.11.

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<sup>9</sup> *Id.*

iv. A Gift Given Pursuant to Ethics Rule 5.8 or 5.11 is Valued at the Fair Market Value of the Gift

In your first question, you state the book the lobbyist wishes to give to a state official may be obtained by the lobbyist principal at “a discounted author rate for approximately \$15.00.” In applying Ethics Rules 5.8 and 5.11, and the \$100.00 annual limit on gifts given in recognition of infrequently occurring occasions of personal significance, the value of the item available to the general public is the value to be assigned to the gift. Consequently, a book which the lobbyist principal may obtain at a discounted author rate of \$15.00, which would cost the general public \$105.00 to obtain, could not be given because the fair market value exceeds the \$100.00 limit for gifts which may be given by a lobbyist and received by a state official for an infrequently occurring occasion of personal significance.

v. Gifts Given for Infrequently Occurring Occasions of Personal Significance Must be Reported

Gifts given by executive or legislative lobbyists to state officers or employees for infrequently occurring occasions of personal significance, pursuant to Ethics Rule 5.8 or 5.11, must be reported by the lobbyists to the Ethics Commission.<sup>10</sup> The value of such gifts may not exceed \$100.00 in the aggregate in any calendar year and are aggregated with the value of meals given by the lobbyist to an individual state officer or employee and may not exceed \$500.00 in the aggregate in a calendar year.<sup>11</sup>

*B. Ethics Rule 5.13: Lobbyist Principal Gifts for Public Service*

In addition to gifts from lobbyists, the Ethics Rules permit lobbyist principals to provide certain gifts. Once a calendar year a lobbyist principal may give to a state officer or employee a “plaque, trophy or similar item suitable for display” valued at no more than \$200.00 to

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<sup>10</sup> Ethics Rules 5.19, 5.20, 5.21, 5.22.

<sup>11</sup> Ethics Rules 5.8, 5.11.

commemorate the state officer's or employee's public service.<sup>12</sup> These are generally personalized items given in recognition of a state officer's or employee's public service which are suitable for display. The book you describe in your question is not a personalized item suitable for display. Consequently, Ethics Rule 5.13 would not permit the book described in your question to be given by a lobbyist principal to commemorate a state officer's or employee's public service.

## **II. Gift of Written Report Costing \$10.00 or Less to Provide**

A legislative or executive lobbyist or their lobbyist principal may give to a state officer or employee once a calendar year "any single item with a fair market value not exceeding Ten Dollars (\$10.00)."<sup>13</sup> Ethics Rule 5.13 authorizes an executive or legislative lobbyist or their lobbyist principal to give a printed report, such as the one described in your second question, which may be provided to a state officer or employee for a cost of \$10.00 or less. Such a gift of a single item, not exceeding a fair market value of \$10.00 or less, is not reported to the Ethics Commission.

## **III. Conclusion**

If the fair market value of the book you describe in your first question<sup>14</sup> does not exceed \$100.00, the only time an executive or legislative lobbyist may give the book to a state officer or employee is for an infrequently occurring occasion of personal significance.<sup>15</sup> An infrequently occurring occasion of personal significance is a major life event personally significant to the recipient that does not occur on an annual basis. If the book is given for an infrequently occurring occasion of personal significance, the book must be given contemporaneously with the

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<sup>12</sup> Ethics Rule 5.13.

<sup>13</sup> *Id.*

<sup>14</sup> Which can be obtained by you at a discounted author rate of \$15.00

<sup>15</sup> Ethics Rules 5.8, 5.11.

occasion or at a time when gifts are traditionally given for such occasion. Gifts given by a lobbyist to a state officer or employee for an infrequently occurring occasion of personal significance are limited to \$100.00 in the aggregate in any calendar year. Any such gifts are reported by the lobbyist to the Commission and aggregated with meals, and the aggregate total of meals and other gifts provided to an individual recipient by an executive or legislative lobbyist may not exceed \$500.00 in any calendar year.<sup>16</sup>

Neither “executive lobbying” nor “legislative lobbying” means a speech, article, publication or other material that is widely distributed, published in newspapers, magazines or similar publications or broadcast on radio or television.<sup>17</sup> The report you describe in your second question does not fall within this exception to the definitions of lobbying. Nevertheless, under Ethics Rule 5.13, a lobbyist or lobbyist principal may give to a state officer or employee a single item, such as the printed report described in your second question, so long as it may be provided to the state official for \$10.00 or less. Such a gift, not exceeding a fair market value of \$10.00, is not reported to the Ethics Commission and one such gift may be given by a lobbyist or lobbyist principal to any individual recipient no more than once a calendar year.<sup>18</sup>

Before giving any gift to a state officer or employee it is best practice to check with them to ensure they may accept the gift because state officers and employees may be subject to more restrictive rules implemented by his or her employing agency and with more restrictive provisions of the statutes of the State of Oklahoma, neither of which are enforced by the Ethics

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<sup>16</sup> *Id.*

<sup>17</sup> Ethics Rule 5.2(3) & (7).

<sup>18</sup> Ethics Rule 5.13.

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Commission.<sup>19</sup> Additionally, many state officers and employees do not accept gifts from lobbyists or lobbyist principals as a matter of personal preference.

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<sup>19</sup> Ethics Rule 4.3.