

STATE ETHICS COMMISSION
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SUBJECT: Gift Reporting for Lobbyists

This memorandum is intended to provide a brief summary of a lobbyist's reporting requirements as to gifts given to officials or employees. Whether or not an official or employee may accept a particular gift is governed by Subtitle 5 of the Public Ethics Law ("Ethics Law"), which includes the gift provisions, as interpreted by one of three State entities. The State Ethics Commission ("Commission") administers and implements Subtitle 5 with respect to State officials of the Executive Branch and all State employees, regardless of governmental branch; the Joint Committee on Legislative Ethics administers and implements Subtitle 5 with respect to members of the General Assembly; the Judicial Disabilities Commission administers and implements Subtitle 5 with respect to State officials of the Judicial Branch.¹ Note, however, that the Commission solely is responsible for the regulation of lobbyists. Consequently, unless otherwise indicated, the gift reports discussed in this memorandum are required regardless of the governmental branch of the recipient and should be filed with the Commission.

A lobbyist must be familiar with the rules pertaining to the acceptance of gifts (see § 5-505 of the Ethics Law) because the Ethics Law strictly prohibits a regulated lobbyist from making a gift that the lobbyist knows or has reason to know is in violation of Subtitle 5 (see § 5-714(8)). The Commission's application of the gift provisions in the Ethics Law to individuals under its jurisdiction (State officials of the Executive Branch and all State employees) is discussed in the Commission's Gift Memo. Questions regarding the application of the gift restrictions of the Ethics Law, and exceptions to those restrictions, with respect to members of the General Assembly or State officials of the Judicial Branch should be directed to the Ethics Advisor to the General Assembly and the Judicial Disabilities Commission respectively.

The Ethics Law defines gift as "the transfer of anything of economic value, regardless of form, without adequate and lawful consideration." (§ 5-101 (p) (1)). Within that broad definition, however, the Ethics Law specifically exempts out "the solicitation, acceptance, receipt, or regulation of a political contribution that is regulated in accordance with: (i) the Election Law Article; or (ii) any other State law regulating: 1. the conduct of elections; or 2. the receipt of political contributions." Note that while a political contribution is NOT included within the definition of gift, and a regulated lobbyist is permitted to make personal political contributions, the lobbyist is required under the Ethics Law to file a Campaign Contribution Report to the Commission.²

¹The term *State officials of the Judicial Branch* includes a judge or judge-elect of a court under Article IV, §1 of the Constitution and a judicial appointee as defined in Maryland Rule 16-814.

²The Election Law and reporting requirements of the Ethics Law regarding campaign contributions by regulated lobbyists are beyond the scope of this memo. Specific questions should be directed to Commission staff.

The Gift “Triggers”

There are several circumstances or “triggers” that result in a person becoming subject to regulation as a lobbyist under the Subtitle 7 of the Ethics Law. Of these, there are two a person must pay particular attention to because they may create an obligation to register as a lobbyist without the person intending such an outcome. A person becomes a lobbyist, if, for the purpose of influencing any executive action, he/she spends a cumulative value of at least \$100 for gifts (including meals, beverages and special events) to one or more officials or employees of the Executive Branch. A person also becomes a lobbyist if, for the purpose of influencing any legislative action, he/she incurs cumulative expenses of at least \$500. The cost of gifts to legislators would be counted toward the \$500 expense total. The lesson here is that in giving gifts (including taking a few executive branch members to lunch, which could easily cost \$100), a donor must be cognizant that the gifts may result in his/her becoming a lobbyist, subject to registration with and regulation by the Commission.

The Reports

This section addresses reports a lobbyist (or an employer, in those rare cases where the regulated lobbyist does not file activity reports for the employer) must submit if certain gifts are made by the employer or lobbyist (personally). The referenced report numbers indicate the numbers assigned by the Commission. Note that reports identified as Forms 13A through 13D are to be filed in conjunction with the Activity Report (Form 4). Lobbyists who choose to file their Activity Reports using the Commission’s electronic filing system will automatically be directed to those Forms if circumstances indicate the reports are required.

Activity Report (Form 4). Submitted twice per year as follows: May 31, covering the period November 1 – April 30; November 30, covering the period May 1 – October 31. Gift information is reported on lines B-1 through B-6. (Note that an Activity Report is required if a lobbyist was registered during any part of a reporting period, even if the lobbyist had no activity). The following Forms, where relevant, should also be filed with the Activity Report.

- **Regulated Lobbyist Employer’s Expenditure on Meals and/or Beverages – Elected Executive Officials** (Form 13A). This requires the regulated lobbyist to disclose, on behalf of his/her employer, the name of any State official of the Executive Branch³, or the name of a member of the official’s immediate family, who benefitted during the period covered by the Activity Report from any gift of meals and beverages from the lobbyist’s employer, whether or not in connection with lobbying activities.
- **Individual Lobbyist Personal Expenditure, Elected Executive Officials Gift of Meals and/or Beverages** (Form 13B). This report requires information similar to Form 13A, the difference being that this form is used when the lobbyist makes the expenditures from his/her personal funds with no involvement of the employer, rather than on behalf of the employer (where Form 13A would apply).
- **Disclosure of Gifts of \$75 or more – Single Employer** (Form 13C). This requires the regulated lobbyist to disclose, on behalf of his/her employer, the name of any official⁴,

³The term *State official of the Executive Branch* includes the Governor, Lieutenant Governor, Comptroller, Attorney General, State’s Attorney, Clerk of the Circuit Court, Register of Wills and Sheriff.

⁴Note that this Report (as well as Form 13D) seeks information on gifts to a larger group of recipients than Forms 13A and B. While the term “official” includes State officials of the Executive Branch as discussed above (see footnote #3) with

employee or the spouse or dependent children of an official or employee who has benefitted from one or more gifts with a cumulative value of \$75 during the reporting period, whether or not in connection with lobbying activities. Note that because the report seeks all expenditures by a single employer, where there are multiple regulated lobbyists representing the employer, this report should be filed by one of the regulated lobbyists and aggregate all expenditures by the employer. The Ethics Law provides for a number of exceptions to this reporting requirement, specifically:

1. food, beverages, and incidental expenses for members of the General Assembly or a legislative staff for meals and receptions to which all members of any legislative unit were invited;
 2. food and beverages for members of the General Assembly at the respective times and geographic locations of meetings of legislative organizations (e.g. National Conference of State Legislatures), to which meetings those members' attendance at State expense has been approved by the appropriate presiding officer;
 3. food, lodging, and scheduled entertainment, with a value of \$200 or less, for officials and employees at meetings at which the officials and employees were scheduled speakers or scheduled panel participants;
 4. tickets and free admission extended to members of the General Assembly to attend charitable, cultural, and political events sponsored or conducted by the entity filing the report, to which all members of a legislative unit were invited, unless the recipient was given two or more such gifts with a cumulative value of \$100 or more;
 5. gifts of meals or beverages reported on Forms 13A or B as discussed above.
- **Disclosure of Gifts of \$75 or more - Individual Lobbyist or Multiple Employers** (Form 13D). This report requires similar information to Form 13C, the difference being that this form is used when the lobbyist makes the expenditures from his/her personal funds with no involvement of the employer, or when the lobbyist used multiple employers' funds to satisfy the \$75 gift level, rather than when the expenditures were by a single employer (where Form 13C would apply).

Note that the cost of the gifts disclosed "by name" in Forms 13A-D (and the exceptions listed in subparagraphs 1-5 above) must also be accounted for within the expense totals reported on Form 4.

Meal or Reception Legislative Unit Invitation - Regulated Lobbyist Disclosure (Form 13E). Submitted to the Department of Legislative Services (not the Commission), at least 5 days before the date of a meal or reception to which all members of a legislative unit are invited. A "legislative unit" is defined as the entire General Assembly, either house of the General Assembly, a standing committee, a county or regional delegation of members of the General Assembly that is recognized by a presiding officer (as listed on the Commission's website). Within 3 business days of receiving the Form 13E, the Department of Legislative Services forwards the original to the Commission.

respect to Forms 13A and B, it also applies to a member or member-elect of the General Assembly, a judge or judge-elect of a court under Article IV, § 1 of the Constitution, a judicial appointee as defined in Maryland Rule 16-814, and public officials (which includes employees who file financial disclosure forms and members of State boards and commissions).

Regulated Lobbyist Meal or Reception, Legislative Unit – Fourteen Day Report (Form #13F). Submitted to the Commission within 14 days after the date of the meal or reception disclosing its total cost and identifying all sponsors and their respective cost shares. If the lobbyist does not have final cost information within 14 days, the lobbyist must provide estimates. If the information reported here represents a full and accurate accounting (rather than estimates), it should not be reported on the lobbyist’s regular Activity Report (Form 4). If not a full and accurate accounting, the final information must be included on the regular Activity Report.

Special Circumstances

Lobbyists and Weddings. The Commission’s position concerning the acceptance of gifts consistent with traditional wedding activities (including the cost of related receptions) is addressed in the Commission’s Gift Memo. A lobbyist who is a guest at the wedding of an official or employee, or who invites an official or employee to his/her wedding, must submit reports as follows:

- A lobbyist who provides a wedding gift to an official or employee must include the value of the gift on Form 4 as well as on the Form 13D if the gift is valued at \$75 or more.
- A lobbyist who invites an official or employee to his/her wedding must report the individual cost of the reception on Form 4 as well as on the Form 13B or 13D as appropriate.
- Where a wedding invitation from a lobbyist is extended to an official or employee and a “guest”, the lobbyist must include the expense for the guest on Form 4 as well as on the Form 13B or 13D as appropriate, as a gift to that official or employee.

Note that for reporting purposes, the Commission views the cost of a lobbyist’s wedding reception as a gift from the lobbyist, whether or not the lobbyist pays for it.

Gifts to Family Members. The Ethics Law does not require a regulated lobbyist to disclose a gift to a member of the regulated lobbyist’s immediate family (spouse and dependent children), if the gift is: a) purely personal and private in nature and not related to the regulated lobbyist’s lobbying activities; and b) from the regulated lobbyist’s personal funds and not attributable to any other entity or entities.

Conclusion

A lobbyist should be aware that the Commission views disclosure and transparency as key elements of the Ethics Law. A lobbyist who provides anything of value to an official or employee should assume that the gift must be reported. When in doubt, contact the Commission for advice and guidance.