

STATE ETHICS COMMISSION
45 CALVERT STREET, 3RD FLOOR
ANNAPOLIS, MARYLAND 21401
410-260-7770 / 1-877-669-6085

September 9, 2019

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 as well as State's Attorneys, Clerks of Court, Registers of Wills, and Sheriffs, 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, State's Attorneys, Clerks of Court, Registers of Wills, Sheriffs, 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 disclose those political contributions in the Personal Disclosure Report a lobbyist must file with the Activity Report.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 18-200.3.

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 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 cumulatively spends 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 action³, 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). Lobbyists must file all of the following reports using the Commission’s electronic filing system.

Legislative Unit Meal or Reception Events. “Event reports”, consisting of the Notice of Invitation and Post Event report, are submitted electronically through the lobbyist’s account in the Commission’s Lobbyist Registration and Reporting system. The Notice of Invitation must be submitted 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, or 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). The Post Event report is submitted 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 will be automatically inserted into the lobbyist’s regular Activity Report, Section C. If not a full and accurate accounting, the final information must be manually entered into Section C.

Activity Report. Submitted twice per year as follows: by May 31, covering the period November 1 – April 30; by November 30, covering the period May 1 – October 31. Gifts of meals and beverages are reported in Section D. Other gifts are reported in Section E. (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 information must be reported on the Activity Report:

- **Expenditures on Meals and/or Beverages.** (Section D). This report requires the regulated lobbyist to disclose, on behalf of his/her employer, gifts of meals and beverages (other than those associated with events reported in Section C) given during the reporting

³Note here the Commission’s interpretation of “influencing any executive or legislative action”, which may include simply attempting to generate goodwill.

period, whether or not in connection with lobbying activities. Among the required disclosures are these: 1) meals and beverages given to members of the General Assembly at approved legislative organization meetings; 2) meals and beverages provided to officials⁴ and employees at meetings where they were scheduled speakers or scheduled panel participants; and 3) meals and beverages provided to officials, employees, or members of their immediate families not reported elsewhere in Section D. Note two things about this last category. First, the lobbyist must disclose in Part 4 of Section D certain additional information (including the names of the recipients) if the meals and beverages were given to a State Official of the Executive Branch⁵ or a member of the official's immediate family. And second, if during a reporting period a lobbyist provides an official (which includes a State Official of the Executive Branch), employee, or member of their immediate family a gift of meals and beverages with a cumulative value of \$75 or more, those gifts should not be reported here, but instead in Section E-2 of the Activity Report.

- **Other Gifts to Officials, Employees, or Immediate Family Members.** (Section E). Section E-1 of the Activity Report requires the individual regulated lobbyist to disclose, on behalf of his/her employer, all expenses related to gifts to officials or employees or their immediate families that were incurred during the reporting period and not reported elsewhere (e.g. in Part D, Gifts of Meals and Beverages). Where a gift or series of gifts to a single individual amounts to \$75 or more, in addition to including the cost in Section E-1, the lobbyist must provide additional information in Section E-2, including the name of the recipient, whether or not the gifts were in connection with lobbying activities. The Ethics Law provides for a number of exceptions to this additional 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 (which are reported in Section C);
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), at 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 to a State Official of the Executive Branch or family member which is reported in Part D of the Activity Report.

⁴As used throughout this memo, the term *official* is a broad one to include elected officials of the Executive and Legislative Branches, other elected officials (State's Attorney, Clerk of the Court, Register of Wills, and Sheriffs), and Judges and Judicial Appointees.

⁵The term *State Official of the Executive Branch* includes the Governor, Lieutenant Governor, Comptroller and Attorney General.

Personal Disclosures. This report is submitted twice per year in conjunction with the filing of a lobbyist's activity reports. These disclosures pertain personally to the individual regulated lobbyist and are unrelated to disclosures made by or on behalf of a lobbyist's employer on the Activity Report. A lobbyist representing multiple employers need only submit one Personal Disclosure Report for each reporting period, but is responsible for ensuring the information reported is correct and current as of the last day of the reporting period.⁶ (Note that a Personal Disclosure is required if a lobbyist was registered during any part of a reporting period, even if the lobbyist had no activity). The following gift-related information must be reported on the Personal Disclosure Report:

- **Personal Expenditures for Gift of Meals and/or Beverages to State Officials of the Executive Branch.** This requires the regulated lobbyist to disclose the name of any State official of the Executive Branch (see Footnote 5), or the name of a member of the official's immediate family, who benefitted during the reporting period from any gift of meals and beverages funded with expenditures of the lobbyist's personal funds with no involvement of the employer, whether or not in connection with lobbying activities.
- **Personal Expenditures for Gifts of \$75 or More.** This requires the regulated lobbyist to identify by name any official (see Footnote 4), employee or the spouse or dependent children of an official or employee who has benefitted from one or more gifts paid from the lobbyist's personal funds with a cumulative value of \$75 during the reporting period, whether or not in connection with lobbying activities. 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.

Special Circumstances

⁶If a lobbyist is registered on behalf of multiple employers, and one of those registrations terminates on a date prior to the end of a standard reporting period (i.e. prior to April 30 or October 31), the lobbyist must submit a Personal Disclosure report concurrent with the filing of the Activity Report for that one employer. However, the lobbyist is responsible for amending as necessary the Personal Disclosure at the time Activity Reports are filed on behalf of the lobbyist's remaining clients to ensure it is accurate as of the end of the standard reporting period.

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 the lobbyist’s Personal Disclosure Report 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 the lobbyist’s Personal Disclosure Report.
- 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 the lobbyist’s Personal Disclosure Report 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 actually 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.