



# TEXAS ETHICS COMMISSION



**\*\*Overruled, Modified, Clarified, or Superseded\*\***

## ETHICS ADVISORY OPINION NO. 56

*September 10, 1992*

*Reporting requirements for various circumstances in which a lobbyist or lobbyists have lunch with a member of the executive or legislative branch. (AOR-70)*

A registered lobbyist has asked the Texas Ethics Commission to consider several different questions about lunches at which a registered lobbyist and members of the executive or legislative branch are present.

In one situation a registered lobbyist, the lobbyist's client, and a member of the legislative or executive branch have lunch. The member pays for his own meal. During lunch the lobbyist and his client try to influence pending legislation or administrative action. The requestor asks whether the registrant's lobbyist activity report must reflect the cost of both his lunch and his client's lunch.

Under section 305.006(b), a registrant must list total expenditures of certain types that are made to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. The types of expenditures that must be reported are expenditures for: (1) transportation and lodging, (2) food and beverages, (3) entertainment, (4) gifts, other than awards and mementos, (5) awards and mementos, and (6) expenditures made for the attendance of members of the legislative or executive branch at political fundraisers or charity events. *See also* Gov't Code § 305.006(c) (requiring reporting of expenditures for certain mass media communications). In the situation described the registrant must report the cost of his own meal. If the client is present at the meal to facilitate the lobbyist's communication to influence legislative or executive action, as is apparently the case in the situation described, the registrant must also report the cost of the client's meal. The registrant must report both lunches under the category of "food and beverages" for purposes of section 305.006(b) and under "registrant" for purposes of section 305.0062. *See* Tex. Ethics Comm'n, Lobbyist Activity Report, Schedule II, at 3 n.4 (June 1992).

The requestor also asks what reporting is required if the client, who is not required to register as a lobbyist, pays for both meals. In this situation, the registrant must report the cost of the meals on his activity report if "the expenditures were made with the registrant's consent or were ratified by the registrant." Gov't Code § 305.006(b); *see* [Ethics Advisory Opinion No. 48](#) (1992). Whether expenditures are made with a registrant's consent or ratification is a fact question. If the expenditures are reportable, the registrant must report them under the category of "food and beverages" for purposes of section 305.006(b) and under "registrant" for purposes of section 305.0062.

In another situation described by the requestor, several registrants who work for the same client have lunch with a member of the legislative or executive branch (hereinafter "member"). *See* Gov't Code § 305.002(4), (7) (defining, respectively, "member of the executive branch" and "member of the legislative branch"). The registrants try to influence the member about legislation or administrative action that could affect their client.

One of the registrants buys lunch for the member, the other registrants, and himself.<sup>1</sup> The requestor asks how such an expenditure should be reported.

If there is an agreement among the individual lobbyists about later reimbursement for the expenditure, each lobbyist must report on his own activity report the amount that he has agreed to pay. *See Gov't Code § 305.002(5)* ("expenditure" includes reimbursement). Also, even if the individual lobbyists do not agree to reimburse the payor but ratify or consent to the expenditure, the expenditure must be apportioned among the lobbyists. Otherwise, only the payor must report the expenditure for the meal. The amount the payor reports depends on his purpose in paying for the other lobbyists' meals. If the purpose is to facilitate his own ability to communicate to influence, he must report the total expenditure. If not, he needs to report only the cost of his own meal and the member's meal.

The expenditures must be reported under the category of "food and beverages" for purposes of section 305.006(b). For purposes of section 305.0062, the expenditure for the member's meal must be reported in the category applicable to that particular member.<sup>2</sup> Expenditures for the lobbyists' lunches, no matter how they are allocated among the lobbyists, must be reported under the category "registrant."<sup>3</sup> If an individual lobbyist's expenditure for the member's lunch exceeds \$50, then a detailed report would be required under section 305.0061.

### SUMMARY

If a registered lobbyist pays for his own meal and his client's meal in connection with a lobby communication, the registered lobbyist must report the expenditures for both meals if the purpose of the client's presence is to facilitate the lobby communication. If the client pays for both meals, the registered lobbyist must report the expenditures if the expenditures are made with his consent or ratification. If one registrant pays for meals of other registrants in connection with lobby communications, the reporting requirements depend on the specific circumstances of the transaction.

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<sup>1</sup> Because the payor is present, the lunch would not be prohibited under section 36.08 or section 36.09 of the Penal Code even if the lunch is a benefit. *See Ethics Advisory Opinion No. 12* (1992) (application of "guest" exception to prohibitions set out in sections 36.08 and 36.09). Also, we assume that the lunch is not offered to or accepted by the member of the legislative or executive branch as consideration for official action. *See Penal Code § 36.02* (bribery).

<sup>2</sup> Under section 305.0062, expenditures must be broken down among these categories: (1) state senators, (2) state representatives, (3) elected or appointed state officers other than senators and representatives, (4) legislative agency employees, (5) executive agency employees, (6) the immediate family of a member of the legislative or executive branch, (7) the registrant, and (8) events to which all legislators are invited. *Gov't Code § 305.0062(a)*.

<sup>3</sup> The requestor also asks about a situation in which several lobbyists have lunch with a member of the legislative or executive branch. Each lobbyist represents a different client, and each tries to influence the member about legislation or administrative action. One lobbyist pays for all the lunches. The registrant asks how such expenditures should be reported. The foregoing analysis would apply to this situation.