



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 91

December 10, 1992

Reporting requirements of an organization that hosts a reception and sporting event to which legislators and executive branch members are invited. (AOR-59)

The Texas Ethics Commission has been asked to consider a number of questions about the application of Government Code chapter 305, the lobby statute, to activities held in connection with a sporting event. In the situation presented, a corporate organization that is registered as a lobbyist hosts a reception before the sporting event. All legislators and various members of the executive branch are invited to attend. Entertainment and refreshments are provided at the reception. The invited members of the legislative and executive branches and their companions are admitted free, but the organization charges for others to attend the reception. The organization also provides transportation between a hotel and the sporting event.

Issue No. 1 - Reporting of Expenditures

The requestor asks whether the expenditures for the reception, the tickets for the sporting event, and the transportation should be reported under sections 305.006 and 305.0062 of the Government Code. The requestor states that the organization and at least one employee are or will be registered as lobbyists under chapter 305 of the Government Code. Sections 305.006¹ and 305.0062² set out different lists of categories in which expenditures must be reported. One requires a breakdown of the types of expenditures made. The other requires a breakdown of the type of public servant to whom expenditures are attributable. In addition, if expenditures for food, lodging, transportation, or entertainment for an individual member of the legislative or executive branch exceed more than \$50 per day or if an expenditure for a gift, award, or memento for an individual member of the legislative or executive branch exceeds \$50, a detailed report is required. Gov't Code § 305.0061; Tex. Ethics Comm'n, 17 Tex. Reg. 4446 (1992) (to be codified at title 1, section 40.25, of the Texas Administrative Code).

Those breakdowns are not required for the reception or the football game in question, however, because they are events to which all legislators are invited. Section 305.0062(d) allows expenditures for the reception to be listed on a lobbyist activity report under the category of "events to which all legislators are invited," Gov't Code § 305.0062(a)(8), and states that such expenditures are not to be reported elsewhere under any other category on the lobbyist activity report. *See Ethics Advisory Opinion No. 30* (1992). The corporation must, however, "be present" at the sporting event. Gov't Code §§ 305.006(f), 305.024(a)(7); *see Ethics Advisory Opinions Nos. 89, 69, 4* (1992). For a corporate registrant, this would require the presence of an officer, employee, or stockholder who is himself registered or the presence of a person whose position, authority, or conduct could create corporate liability for exemplary damages. *See Ethics Advisory Opinion No. 89* (1992).

The requestor also asks about transportation between a hotel and the sporting event. As a general rule, lobby expenditures for transportation are prohibited. Gov't Code §§ 305.024(a)(3), 305.025(3) - (4). The lobby statute does not, however, apply to transportation of "incidental value." *See Ethics Advisory Opinion No. 30* (1992); Tex. Ethics Comm'n, 17 Tex. Reg. 4446 (1992) (to be codified at title 1, section 40.27, of the Texas Administrative Code). Transportation between a local hotel and a sporting event by car or taxi would not generally be of more than "incidental value." *See Ethics Advisory Opinion No. 30* (1992). However, transportation from outside the city in which the sporting event takes place would probably be of more than "incidental value." If the transportation is of more than "incidental value," the registered organization may not provide transportation to

and from the sporting event nor may the legislators and members of the executive branch accept it.³ Gov't Code § 305.024.

Issue No. 2 - Allocation of Expenses

The requestor asks if the organization should allocate the reception expenses between "food" and "entertainment." Because all legislators are invited to the reception, the expenditure for the reception should be listed on the lobbyist activity report under the category of "events to which all legislators are invited." The expenditure is not to be reported elsewhere under any other category on the lobbyist activity report. *Id.* § 305.0062(d). Therefore there is no need to allocate expenses. See [Ethics Advisory Opinion No. 36](#) (1992).

Issue No. 3 - Apportionment of Expenses

The request also raises a question about apportionment of expenses. Section 305.0062(d) allows apportionment of expenses among the total number of persons in attendance at an event "if a registrant cannot reasonably determine the amount of an expenditure under section 305.006(b) that is directly attributable to a member." Again, because the expenditure for the reception is to be reported only under section 305.0062(a)(8), there is no need to apportion the costs of the reception.

Issue No. 4 - Individual Members of the Organization and Earmarked Funds

The requestor states that "corporate underwriters" who are members of the corporate organization hosting the event make contributions to the host organization that are specifically earmarked to be used for the reception, transportation, and sporting event. The requestor asks if these "corporate underwriters" are, by virtue of these earmarked funds, required to register as lobbyists with the Texas Ethics Commission and report these contributions as expenditures.

Under the facts as described, it is not clear whether an entity earmarking funds for the host or organization to use for the event does so "to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action." If an entity earmarks funds for a reception or sporting event in order to create or enhance an opportunity to communicate with members of the legislative or executive branch to influence legislation or administrative action, the entity must report the expenditure if the entity is required to register as a lobbyist. See [Ethics Advisory Opinions Nos. 89](#) (regarding application of presence requirement to corporate registrant), [48](#) (1992) (regarding reporting of expenditures made on a registrant's behalf and duplicate reporting).

Even if an underwriting entity is not making the expenditure to communicate directly, an entity that earmarks funds for the host organization to use for an event may be a person "who reimburses, retains, or employs the registrant to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action" for purposes of section 305.005(f)(3). If so, the host organization must list "corporate underwriters" who earmark funds on lobbyist registration forms as persons who reimburse, retain, or employ the registrant. Gov't Code § 305.005(f)(3).

Issue No. 5 - Presence of Other Registrants

The requestor asks if any of the expenditures for the reception and sporting event should be allocated to other registrants present at the reception and sporting event. Expenditures are not to be attributed to other registrants present at an event who do not make, consent to, or ratify the expenditures. *Id.* §§ 305.006, 305.0062. If, however, a registrant purchases a ticket to an event in order to communicate directly with a member of the legislative or executive branch to communicate directly to influence legislation or administrative action, the price of that ticket is reportable on the registrant's lobbyist activity report if the ticket entitles the purchaser to food, beverages, or entertainment. *Id.* §§ 305.003, 305.006, 305.0062.

SUMMARY

An organization that hosts a reception to which all legislators are invited must report that expenditure on its lobbyist activity report under section 305.0062(d), under the category of "events to which all legislators are invited." Such expenditures are not required to be reported under any other section of the lobbyist activity report.

Transportation to a sporting event that is of "incidental value" is not prohibited or reportable under chapter 305. A lobby expenditure for transportation that is of more than "incidental value" is prohibited by chapter 305.

An organization that "underwrites" the cost of an event by earmarking funds given to a registered organization to host an event may have to report those funds as lobby expenditures under chapter 305, or the underwriting organization may be listed as a person who reimburses, retains, or employs the host organization.

Other registrants who attend a reception and sporting event hosted by an organization do not have to report any expenditures if none were made with their consent. However, a registrant who purchases a ticket to an event in order to directly communicate with a member of the legislative or executive branch to influence legislation or administrative action may be required to report the price of the ticket.

¹ Section 305.006(b) and (c) list the different categories of expenses reportable under chapter 305. The section 305.006(b) expenses are:

- (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 fund-raisers or charity events. Section 305.006(c) requires reporting of expenditures for certain mass media communications. Section 305.006(b) and (c) expenses are reported on a lobbyist activity report.

² Section 305.0062(a) provides that the lobbyist activity report must also contain a breakdown of expenditures attributable to members of the executive or legislative branch. The section provides eight categories in which expenditures must be listed:

- (1) state senators;
- (2) state representatives;
- (3) elected or appointed state officers, other than those described by Subdivision (1) or (2);
- (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.

However, section 305.0062(d) provides:

[I]f an expenditure is for an event to which all legislators are invited, the registrant shall report the expenditure under Subsection (a)(8) [events to which all legislators are invited and not under any other subdivision of that subsection or any other provision of this chapter.]

³ Lobbyists can provide transportation and lodging for:

(1) "necessary expenditures for transportation and lodging when the purpose of the travel is to explore matters directly related to the duties of a member of the legislative or executive branch, such as fact-finding trips, but not including attendance at merely ceremonial events or pleasure trips" and

(2) "necessary expenditures for transportation and lodging provided in connection with a conference or similar event in which the member renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory." Gov't Code § 305.025(3), (4). The situation described in the request fits into neither exception.