



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 93

December 10, 1992

Reporting requirements of an organization registered as a lobbyist that hosts a luncheon with a guest speaker who is a member of the legislative or executive branch. (AOR-61)

The Texas Ethics Commission has been asked three questions about luncheons sponsored by a nonprofit organization that is registered as a lobbyist. These luncheons are held in various Texas cities, and members of the organization attend. The organization invites a member of the executive or legislative branch to each of these functions. The organization may pay the cost of transportation between Austin and the site of the luncheon, including transportation to and from the airport. The requestor states that the invited official provides a "substantive" speech at the luncheon, or engages in a question-and-answer session with members of the organization.

The requestor asks if the transportation expenditures for the invited member are permitted under section 305.025(3) or (4) of the Government Code.¹ The organization is registered as a lobbyist under chapter 305, the lobby statute. Chapter 305 places restrictions on the types of expenditures that a registrant may make and that a member of the legislative or executive branch may accept. Section 305.024(a)(3) of the Government Code generally prohibits lobby expenditures for transportation and lodging for a member. However, there is an exception to this restriction for

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(4). Whether a luncheon is a conference or similar event is a fact question. If it is, then as long as the invited member of the legislative or executive branch renders "more than merely perfunctory" service at the conference or similar event, necessary expenditures for transportation are not prohibited by section 305.024(3). See [Ethics Advisory Opinion No. 17](#) (1992). Whether the services are "merely perfunctory" is another fact question. For purposes of the following questions, we assume that the luncheons given by the organization qualify as a "conference or similar event" and that the services rendered are more than "merely perfunctory." See [Ethics Advisory Opinion No. 18](#) (1992).

Because the nonprofit organization is registered under chapter 305, the organization must report its lobbying expenditures as required by sections 305.006, 305.0061, and 305.0062. See [Ethics Advisory Opinion No. 34](#) (1992). Section 305.006 requires reporting of expenditures by category of expense. Section 305.0061 requires detailed reporting if expenditures exceed more than \$50 a day for food, lodging, transportation, or entertainment for a member or exceed \$50 for a gift, award, or memento.² Section 305.0062 requires the registrant to break down expenditures by category of beneficiary. Therefore, if the registered organization pays for transportation and lunch for a member of the legislative or executive branch, the organization must report the cost of the lunch and transportation on its lobbyist activity report. Depending on the amount of the expenditures, the organization may also be required to provide a detailed report of these expenditures.³

The requestor asks if the entire cost of the luncheon or only the expenditures attributable to an invited official or officials are reportable under chapter 305. Depending on the situation, the organization may have to report the entire cost of the luncheon on its report. [State Ethics Advisory Opinion No. 13](#) at 3 (1984) addressed whether a registered lobbyist must report the total expenses of an event at which a public official is the guest speaker. The opinion focused on the intent behind the event:

If the lobbyist planned the entire event with the intent to influence legislation or administrative action, then the entire event is reportable.

[State Ethics Advisory Opinion No. 7](#) at 2 (1984) emphasized that such situations involve questions of fact:

The amount of the entertainment expenditure to be reported is highly specific to the facts. Whether the reportable amount is a pro rata figure or the total expenditure depends on the motivation behind the entertainment event. If the entire event was engineered with the purpose of influencing legislation or administrative action, the entire cost must be reported.

Therefore, whether the registered organization must report the entire cost of the luncheon is a question that should be determined in light of the facts and intent behind the luncheon. If the entire event is not planned with the intent to influence, the organization must report only those expenditures made to communicate to influence legislation or administrative action on its lobbyist activity report.

If the entire cost of the luncheon must be reported, it should be reported on the lobbyist activity report under the category of "food and beverages." Gov't Code § 305.006(b)(2). The registrant must also provide a breakdown, by category, of who benefitted from the expenditures. One category is for expenditures made to benefit the registrant. *Id.* § 305.0062(a)(7). Section 305.0062(b) states that "an expenditure is directly attributable to the person who consumed the food or beverage." If the entire luncheon cost must be reported, the cost for the public official must be listed under the appropriate section 305.0062(a) category and the remaining costs must be listed as expenditures for the registrant.

The requestor asks whether any expenditures for the luncheon should be attributed to registered lobbyists for other organizations who are present at the luncheon. A registrant must report only the expenditures he makes or expenditures made on his behalf with his consent or ratification. *Id.* § 305.006(b), (c); see [Ethics Advisory Opinion No. 91](#) (1992) (regarding reporting if registrant pays for his own meal).

SUMMARY

A registrant may provide transportation expenses for a member of the executive or legislative branch to attend "a conference or similar event in which the member renders services." However, the nature of those services must be "more than merely perfunctory." Whether a particular event or a service falls within these definitions is a fact question.

A registered organization that provides a luncheon for a member of the legislative or executive branch and the organization's members for the purpose of communicating directly to influence legislation or administrative action must report the entire cost of the luncheon on its lobbyist activity report.

When a registrant pays for an event that other registrants attend, none of the expenses of the event are attributable to the other registrants who are in attendance but who make no expenditures themselves.

¹ Because the requestor specifically asks about the lobby statute, we assume that the expenditures in question are made in order to communicate with the legislators or executive branch members to influence legislation and are therefore subject to regulation under the lobby statute. See [Ethics Advisory Opinions Nos. 90, 4](#) (1992) (generating "goodwill" as an attempt to influence).

² Section 305.0061 also requires detailed reporting when expenditures are made for a member of the legislative or executive branch to attend a political fundraiser or charity event.

³ We assume that the expenditures in question are attributable to the organization, not to individual registrants. *See Ethics Advisory Opinions Nos. 91, 89* (1992) (regarding attribution of expenditures).