

# STATE ETHICS ADVISORY COMMISSION

## ADVISORY OPINION 1984-12

Re: If an office-holder asks a lobbyist to entertain his constituents, guests or friends, is the lobbyist required to report the cost of the entertainment even when the office-holder does not attend?

This opinion responds to a request (AOR 1984-14) from the Public Servant Standards of Conduct Advisory Committee for a State Ethics Advisory Commission opinion. The request was received by the Commission at its meeting on January 13, 1984 and relates to the following issue:

If an office-holder asks a lobbyist to entertain constituents, guests, or friends of the office-holder, is the lobbyist required to report the cost of such entertainment, even when the officeholder is not present?

The lobby reporting requirements are set out in Tex. Rev. Civ. Stat. Ann. art. 6252-9c, § 6 (Vernon Supp. 1983-1984) It states in pertinent part:

(a) Every person registered under Section 5 of this Act shall file with the secretary a report concerning the activities set out in Subsection (b) of this section . . . .

(b) The report shall be written, verified, and contain the following information:

(1) the total expenditures under a category listed in this subsection that are made by the registrant for directly communicating with a member of the legislative or executive branch to influence legislation or administrative action, including expenditures under a category listed in this subsection that are made by others on behalf of the registrant for those direct communications if the expenditures were made with his consent or were ratified by him. The expenditures for directly communicating with a member of the legislative or executive branch to influence legislation or administrative action shall be stated in the following categories:

(A) entertainment, including but not limited to food, beverages, maintenance of a hospitality room, sporting events, theatrical and musical events, and any transportation, lodging, or admission expenses incurred in connection with the entertainment . . . .

All elements of the reporting requirement must be met before an expenditure becomes reportable. The question presented must be considered in light of each statutory element. First, only persons registered under § 5 are required to file reports. For purposes of this opinion, we will assume that the lobbyist is registered. Furthermore, we assume that the officeholder in question is a member of the legislative or executive branch as defined by § 2 of the act.

To be reportable, the expenditure must come within a category listed in § 6(b). The lobbyist's activity in the question presented is "entertainment" as that term is commonly used. Entertainment is a category listed in § 6(b). Another requirement that must be met for the expenditure to be reportable is that the expenditure be made for communicating directly with one or more members of the legislative or executive branch to influence legislation or administrative action. When the expenditure is subsequent to the direct communication and the expenditure is made for the purpose of making the prior communication influential, it is the opinion of the Commission that it is an expenditure for communicating directly to influence legislation or administrative action. We will assume that such direct communication took place between the office-holder and the lobbyist.

Based on the facts included in the question and the facts we have assumed, the lobbyist is required to report the cost of the entertainment, even when the office-holder does not attend.

### SUMMARY

Where a member of the legislative or executive branch asks a registered lobbyist to entertain his constituents, guests or friends, the lobbyist is required to report the cost of the entertainment, even when the office-holder does not attend, if the expenditures are made by the registrant as a consequence of directly communicating with the office-holder to influence legislation or administrative action.

W. Page Keeton, Chairman  
State Ethics Advisory Commission  
Adopted this 13th day of April, 1984.