

STATE ETHICS ADVISORY COMMISSION

ADVISORY OPINION 1984-13

Re: Must a lobbyist report the total expenses of a banquet, given by his association, at which a public official is a guest speaker? Must the lobbyist include the speaker's travel, accommodations, or honorarium on the lobbyist activity report?

This opinion responds to a request (AOR 1984-24) 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 the association that employs a registered lobbyist has a banquet and invites a public official to be its banquet speaker, must the lobbyist report the total expenses of the banquet? Must he report the expenses incurred for the speaker's travel, accommodations, or honorarium on his lobbyist activity report?

The mere presence of a public official at a banquet in the role of guest speaker does not, of itself, require the lobbyist to report the total expenses of that banquet in a lobbyist activity report. In order to be required to report expenses in connection with the banquet, the association's lobbyist and his activities would have to meet certain requirements. Those requirements, according to Tex. Rev. Civ. Stat. Ann. art. 6252-9c, § 6(b)(1), are:

the total expenditures under a category 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

Because this question is posed in regard to the reporting of expenditures, we make two assumptions for the purposes of this opinion. The first assumption is that the expenditures were made either by a registered lobbyist or with his consent. The second assumption is that the expenditure was made for direct communication between the lobbyist and a member of the legislative or executive branch with the intent to influence legislation or administrative action.

With those two assumptions, all the criteria that trigger the expenditure reporting requirement are met. Of course if the assumptions are not met in any particular instance, the expenses would not be reportable.

The term "expenditure" is defined in Tex. Rev. Civ. Stat. Ann. art. 6252-9c, § 2(7), as:

a payment, distribution, loan, advance, reimbursement, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

The expenditures that must be reported are identified by subdivision (b)(1) of § 6 of the act, which reads as follows:

(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; and

(B) gifts, awards, or loans, other than contributions as defined by Article 14.01 of the Texas Election Code.

Payments for the banquet expenses, the speaker's travel, and his accommodations are all reportable expenditures given our initial assumptions.

An honorarium is an honorary gift, a gratuitous payment, a "voluntary reward for that for which no remuneration could be collected by law" Cunningham v. Commissioner of Internal Revenue, 67 F. 2d 205 (3d Cir. 1933). Since an honorarium paid to the public official as a result of his presence at the, banquet is a "gift," it constitutes a reportable expenditure under § 6(b)(1)(B).

Because this inquiry supplies a limited number of facts, this opinion reaches no conclusion as to whether the acceptance of the honorarium constitutes a possible violation of Chapter 36 of the Penal Code.

The question presented in this request raises the issue of the correct method for calculating and reporting the banquet expenses. It is possible that the total banquet expense is reportable. The alternative is a pro rata amount based on the expense attributable to the public officer.

The degree to which an entertainment event is reportable was addressed by the 68th Legislature. S.B. 923, as introduced in that session, contained a provision in § 5(d) that would have required the lobbyist to report the total expense. That provision was deleted by the Senate Committee on State

Affairs because the committee felt that the intent behind the event is a crucial factor and is highly specific to the fact circumstances.

That was also the opinion of the attorney general on a parallel issue. In Op. Tex. Att'y Gen. No. H-583 (1975) the question related to the amount of an advertising expense that was required to be reported. The attorney general said:

Whether a registrant should report the full or only a pro rata cost of advertisements or publications directed toward both private citizens and public officials depends on the facts of each case.

In the current instance, the motivation, or specific intent, behind the event is not apparent from the question. If the lobbyist planned the entire event with the intent to influence legislation or administrative action, then the entire event is reportable. If, on the other hand, the invitation to the public official was motivated by the intent to influence, but the event itself was not, only the pro rata expenditure attributable to the public official is reportable.

While we assume some intent to influence legislation, we cannot assume the degree of that intent.

SUMMARY

If an association that employs a registered lobbyist funds a banquet with the consent of the lobbyist and invites a public official to be its banquet speaker, and if that banquet is an entertainment event that brings about direct communication to influence legislation or administrative action, then the lobbyist must report the expenses that were made for such communication with a member of the legislative or executive branch. These expenses include the speaker's travel, accommodations, and honorarium. Whether the banquet expenses are to be reported in total or on a pro rata basis, or not at all, is a question of fact.

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