

STATE ETHICS ADVISORY COMMISSION

ADVISORY OPINION 1984-7

Re: Must a registered Lobbyist report an entertainment event which he hosts for attendees who pay for tickets, resulting in proceeds in excess of the total cost of the even, if the event is also attended by public officials as his non-paying guests" If so how does one calculate the expense?

This opinion responds to a request (AOR 1984-4) 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 public officials attend an entertainment event hosted by a registered lobbyist as non-paying guests of the lobbyist, but other attendees pay for tickets which result in proceeds in excess of the total cost of the event, does the event have to be reported under Tex. Rev. Civ. Stat. Ann. art. 6252-9c (Vernon Supp. 1983-1984)? If so, how does one calculate the expense?

Under Tex. Rev. Civ. Stat. Ann. art. 6252-9c, § 6, a registered lobbyist is required to report:

(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 ... 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

Therefore, a registered lobbyist must report any expenditure on an entertainment event that he makes for directly communicating with a member of the legislative or executive branch to influence legislation or administrative action. Whether an expenditure is or is not made for directly communicating with a member of the legislative or executive branch to influence legislation or administrative action is a question of fact. Op. Tex. Att'y Gen. No. H-583 (1975). For the purposes of this opinion, we will assume that the requisite intent to influence legislation or administrative action exists in this instance.

The expenditures that § 6(b)(1) requires to be reported are defined in § 2(7) as follows:

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

The lobbyist, as host, would pay for the entertainment event. Any payment he makes in relation to this event is an entertainment expenditure regardless of the fact that he eventually recoups his expenses. That this is within the intent of the statute is evidenced by the inclusion of loans in the definition of expenditure. Furthermore, this interpretation is consistent with the purpose of this statute. The statute seeks to "preserve and maintain the integrity of the legislative process" by requiring that "the identity, expenditures, and activities of certain persons who, by direct communication to such officers, engage in efforts to persuade members of the legislative branch or executive branch to take specific actions . . . be publicly and regularly disclosed." Art. 6252-9c, § 1. Assuming this activity was for the purpose of such "direct communication," it constitutes the type of influence that the act seeks to expose. Therefore, the entertainment expenditures must be reported. The fact that the lobbyist has ultimately profited from his initial expenditure to persuade a public official does not make his activity any less influential.

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. If the event itself was not motivated by the intent to influence legislation or administrative action, but the invitation to the public officials was grounded in such a motivation, only the pro rata expenditure is reportable. This matter of motivation or intent is a question of fact. See Op. Tex. Att'y Gen. No. H-583 (1975); S.E.A.C. Op. No. 1984-13.

SUMMARY

When a registered lobbyist hosts an entertainment event to which he sells tickets resulting in proceeds in excess of the total event, and the event is also attended by a legislator or member of the executive branch as his non-paying guest, the lobbyist must report his expenditures for the event if he communicates with the public official to influence legislation or administrative action. The amount that is required to be reported is a question of fact.

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