

**NEW YORK
TEMPORARY STATE COMMISSION
ON LOBBYING**

OPINION NO. 52 (03-3)

FACTS

A registered lobbyist takes an assembly staff person to dinner at a local restaurant. The bill for dinner for two comes to \$138.78 with tax, an amount under the \$75 gift ban limit of the Lobbying Act. However, the lobbyist pays the bill plus an additional \$26 gratuity. The total for dinner and gratuity comes to \$164.78 or \$82.39 per person - over the gift limit.

ISSUE

Is this gift of dinner a violation of § 1-m of the Lobbying Act as an illegal gift?

OPINION

Yes, this is an illegal gift. When the value of the entire gift exceeds \$75, it is illegal under the Act. The problem here is that if the lobbyist reported only the cost of the meal and tax, the gift would be legal. The gratuity, if included in the payment of the check by the lobbyist, is part of the gift. However, the gratuity, if not included in the payment of the check, is not part of the gift. In the present case, the lobbyist kept good and proper records and reported his expenses honestly. In so doing, he violated the Act and may be subject to the sanctions provided by the statute.

APPROVED BY COMMISSION: OCTOBER 28, 2003

CONCURRING: STEWART C. WAGNER, CHAIR, RONALD J. AIELLO, VICE CHAIR; ALBERT S. CALLAN, MEMBER; BARTLEY F. LIVOLSI, MEMBER; JOSEPH A. DUNN, MEMBER; PATRICK J. BULGARO, MEMBER.

/S/

STEWART C. WAGNER
Chairman