

# **NEW YORK TEMPORARY STATE COMMISSION ON LOBBYING**

## **OPINION NO. 56 (05-2)**

### **FACTS**

A Corporation retains the services of registered lobbyists to advocate on its behalf in New York State, and, therefore, is required to file client reports pursuant to the New York State Lobbying Act (Lobbying Act) with the New York Temporary State Commission on Lobbying (Lobbying Commission).

Through its trade association, the Corporation agreed to co-sponsor two receptions and/or events during a 2004 National Political Convention. The trade association is coordinating co-sponsors, including the Corporation, and planning both events. The corporation will pay its contributions of the shared costs of the events to the trade association.

Attendees at each reception and/or event will be corporate officers and employees, delegates to the Convention, elected and appointed Federal, State and local elected and public officials as well as members of the general public. Attendance is complimentary at both events.

The first event was at a restaurant in New York City. It is a private, invitation-only event, not connected or sanctioned by a political party's National Committee or any official federal, political or candidate committee. The Corporation is one of 20 company co-sponsors. Even if the total cost per attendee is greater than \$75, the Corporation's share of the cost for this event was less than \$75 per attendee.

The second reception/event was held at the Fulton Ferry Landing in Brooklyn, New York. The host and prime sponsor of this event is a National Association. The Corporation is a member of the Association. The Corporation, together with other members of its trade association, is among various contributors to this reception and/or event. It is a private, invitation-only event, not connected or sanctioned by a political party's National Committee or any official federal, political or candidate committee. However, a contribution in kind, may be made by the trade association for the benefit of a political party, elected official, candidate for public office or campaign committee for public office. Even if the total cost per attendee is greater than \$75, the Corporation's share of the cost of this event will be less than \$75 per attendee.

### **ISSUES**

Are either or both of the referred events of the type that would require the exclusion of the costs of these events from being considered a gift as that term is defined in the Lobbying Act?

May lobbyists and/or clients jointly provide a gift to a public official in excess of \$75 in value, if the per lobbyist or client cost is less than \$75? How is the value of \$75 calculated by the Commission in determining if a gift is allowable under the law?

If a gift has a value less than \$75, must it be reported as an expense by a client or lobbyist in its bimonthly or semi-annual report?

### **PREAMBLE**

The Commission recognizes that the issues contained here were not contemplated by the original drafters of the statute, and, as such, are being raised "de novo." This opinion is rendered with a clear understanding that apportionment of cost in events such as set forth above could be utilized to evade the clear intent of the statute to limit gifts to public officials. All future applications of the findings of this opinion will be undertaken with a clear understanding that efforts to circumvent the clear intent of the statute will be addressed on a case-by-case basis.

### **DISCUSSION**

In order to determine whether a gift is prohibited under the Lobby Act, several elements must be established. First, is the gift being offered or given to a public official by a client or lobbyist, as those terms are defined in the statute? In this case the offer or is a client under the law and a public official would be the recipient of the largesse. Therefore, Section 1-(m) of the Act is applicable.

Secondly, does the event meet the definition of "gift" as set forth in Section 1(c)(j) of the Act? If so, is it excluded under Section 1(j) (1-7) of the Act? The events in question clearly meet the definition set forth in Section 1(j). As to the exclusions set forth in subsection 1 through 7. Advisory Opinion No. 55 (04-2), recently issued by the Commission, clearly establishes that the events set out in this case do not create a scenario that would fall within the exclusion. These events are not charitable or political pursuant to Advisory Opinion No. 55. The fact that the contribution may be made for the benefit of a political party, elected official, candidate for public office or a company committee is not dispositive as there is no assurance that a contribution in kind will be made. Should a contribution in kind be made that is reportable under Article 14 of the Election Law, the gift would be excluded under the Act (Advisory Opinion No. 55).

Third, the legality of the gift turns upon the value of the gift. The definition of "gift" under the Lobby Law §1c(j), states as follows:

§1c(j) The term "gift" shall mean anything of **value** given to a public official...

As to the value of a gift, such should be determined by determining the cost to any offeror. If a lobbyist or client offers a gift to a public official that costs the offeror less than \$75, then that gift would be considered a legal gift. Therefore, if three lobbyists and/or clients pool their resources and offer a public official a \$200 gift whose cost is equally shared, they would be considered to be giving a legal gift of less than \$75 each.

## **CONCLUSION**

Therefore, the value of a gift offered or received is determined by the actual cost attributable to each donor. In this case, the per person cost to the lobbyist and/or client does not exceed \$75, and therefore is not an illegal gift.

Further, the cost of any gift need only be reported if it is part of a lobbying effort or otherwise not specifically excluded from reporting. Such gifts are presumed to be part of a lobbying effort if the donor is a registered lobbyist or client but such presumption may be overcome by presentation of facts demonstrating that such gift was in fact not related to a lobbying effort (Advisory Opinion No. 38).

APPROVED BY COMMISSION: JUNE 15, 2005

CONCURRING: BARTLEY F. LIVOLSI, CHAIRMAN; PATRICK J. BULGARO, VICE-CHAIR; JOSEPH A. DUNN, MEMBER; ANDREW G. CELLI, JR., MEMBER; KENNETH J. BAER, MEMBER; PETER J. MOSCHETTI, JR., MEMBER.

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BARTLEY F. LIVOLSI  
Chairman