

**NEW YORK
TEMPORARY STATE COMMISSION
ON LOBBYING**

OPINION NO. 57 (05-1)

FACTS

A sporting team, which retains lobbyists in New York State, maintains an "owner's" box at the facility used by that team. The team invites "public officials" to this box from time to time, when the team is playing and at other events attended by the public. Besides attendance, food and beverages are available. The team has adopted the following policy:

"The sporting Team will not make a gift of admission to the Team's box to any public official. Any public official who attends the game in the owner's box must pay the full face value of a ticket to the box plus a good faith estimate of the per person cost of food and beverage provided at the box. Thus, public officials who attend a game in the box must pay the combined cost of admission and the food and beverage served in the box. This policy will be followed in all instances, except where the exceptions to the gift rules set forth in the Lobbying Commission's Guidelines are applicable."

ISSUE

Must "public officials" pay the face value of the ticket and pay for their food and/or beverages consumed while in the "owner's" box or is this gift exempt from reporting under Section 1-c(j)(1) of the New York State Lobbying Act.

DISCUSSION

Section 1-c(j)(1) of the New York State Lobbying Act states that the following are excluded from the definition of an illegal gift "...complimentary attendance including food and beverage, at charitable or political events; or complimentary attendance, including food and beverage, at officially related, widely attended events, if offered by the sponsor."

It seems that the games and events in question are widely attended and that the gift is offered by the sponsor (team). The only question is whether or not the event is officially related.

Public officials in New York are always responsible to their constituents to represent their interests and to be aware of a multitude of issues. It is quite conceivable that attendance at events such as a professional ball game could have relevancy to the duties of that public official. Therefore, the determination as to whether or not an illegal gift is being offered or accepted falls on whether or not such expense would be reimbursable if paid for by the public official. That is, would such expense fall within the guidelines set by the New York State Comptroller's Office for those expenses that are subject to reimbursement when paid for by a public official or employee as part of their official duties. (Further, if this is an exempt gift, its value is irrelevant.)

If however, after inquiry it is determined that the gift offered to a public official was not "officially related" and not reimbursable, then the team may not provide access to the box, if it would result in a gift having a fair market value in excess of \$75 (See Opinion No. 54 (04-01)).

OPINION

It is therefore the opinion of this Commission that a report of a possibly illegal gift will require an inquiry by the staff of the New York State Comptroller as to whether or not the gift was of a type subject to reimbursement. If the Comptroller's Office responds that it is, then this Commission must close the inquiry with the conclusion that the gift falls within the exemption provided by Section 1-c(j)(1) of the Act.

If, after the inquiry, the gift is not declared to be reimbursable, it then becomes the lobbyist's or client's obligation to provide documentary evidence to prove that the fair market value of the gift does not exceed \$75.

So far as this decision conflicts with or contradicts any prior opinions of this Commission, this decision shall have precedence.

APPROVED BY COMMISSION: FEBRUARY 1, 2005

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

/S/

PATRICK J. BULGARO
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