

**NEW YORK
TEMPORARY STATE COMMISSION
ON LOBBYING**

OPINION NO. 60 (05-05)

FACTS

An entity required to file reports with the Commission had offered and provided a public official with transportation on a private plane traveling from Westchester County Airport to the Albany International Airport. The aforementioned entity issued an invoice to the public official requesting payment of a sum of money equal to the cost of the highest available commercial fare for the point-to-point transportation as set forth above. The public official paid that fare.

ISSUE

Has a gift been made to the public official under New York State Lobbying Act Section 1-m?

OPINION

The Lobbying Act prohibits gifts from lobbyists or their clients to public officials in excess of \$75. The Commission has previously opined that a fair market analysis must be applied to determine the value of a lobbying expense (Commission Opinion #54). A similar analysis must be applied when a public official pays less than the actual cost when provided anything of value by a lobbyist or client. The proper measurement of fair market value in cases of this type is the actual cost of the transportation divided by the number of people receiving said transportation to arrive at a fair market value per person for the transportation. In the instant case, the public official paid far less than his/her proportionate share of the actual cost of the plane flight. The highest available commercial fare is only applicable if the public official is traveling on a commercial flight. Where the cost of the flight on the private plane is ascertainable, the public official must pay his/her proportionate share. Anything less than that amount would constitute an illegal gift under Lobbying Act Section 1-m, if that amount exceeds \$75.

APPROVED BY COMMISSION: April 5, 2005

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

/S/

Bartley F. Livolsi
Chairman