

**NEW YORK
TEMPORARY STATE COMMISSION
ON LOBBYING**

OPINION NO. 60 (05-5) (Amended)

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 Commission hereby amends its existing Advisory Opinion No. 60 by incorporating Ethics Commission Opinion No. 97-3 (attached hereto) in its entirety.

APPROVED BY COMMISSION: OCTOBER 5, 2005

BARTLEY F. LIVOLSI, CHAIR; PATRICK J. BULGARO, VICE CHAIRMAN; JOSEPH A. DUNN, MEMBER; KENNETH J. BAER, MEMBER.

/S/

BARTLEY F. LIVOLSI
Chairman

Commission Opinion No. 60 (Amended)

CONCURRENCE

Commissioner Patrick J. Bulgaro

The failure of this Commission's Amended Opinion No. 60 to articulate the rationale and reasoning therefore, along with the recent amendment of the Lobby Act and our powers to issue opinions thereunder, requires my written concurrence.

It is imperative that the lobbying community understand that under the recently amended Lobby Act, any advisory opinion issued by the Commission shall only be binding upon the person whom requested it and any modification by the Commission of a previous opinion shall only operate prospectively. (See Lobby Act §1-d(c)(6)) Therefore, since this Commission could only prospectively amend its previously issued Opinion No. 60, and the person whom requested the original opinion has not asked for a prospective modification, there is no rational reason at this time for the Commission to take any action relative to its previously issued Opinion No. 60.

Clearly the majority of Commissioners believe that a modification to the Commission's Opinion No. 60 would be in order should a similar fact pattern ever arise. With that thought in mind, the Commission encourages any lobbyist or client intending to provide chartered air transportation for a public official to so notify this Commission prior to the actual offering

of said transportation so that we might provide a written opinion as to the appropriate amount to be paid by the public official.

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DISSENT

Commissioner Peter J. Moschetti, Jr.

The Commission's recent action in amending Commission Advisory Opinion No. 60 which it had unanimously approved less than six months ago necessitates this dissent. The Commission's majority wholly fails to articulate a reason for its unprecedented action. Why would the Commission revisit this request for an opinion when the requesting party did not request a modification and factually, absolutely nothing has changed between the original opinion and the amended opinion. If one were to accept the proffered explanation that the Commission desires its opinions to be consistent with that of the New York State Ethics Commission, then we must be prepared to revisit all of the Commission's Advisory Opinions regarding gifts so as to complete the journey to consistency. Having done so, will this Commission now aggregate the value of all gifts given by a lobbyist during a calendar year so as to be consistent with the New York State Ethics Commission's view that a public official may not accept gifts exceeding the \$75 threshold annually as opposed to this Commission's former opinion that each gift would be valued independently.

More upsetting is the fact that the Commission's amendment of its previous opinion **has absolutely no effect** on the conclusion that an illegal gift was made. In the matter before the Commission, the lobbyist provided chartered airfare and was reimbursed through the payment of the highest published **Coach** fare. New York State Ethics Commission Opinion 97-3, now adopted by this Commission, would require the reimbursement by the public official of **First Class** fare. The end result of this Commission's unprecedented action of amending its previous unanimously approved opinion?...nothing, the action in question is still an illegal gift, either under the Commission's original Advisory Opinion No. 60 or its more recently amended Commission Advisory Opinion No. 60.