



## DELAWARE PUBLIC INTEGRITY COMMISSION

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TO: Elected State Officials/Cabinet Secretaries/Division Directors/Other "Public Officers" and Registered Lobbyists

FROM: State Public Integrity Commission

DATE: March 31, 2003

SUBJ: **Ethics Bulletin 010 - Gift Reporting by Public Officers & Lobbyists**

During the recent financial disclosure reporting period, a number of public officers asked how to properly report: (1) gifts from lobbyists who split the costs of a gift; and (2) gifts if part of the purchase price is designated for a charity. We have addressed those issues for public officers. *Commission Op. Nos. 96-07 & 96-33 (attached)*. However, lobbyists must report expenditures on public officers for gifts, food, entertainment, etc., under a different provision. To the extent the lobbyists' reporting requirements created confusion, we wish to clarify the issues.

**SUMMARY CONCLUSION:** For the reasons which follow: (1) public officers must report the full "value of the gift" itself, even if more than one source paid for the gift; (2) lobbyists must affirm to the public officer the full "value of the gift," even if a lobbyist pays only part of the value; and (3) the "value of a gift" is not reduced if part of the purchase price goes to charity. This ruling is in accordance with the clear statutory language and also with interpretations binding on U.S. Congressional members, officers and employees. *See, Ethics in Government Reporter, U.S. House of Representatives, Committee on Standards of Official Conduct, "Memorandum for All Members, Officers and Employees" (November 14, 2002) at ND-040v, pp. 1-3; Senate Select Committee on Ethics, Senate Ethics Manual, 106<sup>th</sup> Cong., 2d Sess. (2002) at 24-25.*

### **(A) Applicable Law**

#### **(1) Gift Reporting by Public Officers**

Public officers must report: "The **source** of each of the following... Any **gift** with a **value** in excess of \$250 received from any person, identifying also in each case **the amount of each such gift**. The recipient may rely in good faith on the representation of the source as to the **gift's value**." 29 *Del. C. § 5813(a)(4)(e)(emphasis added)*.

#### **(2) Expenditure Reporting by Lobbyists**

Lobbyists shall report: "for each employer...total expenditures ... for all direct expenditures, **costs or values, whichever is greater** provided for members of the General Assembly or for

employees or members of any state agency... and list the recipient any time expenditures exceed \$50 per diem. Lobbyists shall affirm that he or she provided the recipient of any gift in excess of \$50 with a representation as to the **value of the gift.**” 29 *Del. C.* § 5835(b) and (c)(emphasis added).

## **(B) Application of Law to Facts**

As lobbying reports are public records, actual reports are used to illustrate the law. Three lobbyists filed reports indicating they gave NASCAR tickets and/or Grand Gala invitations to public officers. Two lobbyists represent Shell Oil. Another represents Motiva. In their quarterly reports to this Commission, each reported spending \$132 on 6/02/03 for NASCAR tickets given to the public officers listed. They affirmed that the officers were advised of the **“gift’s value.”** Each lobbyist sent a separate letter to the public officers identifying the item, date and the \$132 expenditure by that single lobbyist. The letters did not say that each lobbyist was affirming only a **portion** of the “gift’s value.”

### **(1) Reporting the Source**

Public officers must report the “source” of gifts received from any “person.” 29 *Del. C.* § 5813(a)(4)(e). “Person” means “an individual, partnership, corporation, trust, joint venture and any other association of individuals or entities.” 29 *Del. C.* § 5804(b); 1 *Del. C.* § 302(16). When multiple sources give a gift, the public officer must report all known sources of that gift. *Commission Op. No.96-07 & 96-33.* (attached).

A problem arises for public officers in reporting the “source” when each lobbyist sends a separate letter without indicating that the “source” that the lobbyist represents paid only part of the value. Some public officers receive the first letter, and believe the subsequent letters are duplicates. As a result, they do not realize the gift is from more than one source.

### **(2) Reporting the Value**

**Lobbyists:** Lobbyists must affirm the “value of the gift” to the public officer. In the Shell/Motiva situations, each lobbyist reports their **portion**. Their letters to public officers do not say that the “value” each lobbyist is affirming is only a **portion** of the “value of the gift.”

**Public Officers:** Public officers also must report the “gift’s value” if it exceeds \$250. Because of the separate letters from each lobbyist, public officers have problems reporting the value. Some base their report of “value” on one letter because they believe the other letters are duplicates: one lobbyist reports his expenditure as \$132, the officer believes he does not have to report the gift as the value is lower than \$250. Some officers realize that three separate lobbyists are reporting, but construe the “value” from each lobbyist as the measure of whether they have to report the item: they see three separate letters with a value reported as \$132, and do not believe they must report any of the three. Other officers see two letters from Shell lobbyists and report the combined total of \$264, but do not realize the Motiva lobbyist paid for one-third of the “gift’s value.” As a result, the public officer does not add \$132 from Motiva, which is less than \$250, to the “gift’s value.”

“Value” is not defined in Title 29, Chapter 58. Under the rules of statutory construction, terms that are not defined by law are given their common and ordinary meaning, and read within their context. *Commission Op. No. 96-07 & 96-33 (citing 1 Del. C. § 303)*. Read within its context, it is the value of the “gift” itself, not how it was paid for, that is reported. A “gift” has the same value whether one person or many paid for it. As both the lobbying and the financial disclosure provisions use the “gift’s value” as the reporting standard, the meaning must be the same for both reports. Thus, when a lobbyist affirms to the public officer only a portion of the “gift’s value,” without indicating that the costs were split, then the lobbyist has not affirmed the “gift’s value.” At a minimum, when costs are split, each lobbyist should affirm to the public officer the amount that lobbyist paid, but clearly identify that it is only a portion of the “gift’s value.”

We noted in our prior ruling, that the reporting provisions are meant to instill public confidence in its government, and to insure there is not even an appearance of impropriety. *Commission Op. No. 96-07 & 96-33*. As noted by the U.S. House Committee on Standards of Official Conduct, the law “cannot be evaded by such devices as dividing the expense of a gift among two or more lobbyists.” It noted that as the requirements were “clearly stated in the gift rule. It is absolute, and cannot be evaded by any artificial devices.” Similarly, Delaware’s law is clear - both public officers and lobbyists are to report the “gift’s value.”

### **(3) “Value” does not change when part of the costs go to Charity**

Organizations sometimes buy tickets to events, such as the Grand Gala, and part of the price paid is designated for charity. We have held that a “gift’s value” is not reduced when part of the price paid is meant for charity. *Commission Op. No. 96-07 & 96-33*. The statute has no exemption to, or change in, “value” when part of the price is meant for charity. *Id.* In interpreting the law, Courts look first to the statutory language. *Goldstein v. Municipal Court, Del. Super., C.A. No. 89A-AP-13, J. Gebelein (January 7, 1991)*. Where the legislature is silent, additional language will not be grafted onto the statute because such action would be creating law. *Goldstein (citing State v. Rose, Del. Super., 132 A.2d 864, 876 (1926))*. Thus, the “gift’s value” is what one must pay for a particular event or item. *Commission Op. No. 96-07 & 96-33*. For example, if it costs \$10,000 for a table at an event, and \$5,000 of the purchase price goes to charity, the “value” to the purchaser is still \$10,000. If the purchaser invites 10 people to that table, the “value” to each person is \$1,000. Similarly, if a “per plate” dinner were \$100, and chicken was served, the “value” does not change just because a chicken dinner does not usually cost \$100.

As noted by the House Standards of Conduct Committee, gifts are valued at the amount for which the item or service is available, and the gift laws “cannot be evaded by attributing an improperly low value to a gift.”

The letter of the law requires reporting the “gift’s value” with no exception for possible tax exemptions to a charity. Delaware’s law is meant to avoid even an appearance of impropriety. Thus, we remind public officials, as was done by the House Standards Committee, that they are “to adhere to the *spirit* as well as to the letter” of the law.

This does not stop a lobbyist or public officer from disclosing more information than the law

requires. If, for example, they wish to indicate that the “gift’s value” was \$250, and further disclose that a given portion was designated for charity, they may do so.

## *Attachment*

### **Gift Reporting for Public Officers Synopsis of Commission Op. Nos. 96-07 & 96-33**

#### **Charitable Event and**

#### **Out-of-State Conference**

A public officer was asked, because of his public position, to participate in a charitable athletic event at no cost to him. The value of being able to participate was approximately \$2,000. Some public officers attended an out-of-state conference which was paid for by a number of entities. The primary sponsor was known to the public officers but not all contributors were known. Although the total cost exceeded \$250, if the costs were split by the entities, none would have paid more than \$250. Are these matters to be reported, and if so, how?

#### **Who is the “source” and what is the “value” of a gift under the Financial Disclosure statute?**

The financial disclosure law requires that public officers report:

“The source of each of the following items . . .

Any gift with a value in excess of \$250 received from any person, identifying also in each case the amount of each such gift. For purposes of compliance, the recipient may rely in good faith upon the representation of the source of the gift as to the gift’s value. 29 *Del. C.* § 5813(a)(4)(e) (*emphasis added*).

#### **Payment by More than One Entity**

The first issue is if “source” is limited to a single entity or encompasses multiple entities. The code does not define source. The Delaware rules of statutory construction require that “words and phrases shall be read within their context and shall be construed according to the common and approved usage of the English language.” 1 *Del. C.* § 303. The common meaning of “source” is “a generative force: cause”; “a point of origin or procurement: beginning” “one that initiates”; “origin.” *Merriam Webster’s Collegiate Dictionary*, p. 1123-24 (10th ed. 1994). While both the language in the statute and the language in the dictionary appear to be phrased in the “singular,” the Delaware rules of construction provide that words used in the singular include the plural and the plural includes the singular. 1 *Del. C.* § 304; *See, State v. Minnick*, *Del. Super.*, 168 A.2d 93 (1960); *State v. Caruso*, *Del. Gen. Sess.*, 32 A.2d 771 (1942); *Application of Pepper*, *Del. Gen. Sess.*, 54 A.2d 173 (1947).

Additionally, elsewhere in the financial disclosure law, the legislature has made it clear when it wished to refer to “a single source.” *See, e.g., 29 Del. C. § 5812 (j)*(income means “income from a single source”); *29 Del. C. § 5813(a)(4)(a)*(income from a “single source”); *29 Del. C. § 5813(a)(4)(b)*(capital gain from a “single source”); *29 Del. C. § 5813(a)(4)(c)*(reimbursement from a “single source”). Had the General Assembly meant for the “source” of gifts to be limited to a “single source,” it could have used such term. *See, General Motors v. IAB, Del Supr., 545 A.2d 1186,1191(1988)*(where a provision is expressly included in one section of a statute, but omitted from another, it is reasonable to assume the legislature was aware of the omission and intended it). Also, the statute requires reporting of the source of gifts received from any “person.” In chapter 58, “person” means “an individual, partnership, corporation, trust, joint venture and any other association of individuals or entities.” *29 Del. C. § 5804(6)*; *See also, 1 Del. C. § 302(16)* (in construing all statutes, “person” includes individuals, corporations, etc.) Thus, “source” and “person” can include more than one entity.

**What is the “value” when payment is by more than one entity?**

The next issue is if “value” is based on the amount paid by each single entity or based on the aggregate amount. The Code provides that “any gift with a value in excess of \$250” is to be reported. *29 Del. C. § 5813(a)(4)(e)*. As indicated above, words and phrases are to be read “in their context.”

*1 Del. C. § 303*. Read within its context, it is the value of the “gift” itself, not how it was paid for, that is to be reported as the “gift” has the same value whether it is paid for by one person or many. Such interpretation is consistent with the legislative purpose of disclosure. The legislature, in enacting the financial disclosure law, found that:

“[P]ersons serving in State government hold positions of public trust which require rigorous adherence to the highest standards of honesty, integrity and impartiality. In order to insure propriety and preserve public trust, a public official or employee should refrain from acting in his official capacity on any matter wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment, and avoid even the appearance of impropriety. A disclosure of the personal financial interests of public officials will serve to guard against conduct violative of this

public trust and to restore the public's faith and confidence in representatives of its government." 29 *Del. C.* § 5811.

If a gift were not reported because more than one entity paid for it, but the gift had a value that might on the face of it "reasonably be expected to impair objectivity," or if a gift could be accepted and not reported because entities split the costs, the public might well question the point of having a disclosure law, if it could be effectively circumvented to avoid reporting. That would mean gifts that might appear improper or impact on objectivity could conceivably never be disclosed. It is unlikely that interpretation would "restore the public's faith and confidence in representatives of its government."

### **Meaning of "Value"**

The next issue is another determination of "value." The situation given pertains to a charitable athletic event such as the McDonald's Open, where a public official may be invited to appear and play golf.

The first question is if the recipient should base the value on the fair market value of being able to play golf at that time and place or whether the value is the amount raised per participant and donated to charity. The Code states that the individual is entitled to rely in good faith on the representation by the source as to the gift's value. 29 *Del. C.* § 5813(a)(4)(e). The Code does not define "value."

The rules of statutory construction require that the plain and ordinary meaning of words should be used. 1 *Del. C.* § 303. "Value" means "a fair return or equivalent in goods, services, or money for something exchanged; the monetary worth of something; marketable price; relative worth, utility or importance." *Merriam Webster's Collegiate Dictionary*, p. 1305 (10th ed. 1994). Based on the ordinary meaning, the Commission concludes that "value," under the financial disclosure law, means "marketable price or relative worth." It would be the value paid. Accordingly, the value of the golf event would be what one would have to pay or contribute to participate in the same event. Thus, the full price of a ticket to play in the Pro-Am portion of the McDonald's golf event is its value, not what one would normally pay in green's fees to play at that course.

### **Consideration of Equal or**

An item is not a gift if "consideration of equal or greater value is

**Greater Value**

given.” 29 *Del. C.* § 5813(a)(4)(e). The question is whether the public officer’s time attending such charity event, is the requisite “consideration.” The same question applies to the conference: is attendance by General Assembly members and Executive Branch officials the requisite consideration?

“Consideration” generally means that something is given in exchange. 17A *Am. Jur. 2d Contracts* §§113 and 114. It means “some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered, or consideration by the other, as an act of forbearance or the creation, modification, or destruction of a legal relation; or a return promise bargained for and given in exchange for the promise.” 17 *Am. Jur. 2d Contracts* § 85.

Regarding the golfing event, while the Commission appreciates that it is helpful to charities to have political or other “named” personages on hand, it is also an enjoyable, non-governmental activity for the legislator. Without more, there is not “consideration of equal or greater value.”

Regarding the conference, the agenda showed that while there were some meetings, they appeared to be incidental compared to the majority of time which was not devoted to business. While attending the short meetings was “some” consideration, it was not equal to or greater than the value of the gift.

**Conclusion**

In summary, the conference trip’s value exceeded \$250. The fact it was paid for by several sources who each contributed less than \$250 does not mean it should not be reported, as it is the value of the gift that is reported. As for reporting the “source,” the individual must report all known sources and note the lack of identity of other sources, if they are unknown. If they become known, their identity must reported. And as there was insufficient consideration to remove the trip from the definition of gift, the trip should be reported.

Regarding the golfing event, assuming the cost to participate in the event would be \$2,000, the value exceeds \$250 and would be reported, as there was no consideration of equal or greater value given. (*Commission Op. Nos. 96-07 & 96-33*).