

# LOBBYING SYNOPSIS

1996-2019

## Expenditure Reporting

A lobbyist shall file separate reports for each employer which he or she represents. Each report shall contain the total expenditures during the reporting period 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 for the following:

- (1) Food and refreshment;
- (2) Entertainment, including the cost of maintaining a hospitality room;
- (3) Lodging expenses away from home;
- (4) Fair value of travel if the trip exceeds 100 miles;
- (5) Recreation expenses; and
- (6) Gifts or contributions, excluding political contributions as defined in Chapter 80 of Title 15 provided to members of the General Assembly. 29 Del. C. § 5835(b).

The lobbyist shall also affirm that he or she has provided the recipient of any gift in excess of \$50 with a representation as to the value of the gift. 29 Del. C. § 5835(c).

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### “Cost” or “Value” Reported Should Reflect Language & Purpose of Statute--Commission Op. No. 03-15

A lobbyist asked how to report expenditures of differing amounts spent by lobbying organizations for public officers to attend a charitable event where the “cost” to one lobbyist’s employer may be more than the “cost” for a different employer, but the tables and seats were, according to the facts, the same. The Commission concluded that for the particular situation described, lobbyists should report the price their employer actually paid for the seats at their particular table, rather than the individual ticket price, as the higher costs for the seats at their particular table were greater than the individual ticket price.

#### I. Facts

The situation given was as follows: For a charity dinner, three companies invite legislators. Company "A" is a big supporter of the charity and purchases a table for 10 for \$10,000. Company "B" spends a lesser amount (\$5,000) for a table of 10. Company "C" buys a table of 10 for \$1,500. Individual tickets are \$150.00. There is no difference in seating or any other difference between the tables of 10 at \$10K vs. the \$150 ticket.

Does Company "A" report the value of the ticket \$1,000 per legislator?

Does Company "B" report the value of the ticket \$500 per legislator?  
Does Company "C" report the value of the ticket \$150 per legislator?  
Do all report the value/cost of the ticket as \$150, as if individuals purchased the tickets?

## II. Application of the Law

The Commission must base its opinions on a "particular fact situation." 29 *Del. C.* § 5807(c). While the question appeared to be hypothetical, the Commission was aware that such events occur in Delaware, and therefore used the situation as expressed by the lobbyist to respond.

Lobbyists are to file with the Commission quarterly expense reports for each employer, giving the total of all direct expenditures, **costs or values, whichever is greater**, provided to General Assembly members or State agency employees or members. 29 *Del. C.* § 5832(b).

Terms that are not statutorily defined are given their plain and ordinary meaning, consistent with the General Assembly's intent. 1 *Del. C.* § 301 and § 301. Neither the phrase "costs or values, whichever is greater," nor any words in the phrase, are statutorily defined. Thus, we look to the common and ordinary meaning, consistent with the General Assembly's intent.

In determining legislative intent, Courts look first to the statutory language. *Goldstein v. Municipal Court*, Del. Super., C.A. No. 89A-AP-13, J. Gebelein (January 7, 1991). Generally, all words of a statute must be given meaning. *Id.* (citing *Sutherland, Statutory Construction, Vol. 3A* at 208). As the plain language refers to "whichever is greater," then from the plain and ordinary meaning, the General Assembly recognized that "costs" or "value" could mean different things. In fact, dictionaries show that "costs" and "value" are, sometimes the same; in other instances "costs" may be less than the "value" or vice versa. See, e.g., *Webster's Seventh New Collegiate Dictionary*, pp. 262 and 1305 (10<sup>th</sup> ed. 1967) ("cost" can mean "amount or equivalent paid")("value" can mean "monetary worth of something," or something intrinsically valuable or desirable); *Black's Law Dictionary*, pp. 35, 346, 1552 (6th ed. 1990) ("cost" can be "actual cost," which may not necessarily be the market value") ("costs" can have "varying meanings according to the circumstances in which it is used"); ("cost" can be imputed from the "value" derived from or based on facts other than actual cost records"); ("actual market value" is the price at which something is freely offered for sale to all purchasers); ("value" may mean "actual value" "market value," "fair market value"); "value" can be "a thing as of itself and not the value reflecting extrinsic factors such as market condition).

As the meanings can vary or overlap, we also look to the statutory purpose and place the words within the context of legislative intent. The United States Supreme Court has held that lobbying expenditure reports give the public information on where the money comes from; how it is spent, etc., and serve to deter actual corruption and avoid even the appearance of corruption. See, *United States v. Harris, supra; cf., Buckley v. Valeo*, 424 U.S. 1, 66, 46 L. Ed. 2d 659, 715 (1976). Statutes having a public purpose are broadly construed to achieve that purpose. See generally, *3A Sands, Sutherland Stat. Constr. Chapter 71*, (5th ed. 1992). By requiring lobbyists to report "whichever is greater," the General Assembly insured broad disclosure to the public.

In the situation described, neither the plain language nor the purpose--broad disclosure--is served if all lobbyists report the individual ticket price of \$150. The plain language, consistent

with the purpose, requires reporting “whichever is greater.” The individual ticket price of \$150 is not greater than what A and B paid. However, the language and intent are served if lobbyists report the actual expenditure. Here, the broader result occurs whether the price is viewed as “cost” or “value.” For example, if “cost” means the “actual dollar amount” spent by each entity, then A must disclose more than B and C. Similarly, if “value” means “actual cost” or refers to some intrinsic worth, e.g., some “added value” because the larger contributors get additional recognition and the public officers at A’s table get the “added value” of sitting with the “big contributor,” then the “added value” of being at A’s table is reflected in the difference in costs paid by A as compared to B or C.

There may be other situations where “cost” and “value” may differ. Those issues are not before us. However, as a general rule, the lobbyist should report the amount (whether “cost” or “value”) that will result in the broadest disclosure that reflects the value for that particular event.

### **Splitting “Costs” Between Lobbyists Does Not Change the “Value”--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*. 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.*

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 was 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. Nos. 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 impropriely 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.

### **Reporting Total Expenditures--Commission Op. No 06-43**

A lobbyist asked if he should report the value of a gift to public officers who cosponsored legislation favorable to the lobbyist’s client. The gift was an 8X10 framed version of the legislation. The lobbying law requires lobbyists to report the value of any gift. When the value is \$50 or less, the value is reported in the first section of the form based on the category, e.g., gifts. If greater than \$50, it is reported in Section 2 and the lobbyist must identify the value, the

name of the public officer recipient, and notify the officer of the value. 29 Del. C, §58832 (b) and (c).

### **Can Non-Profit Volunteer Groups be Exempt from Filing Expenditure Reports?-- Commission Op. No. 96-83**

The Commission was asked it would exempt non-paid volunteers of non-profit groups from filing quarterly expenditure reports when no expenditures were made.

The Commission has held that persons who are not paid and voluntarily assist non-profit groups are required to register as lobbyists when they are selected to directly communicate with State officials to advance their organization's interests, because "lobbyist" includes not only: (1) persons who are compensated; and (2) persons who expend funds; but also (3) persons who represent those with a substantial purpose of influencing legislative or administrative action. See, *Commission Op. No. 96-37*; 29 Del. C. § 5831(a)(1)(a)(b) and (c).

Having concluded that such persons may be considered lobbyists, the Commission concludes they must file quarterly expenditure reports even if no expenditures of the type listed are made. The statute requires "each lobbyist" to file the quarterly reports. 29 Del. C. § 5835(a). The General Assembly granted no exceptions, although it was clearly aware of the three distinctions between the types of lobbyists noted above. Had the General Assembly desired to do so, it could have limited the reporting requirement to only persons within the category of those who expend funds.

Past practice has been that lobbyists submit reports with "zero," if no expenditures are made--whether the lobbyist represents a non-profit or a for-profit organization. The Commission finds that practice consistent with the statutory language, because there are no exceptions for lobbyists who do not expend funds.

The Commission does not believe that filing the reports is unduly burdensome because basically all that is required is for the lobbyist to fill in a "zero" and sign the form once a quarter.

The exemption sought is not in the statute and there is no indication the General Assembly intended any exemptions. To impose such language on the statute would be creating law--indeed changing existing law--which is beyond this Commission's authority. See, *Goldstein v. Municipal Court, Del. Super.*, C.A. No. 89A-AP-13, J. Gebelein (January 7, 1991) (*citing State v. Rose, Del. Super.*, 132 A. 864, 876 (1926)) (where the legislature is silent, additional language will not be grafted onto the statute).

### **Payments by Lobbyist--Commission Opinion No. 96-24**

If a General Assembly member is in a lobbyist's office conducting business and the lobbyist's wife calls about dinner and the lobbyist invites the General Assembly member to dinner are the expenditures from such a "casual and spontaneous offer" reportable? A lobbyist planned to have an event such as the baptism/christening of a grandchild and wanted to know if he invited General Assembly members would the expenditures be reportable?

The expenditure reporting provision does not exclude "casual and spontaneous offers" of food, entertainment or gifts. Read literally, it also does not appear to limit expenditures to those

connected to lobbying, as it does not refer to such connection. This Commission has followed the rules of statutory construction requiring words and phrases to be read in their context and construed according to the common and approved usage of the English language, unless such construction would be inconsistent with the manifest intent of the General Assembly. See, 1 *Del. C.* §§ 301 and 303; *Commission Op. Nos. 96-14, 96-15, 96-18.*

The statute defines “lobbyists” as the persons to whom it applies. “Lobbyists” are persons who act to influence matters pending before the General Assembly or a State agency, “and who in connection therewith . . . expend any funds during the calendar year for the type of expenditures listed in § 5835(b).” 29 *Del. C.* § 5831(a) (emphasis added). The expenditure provision requires reports for the “employer which he or she represents.” 29 *Del. C.* § 5835(b) (emphasis added). Thus, the language indicates the provisions are to be read together. Therefore, expenditures must “be in connection” with lobbying. See, *United States v. Harris*, 347 U.S. 612, 74 S. Ct. 808 (1954).

In *Harris*, the federal lobbying law defined the persons to whom the law applied as persons whose principal purpose was influencing legislation. There was a separate provision for disclosing expenditures. The identification provision did not refer to the expenditure provision. The U.S. Supreme Court held that the provision identifying the persons to whom the statute applied modified the provision for disclosing expenditures. Such modification limited expenditure disclosure to only the identified persons and purposes. It found to read otherwise would “do violence to the title and language of the code as well as its legislative history.” *Harris*, 347 U.S. at 619, 74 S. Ct. at 813; *cf.*, *Buckley v. Valeo*, 424 U.S. 1, 65 & 80, 46 L. Ed. 2d 659, 713 & 722(1976) (expenditure reporting of campaign contributions must have “relevant correlation” or “substantial relation” between the government interest in having expenditures disclosed and the information on expenditures which is required to be disclosed).

To construe Delaware’s provision so broadly as to require unrelated expenditures to be reported would be inconsistent with the statutory language and purpose. That purpose is to insure government officials and the public know what pressures are being brought to bear on officials to effect legislative or administrative action. See, *Commission Op. Nos. 96-08, 96-3, 96-14 and 96-18.* To report unrelated spending goes beyond providing the information of who is attempting to influence officials, who is spending funds for that purpose, and how much is being spent for that purpose. See, *Harris*, 347 U.S. at 623, 74 S. Ct. at 815 (narrowly construing federal lobbying statute to avoid First Amendment issues).

This Commission looks to the type and character of activity undertaken. See, *Harris*, 347 U.S. at 623, 74 S. Ct. at 815. Such a criterion is not novel in law. *Id.* at 623; 74 S. Ct. at 815. The type and character of the activity must relate to promoting, advocating, influencing or opposing matters before the General Assembly and the expenditures must be “in connection therewith.”

The lobbyist wanted to know at what point an event moves from one that is not reported to one that is.

The Commission, looking at the type and character of the activities this lobbyist referred to held that, in the baptism situation, if a General Assembly member is one of a number of persons invited, including persons who are not General Assembly members or State agency members, and there is no direct communication on matters before those bodies, it would not be reported as there would be no promoting, advocating, influencing or opposing and the expenditures for this specific activity would not appear to be “in connection” with lobbying. The

Commission noted that it was possible that a casual comment concerning pending legislation may be made to such guest at the social period following the christening. It held that if the comment remained casual and was not expanded upon to the point of lobbying, the expenses of the event in question need not be reported, as they would not be made "in connection" with lobbying.

Where the General Assembly member is invited to dinner, while conducting business with the lobbyist, the result may differ. Logically, if one is conducting lobbying business a continued discussion could occur over dinner. In that case, the expenditures could be reportable. Again, one must look to the type and character of the activity. This Commission must base its advisory opinions on particular facts. 29 *Del. C.* § 5807(c). Here, the Commission was without sufficient facts to render a final decision on the invitation to dinner situation.

### **Employer Expenditures--Commission Opinion No. 96-24**

Is it correct to report expenditures by a lobbyist's employer (an association) who held a legislative party, when the employer, rather than the lobbyist, made the expenditures?

The statute requires reporting of expenditures "for each employer" represented. 29 *Del. C.* § 5835(b). It does not distinguish between expenditures made by the lobbyist or the employer. Interpretation must be consistent with the manifest intent of the General Assembly. 1 *Del. C.* § 301.

It appears clear that the event, and related expenditures, were for the association (and its members) to meet with General Assembly members, with a substantial opportunity to directly communicate on matters pending before the General Assembly. See, *Commission Op. No. 96-24*.

The purpose of the statute is to insure the public is informed regarding pressures brought to bear on government officials. See, *United States v. Harris, supra; cf., Buckley v. Valeo*, 424 U.S. 1, 66, 46 L. Ed. 2d 659, 715 (1976) (campaign financing expenditure disclosure provides information as to where money comes from; how it is spent; deters actual corruption and avoids the appearance of corruption). One indicia of pressure may be the funds expended on officials. If only funds expended by the lobbyist were to be reported, an employer could make all expenditures and no expenditures would ever be reported. It seems consistent with the statutory language and purpose that not only funds spent by the lobbyist, but also by the employer, "in connection" with lobbying, should be disclosed.

### **Indirect Expenditures--Commission Opinion No. 96-36**

If an organization brings members to Dover to lobby from time to time, must they file expenditure reports for the money spent for gas?

The statute requires reporting of "direct expenditures . . . provided for members of the General Assembly or for employees or members of any State agency." 29 *Del. C.* § 5835(b). "Direct" is not defined by the code. Thus, the common and ordinary meaning is used. See, 1 *Del. C.* § 303. "Direct" means "from the source without interruption or diversion." *Merriam Webster's Collegiate Dictionary*, p. 328 (10th ed. 1994). As such expenditures are not "direct expenditures" on government officials, they are not required to be reported.

