

GUIDELINES FOR LOBBYISTS

The following constitutes the guidelines for compliance with the Nevada Lobbying Disclosure Act, as required pursuant to paragraph (b) of subsection 2 of NRS 218H.200.

QUESTION 1:

Does an owner of or attorney employed by a company need to register as a lobbyist?

ANALYSIS

A person must register as a lobbyist if he or she (1) appears in the legislative building (or another building in which the legislature holds hearings), (2) communicates with a member of the legislative branch, (3) on behalf of another, (4) to influence legislative action (NRS 218H.080). The only relevant exceptions would be either confining activity to formal appearances before committees or contacting the members of the legislature who are elected from the person's district. Assuming that these exceptions do not apply, three of the four criteria will generally be met: the owner or attorney appears in the building, communicates with a member of the legislative branch and seeks to influence legislative action. The only issue is whether the person is acting "on behalf of someone other than himself." A business or corporation is generally considered to be a separate entity by law. Therefore, even the sole owner of a corporation could act on behalf of someone other than himself or herself if he or she purports to appear on behalf of the corporation rather than appearing merely as a private citizen. The determinative fact is whether the person is communicating with legislators on behalf of someone other than himself or herself.

CONCLUSION

An owner of or attorney employed by a company must register as a lobbyist if he or she communicates with members of the legislative branch on behalf of the company, and otherwise meets the definition of "lobbyist." Such a person would not be required to register only if the person clearly indicates that he or she is appearing as a private citizen, and not on behalf of the company that employs the person or which the person owns.

QUESTION 2:

What constitutes a business relationship for the purpose of reporting such relationships on the registration statement?

ANALYSIS

Subsection 3 of NRS 218H.210 provides that a registration statement must contain a listing of any direct business associations or partnerships involving any current member of the legislature and the registrant or any person by whom the registrant is retained or employed. The phrase "direct business association or partnership" indicates, first, that the relationship must be a direct one. Second, it indicates that some common venture for profit must be the basis of the relationship. If a registrant (or his or her employer) has a partnership with Person A who has a separate business relationship with Legislator B, the relationship between the

registrant (or employer) and the legislator is not a direct one. If a registrant is the physician of Legislator C, the relationship is not a "business association," in that it is not a common venture for profit. If the registrant is a physician within a partnership in which Legislator C has a financial interest, the relationship must be reported. Because an employer may have business relationships of which a registrant is unaware, a "good faith" standard will be applied. A registrant must disclose all direct business relationships between current legislators and the registrant or the registrant's employer of which the registrant is, or in good faith should be aware.

CONCLUSION

A business relationship must be reported if it is a direct relationship between a current legislator and a registrant or the registrant's client or employer, is a common venture for profit, and is known or reasonably should be known by the registrant.

CAVEAT

This does not limit or otherwise affect the requirement that a registrant report, in addition to these business associations, the name of a current member of the legislature for whom the registrant or a person by whom the registrant is retained or employed has provided professional services in connection with a political campaign.

QUESTION 3:

What is the difference between a paid and a nonpaid lobbyist?

ANALYSIS

Subsection 2 of the Regulation on Lobbying adopted by the Legislative Commission provides different fees for paid and nonpaid lobbyists. A paid lobbyist is defined as a person who receives compensation for engaging in lobbying activities. The compensation need not be paid solely for the act of lobbying, but may be paid for other tasks in addition to lobbying. A nonpaid lobbyist receives no compensation for lobbying. Therefore, a regular employee of a company who comes to the legislature to lobby on behalf of the company is a paid lobbyist. "Compensation" will be interpreted to mean the payment of a wage, not merely the reimbursement of expenses.

CONCLUSION

A paid lobbyist is a person who receives a salary, fee or other wage for engaging in lobbying activity, regardless of whether the wage is also paid for tasks other than lobbying. It does not include a person whose only compensation is reimbursement of expenses.

QUESTION 4:

How do you report a party or major social event? What amount should be attributed to each legislator who attends a party or similar event?

ANALYSIS

Subsection 6 of the Regulation on Lobbying adopted by the Legislative Commission provides that the monthly report of expenditures made by or on behalf of a registrant must be itemized in categories, the second of which is "expenditures made in connection with a party or similar event hosted by the organization represented by the registrant." Subsection 1 of NRS 218H.400 provides that, except

as otherwise provided in subsection 4, the monthly report must identify each legislator and each caucus on whose behalf expenditures were made and "must be itemized with respect to each such legislator and organization." This language requires that each legislator who attends a party or similar event must be listed in the monthly report. This requirement must be interpreted reasonably. A registrant should make reasonable efforts to identify legislators who attend parties or similar events and report each legislator identified. The omission of one or two legislators who attended an event, if unintentional, is understandable. More significant is the exception in subsection 4, which provides that a report must not itemize with respect to each legislator if "the expenditure is the cost of a function to which every legislator was invited."

In the monthly report under "Party or Similar Event," the form requires that you provide the following information: the event, its date, the total expenditure, the total number attending or guaranteed and the cost per person. To compute the cost per person, divide the total expenditure by the number attending or guaranteed. The latter number should be the number of persons upon which the cost of the event was based. If 200 were planned for and 175 attended, the number should be 200 if the cost was based upon a guarantee of 200 and the number should be 175 if the cost was established based upon the number of persons who actually attended. If the cost is based upon some other number of persons, that number should be used. Once the cost per person is determined, each legislator in attendance should be listed with the cost per person attributed to expenditure upon that legislator, unless all legislators were invited to the event. If all legislators were invited to the event, there should be no listing of legislators.

CONCLUSION

If expenses made by or on behalf of a registrant during a month, the monthly report must be itemized in categories, including expenditures made in connection with a party or similar event hosted by the organization represented by the registrant. The total amount spent on the event must be reported, and the legislators who attended the event must be reported unless all legislators are invited to the event. The amount attributable to a legislator who attends a party or similar event is the cost per person, determined by dividing the total cost of the event by the number of persons upon which that cost was based.

QUESTION 5:

How do you report the provision of meals prepared by a lobbyist or at a "pot luck" dinner attended by legislators?

ANALYSIS

Monthly reports must disclose the total amount of expenditures made by a registrant on behalf of a legislator or a caucus (NRS 218H.400). The report must be itemized in categories (Id.). If a lobbyist prepares a meal for a legislator, the cost of the meal is a reportable expenditure and should be itemized as "entertainment" (as are expenditures for food and beverage purchased for a legislator in a restaurant). The amount reported should be a reasonable estimate of the cost of providing the meal for the legislator. If grocery receipts indicate that the total cost of a meal was \$50 for five people, and one legislator attended, the reportable expenditure attributable to that legislator is \$10. If a legislator shares the expense of a meal, or provides a dish for a "pot luck," the legislator has in essence paid for his or her own

meal, and there is no reportable expenditure.

CONCLUSION

Meals prepared for legislators are reportable expenditures, and a reasonable estimate of the cost of providing the meal should be reported unless the legislator shared in the expense of the meal, by either sharing in the cost of the food or providing a dish for a "pot luck" meal.

QUESTION 6:

Whom should an employee of a lobbyist list as his or her clients?

ANALYSIS

An employee of a lobbyist may engage in activity which constitutes acting as a lobbyist, thereby requiring separate registration as a lobbyist. A lobbyist is required to list on his or her registration statement (or an amendment thereto) the "full name and complete address of each person, if any, by whom the registrant is retained or employed or on whose behalf the registrant appears." (NRS 218H.210). This could be interpreted to require a person employed by a lobbyist to include on his or her registration statement the name of the lobbyist as the person "by whom the registrant is retained or employed." However, this gives the mistaken impression that the employing lobbyist's interests are being advanced, rather than those of the clients of the lobbyist. If the employee is appearing on behalf of specific clients of the lobbyist, their names should appear on the employee's registration statement. The employee may list the lobbyist as well, but should not list the lobbyist as the sole client if in fact the employee will be appearing on behalf of one or more clients of the lobbyist. A supplementary statement (see NRS 218H.220) should be filed to add the clients to the registration statement within 5 days after the employee appears on behalf of specific clients of the lobbyist.

CONCLUSION

An employee of a lobbyist who is required to register as a lobbyist should list all clients of the lobbyist by whom he or she is employed, unless the employee will only be representing a limited number of those clients. The employee is not required to list the lobbyist by whom he or she is employed.

CAVEAT

An employee of a lobbyist is not required to register as a lobbyist unless he or she (1) appears in the legislative building or another building in which committees hold meetings, and (2) communicates with a member of the legislative branch on behalf of another to influence legislative action. If the employee does not satisfy these requirements, the employee is not a "lobbyist" and need not register. If registration is required, the above analysis indicates who should be listed as clients of the employee.

QUESTION 7:

Is informational material provided to a legislator considered an expenditure on behalf of a legislator?

ANALYSIS

NRS 218H.400 requires each registrant to file monthly reports which include the total expenditures, if any, made by the registrant on behalf of a legislator or a legislative caucus. "Expenditure" is defined in NRS 218H.050 to include "any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, pledge or subscription of money or anything of value . . ." Subsection 6 of the Regulation on Lobbying adopted by the Legislative Commission provides that the monthly report of expenditures made by or on behalf of a registrant must be itemized in categories, the third of which is "gifts and loans, including money, services and anything of value..." Subsection 1 of NRS 218H.060 defines "gift" as "a payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value unless consideration of equal or greater value is received." These broad definitions of "expenditure" and "gift" have been interpreted by some registrants to include informational material given to legislators, in that the information is of value. This information may be in the form of a published report or a simple handout recording a witness' testimony (as most committees request). While the information provided is of value, construing this as an expenditure on behalf of a legislator could have the extremely negative effect of discouraging the provision of information to legislators. If the information provided is a booklet or report which is sold to the general public, the value of the item should be reported as a gift (subscriptions are expressly included in the definition). If, however, the information provided is available to the general public without charge, or was compiled for the legislature or a legislative committee and is not sold at all, the information does not constitute a reportable expenditure. Any other interpretation would strain the common-sense meaning of the term "gift," discourage the provision of written information to legislators, and serve none of the expressed purposes of the Nevada Lobbying Disclosure Act.

CONCLUSION

The provision of written information to legislators does not constitute a reportable expenditure unless the information is sold to the general public in the form that it is provided to the legislators.

QUESTION 8:

Must gifts of minimal value be reported?

ANALYSIS

NRS 218H.400 requires each registrant to file monthly reports which include the total expenditures, if any, made by the registrant on behalf of a legislator or a legislative caucus. These expenditures include gifts, which are broadly defined to include "a payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value unless consideration of equal or greater value is received." Technically, this definition includes (and has previously been interpreted by this office to include) items valued at as little as 11 cents. This interpretation has led to a tremendous amount of work for an issue that is at best trivial. Persons wishing to make a gift to all legislators must report the insignificant value of each gift for each

legislator who accepts the gift. If a legislator chooses not to accept a gift, it is returned to staff and, if possible, to the person making the gift. The monthly report of expenditures will include a list of 30 or more legislators who received 50-cent gifts, only to be revised when legislators return the gifts or indicate that they did not accept or receive the gift. Legislators have refused to accept homemade cookies out of concern for the cumulative effect of accepting a number of small gifts from lobbyists. For the purpose of the efficient administration of the Nevada Lobbying Disclosure Act, it is necessary to establish a *de minimis* rule because the time, effort and money spent by the lobbyist and by the staff of the Legislative Counsel Bureau to report and track an 11 cent item far exceeds the value of the report. Therefore, items with a value of \$2 or less need not be reported.

This exemption is not an exclusion: gifts of more than \$2 in value must be reported in their entirety. The exemption is intended to address infrequent gifts: if more than one gift is given in a month and the total value exceeds \$2, all gifts must be reported in their entirety.

CONCLUSION

The requirement that registrants report gifts to legislators does not require the reporting of a gift with a value of \$2 or less. However, (1) gifts of more than \$2 in value must be reported in their entirety, and (2) if more than one gift is given in a month and the total value exceeds \$2, all gifts must be reported in their entirety.

QUESTION 9:

How should a lobbyist report contributions to an "end-of-session party" for legislative committee?

ANALYSIS

NRS 218H.400 requires each registrant to file monthly reports which include the total expenditures, if any, made by the registrant on behalf of a legislator or a legislative caucus. Subsection 6 of the Regulation on Lobbying adopted by the Legislative Commission provides that the monthly report of expenditures made by or on behalf of a registrant must be itemized in categories, the second of which is "expenditures made in connection with a party or similar event hosted by the organization represented by the registrant." The response to Question 4 indicates the manner in which these events should generally be reported. In the case of end-of-session parties for committees, lobbyists are sometimes in a position of contributing money for the party without knowledge of the total number of persons attending or guaranteed or which legislators will be in attendance. This makes it impossible to comply with the procedure outlined in the response to Question 4 for reporting parties or similar events.

A lobbyist can only report information to which he or she has access. Rather than requiring each person who contributes to an end-of-session party to indicate the total number of attendees or the total cost, each lobbyist should report what he or she knows concerning the event. If a lobbyist simply contributed to the cost of such an event, the report should indicate the amount of the expenditure, the committee involved and, if known, the date and location of the event. If a lobbyist has organized the party, he or she has access to the information normally required to be reported: the event, its date, the total expenditure, the total number attending or guaranteed and the cost per person. Such a person should report all of this information, as well as identifying the legislators who attended. If no lobbyist reports all of the required

information, I will contact the persons involved in organizing the event to ascertain the necessary facts.

Once the information has been submitted, all contributions for the event will be listed in the section at the end of the monthly Lobbyist Expenditure Report for parties or similar events. The cost per person will be attributed to each legislator in attendance and reported as an expenditure of the lobbyist who organized the event; if no lobbyist is identified as organizing or sponsoring the event, the cost per legislator will be proportionally allocated among the lobbyists who contributed to the event.

CONCLUSION

A lobbyist who contributes to an end-of-session party for a legislative committee should report the amount of the expenditure, the committee involved and, if known, the date and location of the event. If a lobbyist has organized the party, he or she should report the information normally required for parties or similar events: the event, its date, the total expenditure, the total number attending or guaranteed and the cost per person. The cost per person will be attributed to each legislator in attendance and reported as an expenditure of the lobbyist who organized the event or proportionally allocated among the lobbyists who contributed to the event.

QUESTION 10:

Under what circumstances are expenditures by the entity represented by a lobbyist reportable?

ANALYSIS

NRS 218H.400 requires each registrant to file monthly reports which include the total expenditures, if any, made by the registrant on behalf of a legislator or a legislative caucus. The statute also requires that the report include "expenditures made by others on behalf of the registrant if the expenditures were made with the registrant's express or implied consent or were ratified by the registrant." There is no specific requirement that expenditures by a lobbyist's client be reported. However, it can be assumed that expenditures made on legislators during a session by a lobbyist's client are made "on behalf of" the lobbyist. While it is possible that such an expenditure could be made independent of the activities of the client's lobbyist, allowing nonreporting of such expenditures would create a sizeable loophole in the statutes: expenditures could be made by the client rather than the lobbyist, and go unreported based upon the claim that the expenditure is not on the lobbyist's behalf. Although it is difficult to imagine a rationale for most expenditures made on legislators (i.e., meals) not being "on behalf of" a client's lobbyists, allowing this loophole to exist makes the reporting of every expenditure made by a client a question of fact. To avoid this problem, all expenditures made by a client on legislators or a legislative caucus during a session must be reported by the client's lobbyist.

CONCLUSION

All expenditures made by an entity represented by a lobbyist on legislators or a legislative caucus during a session must be reported by the lobbyist.

QUESTION 11:

How do you report a major event, such as a dinner, for which an admission fee is charged? What if the fee includes an amount for other purposes, such as raising money for a charity?

ANALYSIS

Sometimes during session an organization will sponsor a dinner either as a major meeting of the organization or as a fundraiser for a charity or an educational institution, charging an admission fee to offset the cost of the event and, if desired, raise money. Under these circumstances, the standard reporting for a party or major social event (see Question 4) does not make sense: if the sponsor reports the entire cost, it may appear that the sponsor spent thousands of dollars on behalf of legislators when, in fact, the admission fee more than offsets the sponsor's costs. Under these circumstances, the only real expenditure on behalf of a legislator is the amount paid for the legislator to attend the event. Therefore, these costs should not be itemized as "party or similar event," but rather as "entertainment," with the value of the meal or entertainment reported as an expenditure on behalf of the legislator.

There are two distinct situations that require slightly different manners of reporting. In the first situation, a lobbyist is paying the cost of a legislator's attendance at the event. This situation is analogous to a lobbyist taking the legislator to dinner. If a lobbyist takes a legislator to dinner at a restaurant, the cost is reported as "entertainment." Similarly, if a lobbyist pays a legislator's admission fee for an event of this type, it must be reported as an entertainment expense by that lobbyist. The amount reported will generally be the cost of admission, unless a portion of the fee is for charity or some other purpose. In that case, the value of the meal or entertainment, excluding the charitable or other contribution, is the amount expended on behalf of the legislator.

In the second situation, the entity that sponsors the dinner or other event simply does not impose a fee for legislators to attend. Under these circumstances, the sponsoring agency is absorbing the cost of the legislator's attendance and must report that cost as a lobbying expenditure. Because the expenditure is reported as "entertainment," and not as a "party or similar event," every legislator who attends under these circumstances must be reported by the sponsor, even if all legislators are invited to the event. However, as no admission fee is charged, the sponsor may report the cost of the meal or entertainment as the expenditure on behalf of the legislator.

For example, assume that an event has a \$100 admission fee, with \$50 being the cost of the meal and \$50 going to charity. If a lobbyist pays for a legislator's admission to the event, the lobbyist must report an entertainment expenditure of \$50 on behalf of the legislator. If instead the sponsor of the event invites one or more legislators to attend free of charge (and the sponsor is or employs a lobbyist), the sponsor or his lobbyist must report a \$50 expenditure on behalf of each legislator in attendance.

CONCLUSION

If a fee is charged for admission to a dinner or similar event, the expenditure on behalf of a legislator who attends should be reported as "entertainment." If a lobbyist pays the cost of a legislator's admission, the lobbyist must report the cost of admission, unless a portion of the fee is for charity or some other purpose. In that case, the value of the meal or entertainment, excluding the charitable or other contribution, is the amount expended on behalf of the legislator. If the sponsor of the

dinner or similar function simply does not charge legislators to attend, the sponsor must report the amount of the expenditure on behalf of each legislator who attends (generally the cost of the meal or entertainment).