

# **GUIDELINES FOR LOBBYISTS**

The following and the Guide for the Legislative Branch of Nevada State Government constitutes the guidelines for compliance with the Nevada Lobbying Disclosure Act, as required pursuant to paragraph (b) of subsection 3 of NRS 218H.500.

The Nevada Lobbying Disclosure Act (Lobbying Act) in NRS Chapter 218H establishes the requirements and restrictions on the conduct of lobbyists when they lobby members of the Legislative Branch of State Government. See NRS 218H.020, 218H.070, 218H.080 and 218H.090. However, the Lobbying Act generally does not apply to lobbyists when they lobby members of the Executive Branch of State Government or members of local governments, unless such lobbying also involves communications directly with a member of the Legislative Branch in a manner that meets the definition of lobbyist in NRS 218H.080.

## **A. Steps that must be taken to lobby before the Nevada Legislature**

Prior to registering as a lobbyist, a person should review the provisions of the Lobbying Act, the Regulation on Lobbying adopted by the Legislative Commission and these guidelines to ensure that registration is required and to ensure that he or she registers appropriately given their unique circumstances.

### **1. The requirement to register as a lobbyist**

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 and is not subject to the exceptions detailed in subsection 2 of NRS 218H.080. A person who communicates with a member of the legislative branch on his own behalf or communicates with only Legislators from the district in which the person resides is not required to register as a lobbyist. In addition, persons who testify formally before legislative committees and who clearly identify themselves and the interests for whom they are testifying but who do not otherwise communicate with Legislators on behalf of another to influence legislative action are also not required to register as a lobbyist. See NRS 218H.080.

An owner, attorney or other representative for 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. 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.

## **2. Factors in determining whether to register as a paid or nonpaid lobbyist**

Subsections 2 and 3 of the Regulation on Lobbying adopted by the Legislative Commission provide different fees for paid and nonpaid lobbyists. A paid lobbyist is a person who receives a salary, fee or other compensation for engaging in lobbying activity, regardless of whether the compensation is also paid for tasks other than lobbying. The owner or a regular employee of a company who comes to the Legislature to lobby on behalf of the company and receives a wage, salary, fee or other compensation from the company is a paid lobbyist, regardless of whether any of the wage, salary, fee or other compensation is specifically designated as reimbursement for the lobbying activity. A nonpaid lobbyist is someone who receives no compensation for lobbying or whose only compensation is the reimbursement of expenses incurred in conducting lobbying activities.

## **3. Persons to list as clients on the registration statement**

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." See NRS 218H.210. Questions have arisen in the past regarding whether this provision requires an employee of a lobbyist to list the employing lobbyist as the client. Such an interpretation would give the mistaken impression that the employing lobbyist's interests are being advanced, rather than those of the clients who have retained the services of the employing lobbyist. If the employee is appearing on behalf of specific clients of the employing lobbyist, the names of those clients should appear on the employee's registration statement. The employee may list the employing lobbyist as well, but should not list the employing lobbyist as the sole client if in fact the employee will be appearing on behalf of one or more clients of the employing lobbyist.

Often during a session, a lobbyist will take on additional clients that the lobbyist was not representing at the start of the session. In such circumstances, the lobbyist should file a supplementary statement to add the new clients to the lobbyist's registration statement. Likewise, if an employee of a lobbyist begins to represent one of the employing lobbyist's clients that he or she had originally not planned to represent, the employee should file a supplementary statement to add that client to his or her registration statement regardless of the fact that the client already appeared on the employing lobbyist's registration statement. See NRS 218H.220.

## **4. Listing of any direct business associations or partnerships involving Legislators on the registration statement**

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. 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.

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.

**B. Reporting for a party, meal, function or other social event to which every Legislator is invited**

Pursuant to NRS 218H.400, a lobbyist who reports expenditures for a party, meal, function or other social event to which every Legislator is invited must not itemize expenditures by legislator in the report of expenditures. The report should include a name or description of the event, the date of the event and the total expenditure for the event, regardless of the number of Legislators who attended.

**C. Determination of whether informational materials provided by a lobbyist constitute a prohibited gift**

Subsection 1 of NRS 218H.060 defines "gift" as "any payment, conveyance, transfer, distribution, deposit, loan, forbearance, subscription, pledge or rendering of money, services or anything else of value, unless consideration of equal or greater value is received." Although a broad interpretation of the term "gift" could result in a determination that all informational materials are prohibited gifts, such an 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.

Typically, informational materials provided by lobbyists to legislators are in the form of a published report or a simple handout, such as written testimony submitted into the record. While the information provided is of value to the legislative process, construing this as a gift could have the extremely negative effect of discouraging the provision of information to legislators. However, if the information provided is a booklet or report which is sold to the general public, the value of the item extends beyond its usefulness to the legislative process and should be considered a prohibited gift. By contrast, if 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 gift.

Although informational materials that are available to the general public without charge or were compiled specifically for the legislature or a legislative committee are not typically prohibited, the medium in which informational materials are provided could result in the materials being considered a gift. For example, information provided in a calendar or daily planner that has a use irrespective of the information provided to a Legislator would be considered a prohibited gift. If the information were presented on a flash drive or similar device that can be used by the recipient for their own purposes, the device would have value separate from and unrelated to the information that is being provided and would, therefore, be considered a prohibited gift, unless the flash drive or other device is returned by the recipient after the information is downloaded.