

**ETHICS INTERPRETATION EI-2007-001
ISSUED DECEMBER 18, 2007**

Following public hearing, the Ethics Commission [“the Commission”], in the executive session portion of its regular meeting held December 18, 2007, considered your request for an ethics interpretation. You have asked:

With respect to the 2006 amendment to Section 257:20-1-9 of the Constitutional Ethics Rules [“the Rules”], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 2007, Ch. 62, App.,

1. *Are the “things of value” to be aggregated for a lobbyist principal “on whose behalf” the “things of value” are given. For example, if a stockholder, partner, agent, affiliate, member, employee, or officer of a lobbyist principal provides a thing of value for a reason unrelated to the lobbyist principal and the thing of value is not provided on behalf of the lobbyist principal, will that thing of value be considered to be aggregated with other “things of value” which are provided on behalf of the lobbyist principal?*
2. *If a contract lobbyist has multiple clients, are “things of value” given on behalf of one client aggregated to the other clients? For instance, if a contract lobbyist with ten clients provides a thing of value on behalf of the first client, does that same thing of value count against the \$300 limit [for state elected officers] or \$100 limit [for non-elected officers and state employees] for the other nine clients?*
3. *If, on October 1st, a lobbyist principal provides a thing of value to a state official with a value of \$50, will that \$50 be aggregated with “things of value” provided by other entities which the company does not know about? For instance, would that \$50 in “things of value” be aggregated with a thing of value provided by a shareholder if the company has no knowledge of it?*
4. *It is possible for a person to violate the limit on “things of value” set forth in Section 257:20-1-9 without being aware they are violating it? In other words, what state of knowledge or intent is required for a person or entity to be found to have violated Constitutional Rule Section 257:20-1-9?*
5. *Is a registered lobbyist required to attribute to some client all of his or her expenditures for “things of value?” For instance, if a lobbyist spends \$60 on a dinner with an official for “relationship building” purposes, is the lobbyist required to attribute that \$60 to a client?*

FACTS

You have advised that:

- ! you are a person who is, or may be, subject to the jurisdiction of the Commission;
- ! as such, you qualify as among those who may request an ethics interpretation, which, under Rules' Section 257:1-1-6(h), the Commission "in its discretion and where appropriate" may issue;
- ! you posed questions with respect to the year 2006 amendment to Rules' Sections 257:20-1-9 and seek an interpretation on the language requiring aggregation.

ANALYSIS

The questions you ask pertain mainly to Rules' Section 257:20-1-9(c). In applicable part, it provides:

Restraints on solicitation or acceptance of anything of value--Disclosure

* * *

(c) Calendar year limits on things of value.

(1) **Elective officers.** No elective officer, or an immediate family member of an elective officer shall, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive things of value in a calendar year which, in the aggregate, are valued at more than three hundred dollars (\$300); and

(2) **Other state officers and state employees.** Except for an elective officer, no state officer, state employee or an immediate family member of such state officer or state employee shall, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive or agree to receive things of value in a calendar year which, in the aggregate, are valued at more than one hundred dollars (\$100); from a person who the state officer or state employee knows or should know:

(A) is a lobbyist or lobbyist principal, provided that the following shall not be subject to this subsection:

(i) things of value received as a result of or arising out of employment by, or doing business with, a lobbyist or lobbyist principal; and

(ii) things of value received from any director, stockholder, partner, agent, affiliate, member, employee or officer of a lobbyist principal if the donor is excepted in subparagraph (D) of Paragraph (2) from the definition of "anything of value" in Section 2 of Chapter 1 of this title, or if there exists between

the recipient and the donor a close personal relationship of long standing in which the mutual exchange of gifts on special occasions, such as holidays or anniversaries, has become customary;

(B) is seeking to do business or doing business with the governmental entity of which the state officer's or state employee's office or employment is a part; or

(C) has an economic interest in actions or matters before or affecting the governmental entity of which the state officer's or state employee's office or employment is a part.

A thing or things of value given by a lobbyist; the lobbyist principal or lobbyist principals by whom the lobbyist is employed or retained; or a stockholder, partner, agent, affiliate, member, employee or officer of the lobbyist principal or lobbyist principals by whom the lobbyist is employed or retained are aggregated for purposes of the disclosure threshold and calendar year limits, regardless of how the thing or things of value are funded. If more than one lobbyist is retained or employed by a lobbyist principal, the disclosure and calendar year limits of the first lobbyist to register on behalf of the lobbyist principal for a calendar year are aggregated with each additional lobbyist, employed or retained by the same lobbyist principal.

* * *

Section 257:20-1-9(c)

The Commission notes that corresponding language is found in the Lobbying Disclosure provisions in Rules' Chapter 23. It provides:

Anything of value reporting by lobbyists--Preservation of accounts, books, etc.

* * *

(c) **Limits on things of value and exceptions.** Lobbyists or lobbyist principals shall not give things of value which, in the aggregate, are valued at more than \$300 annually to any elective officer or the immediate family member of an elective officer, or things of value which, in the aggregate, are valued at more than \$100 annually to any other state officer or state employee, or the immediate family member of a state officer, excluding an elective officer, or a state employee, provided that the following shall not be subject to this subsection:

(1) things of value given by a lobbyist or lobbyist principal as a result of or arising out of employment of, or the lobbyist or lobbyist principal doing business with a state officer or state employee or the recipient; and

(2) things of value given to the recipient by any director, stockholder, partner, agent, affiliate, member, employee or officer of a lobbyist principal if the donor is excepted in subparagraph (D) of Paragraph (2) from the definition of "anything of value" in Section 2 of Chapter 1 of this title, or if there exists between the recipient and the donor a close personal relationship of long standing in which the mutual exchange of gifts on special occasions, such as holidays or anniversaries, has become customary.

A thing or things of value given by a lobbyist; the lobbyist principal or lobbyist principals by whom the lobbyist is employed or retained; or a stockholder, partner, agent, affiliate, member, employee or officer of the lobbyist principal or lobbyist principals by whom the

lobbyist is employed or retained are aggregated for purposes of the disclosure threshold and calendar year limits, regardless of how the thing or things of value are funded. If more than one lobbyist is retained or employed by a lobbyist principal, the disclosure and calendar year limits of the first lobbyist to register on behalf of the lobbyist principal for a calendar year are aggregated with each additional lobbyist, employed or retained by the same lobbyist principal.

* * *

Section 257:23-1-2(c)

The answer to your questions hinge upon these two Rules' sections, which must be read together.

The Commission begins by noting that the final paragraph of Section 257:20-1-9(c) was added per a 2006 amendment. It addresses two situations. The first governs the gift limit where more than one regulated individual/entity gives a thing or things of value to a single state officer. The second concerns the limit of several lobbyists retained or employed by a single lobbyist principal.

The first scenario speaks to whether things of value given a state officer by lobbyists, lobbyist principals, stockholders, agents, affiliates, members, employees and/or officers must be aggregated with the single lobbyist/lobbyist principal limit. That was the amendment's intent if the thing of value was given at the specific direction of, and on behalf of, the lobbyist or lobbyist principal.

The rationale was that, absent the aggregation requirement, a single state officer could accept many times the annual limit. That could result in tens of thousands of dollars – or more – in gifts each year coming to the hands of a single state officer.

The Commissioners discussed this situation in open meeting for more than two years. Each agenda carried an item calling for public comment. The floor was open for discussion. Lobbyists were invited. Members of the public and Legislature, Common Cause Oklahoma, as well as the Commissioners, themselves, spoke to this issue.

Studies were ordered on gift limits in other jurisdictions. They were conducted and made available to the public. One covered the surrounding area. Another pertained to gift limits nationwide. A third was obtained at this year's annual Council on Governmental Ethics Laws ["COGEL"] conference.

Together they revealed that some states do not regulate gifts. Those that do often have limits of \$50 or less. Other jurisdictions have a zero gift limit – commonly referred to as the "no cup of coffee" rule. The current trend is to lower amounts or eliminate gifts altogether, as has been done by the United States Congress. With some exceptions, both congressional Houses now ban gifts.

The regional study showed Oklahoma with the second largest gift amount of any surrounding state. The nationwide report demonstrated that, at \$300, Oklahoma has one of the highest gift limits in the country.

Adding layers of giving upon an already high gift limit was a matter of concern. The Commission felt their mandate required that they act.

Under Section 3(B) of Oklahoma Constitution Article 29, members are charged with “promulgating rules of ethical conduct for state officers and employees, including civil penalties for violation of these rules.” The Commissioners believed that an already high limit, coupled with the ability of persons or entities to give their own individual limits, impacted “the ethical conduct of state officers and employees.” In 2006, they voted to adopt additional language to make clear they would aggregate things of value between a list of regulated persons/entities and their lobbyist/lobbyist principal.

That is what the first sentence of the 2006 amendment accomplishes. It specifies that gifts from the named sources “are aggregated for purposes of the disclosure threshold and calendar year limits regardless of how the thing or things of value are funded.”

The only question is the outcome where things of value from the named entities and individuals are not given a state officer “on behalf of the lobbyist or lobbyist principal.” That wording is part of Rules’ Section 257:23-1-2(g), which provides:

Anything of value reporting by lobbyists – Preservation of accounts, book, etc.

* * *

(g) **Reporting of things of value given on behalf of lobbyist or lobbyist principal.** A lobbyist shall also report things of value when given by **other persons on behalf of the lobbyist or the lobbyist principal** if they were made with the knowledge of the lobbyist. When other persons, including lobbyist principals, give things of value that the lobbyist is required to report, the other persons shall provide a full, verified account of such things of value to the lobbyist at least seven (7) days before the reports of the lobbyists are due to be filed. When the exact values are not known and not ascertainable, a good faith estimate of the fair market value shall be reported.

* * *

Section 257:23-1-2(g)

[emphasis added]

Under this provision, reporting occurs only when “other persons” – such as stockholders, partners, agents, affiliates, members, employees or officers of the lobbyist principal – give a thing or things of value “on behalf of a lobbyist or lobbyist principal.”

The Commission finds the Section 257:23-1-2(g) language must be construed with that of the 2006 amendment of 257:20-1-9. Harmonizing the two leads to finding that, unless these enumerated “other persons” give a thing of value “on behalf of the

lobbyist or lobbyist principal,” their gifts are not reportable. Thus, things of value provided under that scenario fall outside the first sentence of the 2006 gift rule amendment. This, in effect, exempts gifts by such persons when not given on behalf of the lobbyist or lobbyist principal.

In fact, the Commission finds that a thing of value or things of value provided a state officer or employee by a stockholder, partner, agent, affiliate, member, employee, or officer of a lobbyist principal for a reason related to the lobbyist principal or lobbyist(s) of the lobbyist principal will be aggregated with other things of value, which are provided on behalf of the lobbyist or lobbyist principal, if and only if the thing or things of value are given at the specific direction of, and on behalf of, the lobbyist or lobbyist principal.

In your example, if a stockholder, partner, agent, affiliate, member, employee, or officer of a lobbyist principal provides a thing of value for a reason unrelated to the lobbyist principal, and the thing of value is not provided on behalf of a lobbyist or lobbyist principal, that thing of value will not be aggregated with other things of value which are provided on behalf of the lobbyist or lobbyist principal. The answer to your first question is therefore, “No.”

Your second question is answered by the second sentence of the 2006 amendment. It speaks to situations where a principal retains more than one lobbyist. It provides that disclosure and calendar year limits are to be aggregated between all lobbyists employed or retained by the same lobbyist principal. In other words, all lobbyists working for the same principal share with that principal one annual \$300 limit.

The Commission finds this language clear on its face. As such, it requires no construction. All lobbyists, together with their lobbyist principal, share one calendar year limit. Only \$300 per year in things of value may be given to elective state officers [\$100 for non-elective officers and state employees] by the entire group of lobbyists and their employer, regardless of reimbursement from the lobbyist principal or the source of the funds.

On the other hand where, as in your illustration, a contract lobbyist has multiple clients, things of value he or she gives on behalf of one client are not aggregated with the other clients. For instance, should a contract lobbyist with ten clients provide a thing of value on behalf of the first client, that same thing of value will not count against the \$300 limit for state elected officers [or the \$100 limit for non-elected officers and state employees] for the other nine clients. The answer to your second question is then, “No,” because the Commission finds that the aggregation rule contained in Rules’ Section 257:20-1-9(c) and 257:23-1-2(c) does not apply to a contract lobbyist who has more than one client.

Your next two questions pertain to the issue of knowledge on the part of the persons/entities listed in the 2006 amendment. The Commission finds from this

language, and that of Chapter 23, the lobbyist and lobbyist principal have a duty to keep a running account of what is being spent on state officers/employees in their behalf. In this computer age, that should constitute little problem. Keeping track of these expenses is currently being done by major corporations across the country. Therefore, the answer to your third question is, "Yes."

If a lobbyist principal provides a \$50 thing of value to a elective state officer or other state officer/employee, that \$50 must be aggregated with things of value provided by other individual/entities listed in the 2006 amendment. That \$50 in things of value will be aggregated with a thing of value provided by, for instance, a shareholder giving on behalf of a lobbyist or lobbyist principal.

The Commission suggests the company set up a tracking system because, in order to comply with the Rules, it has a duty to know, just as lobbyists have an obligation to know, what they spend on state officers/employees and at what point they reach a calendar year limit. Moreover, under Section 257:23-1-2(g), "other persons" – stockholders, partners, agents, affiliates, members, employees or officers of the lobbyist principal – have a duty to inform the lobbyist of their expenditures within seven days.

You then ask what level of knowledge or intent is required to sustain a violation of Section 257:20-1-9. In answering this, it is helpful to note that only a few provisions in the Rules require any specific intent. None is needed here.

Hence, in answer to your fourth question, it is possible – in the absence of keeping tabs on what is being spent – for a person to unwittingly exceed the limit on things of value which can be lawfully given under Section 257:20-1-9, just as it is possible for a contributor, who is not keeping track of his finances, to violate the \$5,000 contribution limit to a candidate campaign. There is a cure, however. Under definition of "things of value", there is an exception at Section 257:1-1-2(2)(C)(ii) for items returned or paid back within 30 days after receipt.

Your fifth and last question is whether a registered lobbyist must attribute to some client his or her expenditures for things of value provided in furtherance of "relationship building." Section 257: 23-1-2(d)(5) requires that reported information include "[t]he name of the lobbyist principal or lobbyist principals on whose behalf the thing of value was given, if any." The Commission further finds that the business of lobbying encompasses "relationship building" with a state officer. Therefore, if a lobbyist spends \$60 on a dinner with an official for this purpose, the lobbyist is required to attribute that \$60 to one or more clients for whom the lobbyist is registered.

CONCLUSION

It is therefore the ethics interpretation of the Ethics Commission, as decided at its regular meeting held December 18, 2007, that:

1. The Commission holds that a thing of value or things of value provided a state officer/employee by a stockholder, partner, agent, affiliate, member, employee, or officer of a lobbyist principal for a reason related to the lobbyist principal or lobbyist(s) of the lobbyist principal will be aggregated with other things of value, which are provided on behalf of the lobbyist or the lobbyist principal, if and only if the thing or things of value are given at the specific direction of, and on behalf of, the lobbyist or lobbyist principal.
2. Where a contract lobbyist has multiple clients, things of value he or she gives on behalf of one client are not aggregated with the other clients. For instance, should a contract lobbyist with ten clients provide a thing of value on behalf of the first client, that same thing of value will not count against the \$300 limit for state elective officers [or the \$100 limit for non-elective officers and state employees] for the other nine clients. The Commission holds that the aggregation rule contained in Rules' Section 257:20-1-9(c) and 257:23-1-2(c) does not apply to a contract lobbyist who has more than one client.
3. If a lobbyist principal provides a \$50 thing of value to a state official, that \$50 must be aggregated with things of value provided by other individuals/entities listed in the 2006 amendment. That \$50 in things of value will be aggregated with a thing of value provided by, for instance, a shareholder giving on behalf of a lobbyist or lobbyist principal. The Commission suggests the company, together with its lobbyist(s), set up a tracking system in order to comply with the Rules. Both have a duty to know, just as lobbyists have an obligation to know, what they spend on a state officer/employee and at what point they reach a calendar year limit. Section 257:23-1-2(g) also place a duty upon "other persons" giving things of value on the behalf of the lobbyist(s)/lobbyist principal to notify the lobbyist, for reporting purposes, within seven days of such expenditures.
4. It is possible – in the absence of keeping tabs on what is being spent – for a person to unwittingly exceed the limit on things of value which can be lawfully given under Section 257:20-1-9, just as it is possible for a contributor, who is not keeping track of his finances, to violate the \$5,000 contribution limit to a candidate campaign. However, there is a cure if the thing of value is returned or paid back within 30 days after receipt.
5. A registered lobbyist must attribute to one or all clients his or her expenditures for things of value provided in furtherance of "relationship building." The clear language of Section 257:23-1-2(d)(5) requires the lobbyist report to include

“[t]he name of the lobbyist principal or lobbyist principals on whose behalf the thing of value was given, if any.” The Commission finds that the business of lobbying encompasses “relationship building” with a state officer/employee. Therefore, if a lobbyist spends \$60 on a dinner with an official/state employee for this purpose, the lobbyist is required to attribute that \$60 to one or all clients for whom the lobbyist is registered.

Please be advised that ethics interpretations are fact specific. They answer only the question or questions put forth in the underlying request. While they may shed light on other situations, this opinion does not necessarily control them. To be binding on the future action of this agency, the interpretation must be directed to the individual situation.

The Commission is authorized by Oklahoma Constitution Article XXIX, Section Five and Section 305(A)(6) of Title 51 of the Oklahoma Statutes to interpret the Rules and the Political Subdivisions Ethics Act, 51 O.S. 2001, § 301 set seq. Questions pertaining to other Oklahoma Statutes, the state and federal Constitutions or federal law cannot be interpreted by the Commission and must be referred to the appropriate authority.

Ethics Interpretations are issued not by staff, but by the Commissioners. Members consider briefs, testimony and input from the public who have prior notice of the issue(s) and an opportunity to be heard on the question(s) presented in the ethics interpretation request. Following consideration in executive session, members then vote in open meeting on which version to adopt.

Ethics Interpretations are published with sufficient deletions to prevent identification of the person or persons involved in the situations herein described. The name of the requestor is considered confidential. This letter has been labeled accordingly.

We trust the foregoing has answered your questions. Please advise if we may be of further assistance.