

INFORMAL OPINION IO-1998-007
ISSUED APRIL 28, 1998

You have asked for an informal opinion on the following question:

Who, under the Constitutional Ethics Rules ("the rules"), 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 1997, Ch. 62, App., must report a gift to a legislator, given by an owner of a golf store, of a golf coupons book with a retail value of \$49.95?

ANALYSIS

Disclosure of things of value given to state officers or employees is addressed in the rules, which, in applicable part, provide:

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

(a) **Required reports.** Every lobbyist shall file reports required by this section with the Ethics Commission concerning the activities specified in this section. The reports shall be filed whether or not the person has taken any action which is required to be reported pursuant to the provisions of this section. The reports shall be filed between the first and twentieth day of January and the first and twentieth day of July of each calendar year which shall cover the activities during the period following the last report.

(b) **Disclosure of things of value exceeding \$50.** The report shall be signed by the lobbyist, who shall attest to the report's accuracy and veracity, and the signature shall be notarized. The reports shall include the information specified in Subsection (d) of this section for things of value given to a state officer or state employee or the immediate family member of a state officer or state employee by the lobbyist or any lobbyist principal by whom the lobbyist is employed or retained, the costs of which exceed fifty dollars (\$50) in the aggregate during a six-month period beginning January 1 and ending June 30 or beginning July 1 and ending December 31.

(c) **\$300 annual limit 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 state officer or state employee or the immediate family member of a state officer or 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 by any director, stockholder, partner, agent, affiliate, member, employee or officer of a lobbyist principal as a result of a personal or casual relationship with the recipient.

(d) **Contents of reports.** The information to be reported pursuant to the provisions of Subsection (b) of this section shall be as follows:

(1) The name and position of the state officer or state employee to whom the thing of value was given;

- (2) The date the thing of value was given;
- (3) The nature of the thing of value given;
- (4) The amount of the expenditure made by the lobbyist or lobbyist principal for the thing of value; and
- (5) The name of the lobbyist principal or lobbyist principals on whose behalf the thing of value was given, if any.

(e) **Prohibition against dividing costs among lobbyist principals or other lobbyists.** For purposes of reporting things of value as required by this section, a lobbyist giving a thing of value on behalf of more than one lobbyist principal shall not divide the cost of the thing of value by the number of participating lobbyist principals. Nor may a lobbyist divide the cost of a thing of value with other lobbyists for any single expenditure.

(f) **Presence of lobbyist--exception for nominal things of value.** A lobbyist who gives a thing of value to a state officer or state employee must be present when the thing of value is accepted by the recipient unless the thing of value is of no more than ten dollars (\$10) in value.

(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 exact values are not known and not ascertainable, a good faith estimate of the fair market value shall be reported.

(h) **Exception for campaign contributions.** Any information required to be reported pursuant to the provisions of Chapter 10 of this title is not required to be reported pursuant to the provisions of Sections 2 and 3 of this chapter.

(i) **Form for lobbyist reporting.** The form or computer diskette with form software for reports of lobbyists shall be prescribed by the Ethics Commission.

(j) **Record-keeping requirements.** Each lobbyist shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the activity reports required to be made pursuant to this section for four (4) years from the date of filing of the reports containing the items.

(k) **Exceptions to reporting.** Nothing in this section shall prohibit the giving or require the disclosure of the giving of anything of value by:

- (1) a charitable organization or an organization described in Section 501 (c) of Title 26 of the United States Code, 26 U.S.C., Section 501 (c), as it currently exists or as it may be amended; or
- (2) a tax-exempt professional organization established by state statute or rules passed by the Oklahoma Supreme Court,

to a state officer or state employee, who is an officer or director of the organization, when receipt of anything of value results from the state officer or state employee

attending a function, meeting or seminar on behalf of, or as a representative of, the organization.

Things of value to state officers or state employees of regulatory governmental entities

Any person who:

- (1) is employed or retained by another for financial or other compensation to perform services that include promoting, opposing or attempting to influence any executive or administrative action by a governmental entity, including, but not limited to, the promulgation of rules and regulations and the setting of rates, other than an individual whose lobbying activities are only incidental to, and are not a significant part of, the services provided by such individual to the client;
- (2) is seeking to do business or doing business with a governmental entity; or
- (3) has a substantial financial interest in actions or matters before or affecting a governmental entity;

shall be required to file, by paper form or computer diskette, or electronically transmit the same report required to be filed by lobbyists by Section 2 of this chapter if, and only if, such person gives anything or things of value to a state officer or state employee the cost of which exceeds fifty dollars (\$50.00) in the aggregate during a six-month period beginning January 1 and ending June 30 or beginning July 1 and ending December 31. Electronic filings shall be followed by delivering, mailing or faxing a signed and notarized paper copy of the form. This provision shall not apply, however, to things of value received as a result of or arising out of employment by, or doing business with, a lobbyist or lobbyist principal; and things of value received from any director, stockholder, partner, agent, affiliate, member, employee or officer of a lobbyist principal as a result of a personal or casual relationship with the recipient. Provided further, this provision shall not apply to things of value given to a public member when not given as a result of the public member's status as a public member.

257:23-1-2 and 23-1-3

[emphasis added]

The effect of these provisions is to require a lobbyist, or lobbyist principal, to report things of value given to a state officer or state employee with aggregate values in excess of \$50.00.

Those whom the rules refer to as “other persons” are required to file the same reports when seeking to or doing business with a governmental entity or with matters before or affecting a governmental entity [e.g. the Legislature].

The donor you have named does not have a lobbyist registration on file with this agency; he is thus not a registered lobbyist. Therefore, the thing of value you have received [i.e. the book of golf coupons] is not from a lobbyist or lobbyist principal.

The next question is whether the donor is seeking to do or doing business with the Legislature. If the answer is “no”, then the third question is whether the donor has matters before or affecting the Legislature.

If the donor falls into either the second or third group, aggregate values of things you receive are reportable when they exceed \$50.00. If the book you received was taxed, the value could exceed the limit. Or, if something else has been given to you by the donor within the past six-month period, the disclosure provision would be triggered. In all cases where disclosure is required, it must be made **by the donor**.

If the donor is not seeking to do or doing business with the Legislature, or has no interest in matters before or affecting the Legislature, no reporting is required.

A \$300 per year limit applies to things of value given state officers and employees from those above described. But, the rules no longer require reporting by recipients; therefore, you have no obligation to report receipt of the thing of value you received.

CONCLUSION

It is therefore the informal opinion of the Ethics Commission staff that since the records of this agency do not contain a lobbyist registration for the named donor, he is not a registered lobbyist or lobbyist principal, within the meaning of the rules. If the donor is seeking to do or doing business with the Legislature, or has matters before or affecting the Legislature, the thing of value must be reported by the donor if it exceeds \$50.00 in value or if, together with other things of value given to you within the past six-month period, you have received more than \$50.00 in value from this donor. Reporting, if any is triggered, must be made by the donor, who is required to report all such things of value between July 1 and 20 of this year. A \$300 per year limit applies to things of value given state officers and employees from those described in Section 257:20-1-9. But, the rules no longer require reporting by recipients; therefore, you have no obligation to report receipt of the thing of value you received..

The rules permit the Commission staff to issue informal opinions, upon the approval of the Chair or Vice Chair, provided the matter is reasonably susceptible to a single analysis and is not the subject of litigation, investigation or legislation. We hope these informal letters shed light on the issues and provide guidance. They are not, however, official pronouncements.

This letter has been approved by the Commission Chair. We trust it has answered your question.

Please note that, like ethics interpretations, informal opinions like this one are published in such a way as to protect the identity of those involved.