

Before the House Committee on Rules
House Bill 3528—Lobbyist Reporting Requirements

Bruce A. Bishop
May 16, 2013

Please accept this written letter for the record on House Bill 3528, modifying the lobbying reporting requirements on lobbyists to the Oregon Government Ethics Commission (OGEC). I am Bruce Bishop, a registered lobbyist appearing on my own behalf and not for my employer or any other organization. In 2006-07, I was president of The Capitol Club, Oregon's association of professional lobbyists, and I represented the association in legislative and administrative proceedings involving Oregon's regulation of lobbying.

HB 3528 is a legislative response to an informal staff opinion (copy attached), which the Capitol Club received from OGEC Executive Director Ron Bersin two months ago. In that opinion, Mr. Bersin wrote:

“[W]hen a lobbyist goes outside his or her firm and solicits others (including another lobbyist) to aid in an effort to influence action, he or she is lobbying. However, when a lobbyist discusses legislation or strategies with members of their own firm or with a client, he or she is not lobbying because there is no solicitation of others. We approach the problem with a common sense perspective.”

Mr. Bersin's analysis relies heavily on the meanings of the terms “solicit” and “other persons”. Relying on a 1998 opinion of the Oregon Attorney General, he points out that any “solicitation” by a lobbyist, whether action results or not, constitutes “lobbying” activity. In his comments on the first hypothetical presented to him, he says that lobbyists Jack and Jill need not report their lunch expenses, unless one solicits the other “. . . to influence or attempt to influence legislation action.” If such a solicitation occurs, he writes, “[T]he soliciting lobbyist must report his or her expenses.”

HB 3528 is helpful in clarifying that “Moneys expended on lobbying another lobbyist . . . or on lobbying any person on whose behalf a lobbyist is registered or required to register, are not required to be included in the statement required by this section.” (Page 1, lines 9-12.) With regard to Jack and Jill, whoever solicits whom, there would be no reportable expenditure, should the bill become law.

But there's one issue the bill leaves unresolved: Is a lobbyist's expenditure for his/her own food, refreshments and entertainment reportable when a lobbying solicitation occurs? In other words, while "Moneys expended *on* lobbying another lobbyist" would not be reportable under the bill, would "Moneys expended *while* lobbying" be excluded as well? In the first hypothetical addressed by Mr. Bersin in the attachment, both lobbyists paid their own lunch expenses. I respectfully disagree with his conclusion about how this situation should be handled.

If I am solicited by a lobbyist in the Capitol Coffee Shop to join him/her in supporting or opposing specific legislation, must I report my own expenditure for lunch because a lobbying solicitation occurred? Must the other lobbyist report his/her own lunch expenditure because a solicitation was made?

My answer is "No, the expenditures are not reportable", because they constitute "... amounts expended by the lobbyist for personal living and travel expenses ..." in accordance with the current exclusion in subsection (2) of ORS 171.745. (See page 1, lines 17-19 of the bill.) Relying on this provision, I have never reported my own expenditures—even if they were incurred while lobbying, and I know no lobbyist who would—unless the expenditure involved a legislative or executive official or another person.

Let me explain how I have handled such matters in the past.

Five years ago, I lobbied on behalf of the Oregon Association of Hospitals and Health Systems (OAHHS), which regularly convened lunch meetings for all the lobbyists representing hospitals. (There weren't quite as many then as there are now.) Unsurprisingly, we talked about legislation affecting our mutual interests. While their employers/clients were members of the association, they were not registered as OAHHS lobbyists. Consequently, I believe, they would not fall within Mr. Bersin's exceptions for those within the same lobbying firm or registered for the same employer/client. HB 3528 addresses this situation with regard to other lobbyists. It does not resolve the problem when the principals of other lobbyists are also involved.

In fact, I would not have included these expenditures on my lobbyist expenditure reports because they were paid for by the association to keep its members' lobbyists informed and (hopefully, but not always) aligned. The association would report the expenditures on its reports because they were incurred for lobbying. But if a group of us each paid our own tabs, I would not report my expenditure as lobbying.

Second, I recently served on the Board and as co-chair of the Public Policy Advocacy Committee for Ecumenical Ministries of Oregon (EMO). I was not registered on the entity's behalf as a lobbyist, nor did I spend 24 hours or \$100 quarterly "lobbying" on its behalf. But at the lobbyist orientation sponsored by the Capitol Club earlier this year, an OGEC staff member reported that once a person had registered as a lobbyist for one client, she/he was responsible for registering for others whether they met the 24-hour/\$100 expenditure thresholds for that interest or not. Would any lobbying by me on

an EMO issue have triggered an obligation to register? That seems like an absurd result, since I was just a volunteer, not EMO's lobbyist. (Or did the OGEC staffer mean that interpretation to apply only when an employer/client compensates a lobbyist?)

I support the policy that lobbyists who receive neither compensation nor other consideration, but volunteer their services for a group or interest, should not be required to register with or report to OGEC. I am not convinced that Oregon law or administrative practices make that clearly enough understood. Should you choose to do so, sprinkling a few more "notwithstanding" clauses into the lobbying laws would help clarify this matter.

Third, I received notice of this bill and today's hearing through a communication from Paul Cosgrove, the current Capitol Club president. (To the best of my knowledge, he is not registered as the organization's lobbyist. And I never so registered when I served in that, or myriad other, volunteer capacities over my 24 years as a Capitol Club member.) Mr. Cosgrove did not solicit me to support or oppose this legislation.

Finally, I support HB 3528 and urge your approval of it. It will clear up an ambiguity in current law for lobbyists who are striving to meet the regulatory requirements imposed on them in the name of government ethics. It will do little, however, to address how ethical lobbyists carry out their professional responsibilities.

Thank you for your consideration.

Attachment (1)



Oregon

John A. Kitzhaber, MD, Governor

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March 14, 2013

Marla Rae
Oregon Capitol Club, Inc
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Salem, OR 97301

Dear Ms. Rae:

This is in response to your request for staff advice dated March 8, 2013 concerning the circumstances under which it is required to report lobbying expenditures. Your submission contained six hypothetical situations and asked for a determination as to whether a lobbyist would be required by statute to report his or her expenditures in each scenario.

Before responding to the specific hypothetical situations posed in your inquiry, an explanation of the analytical framework our office used to evaluate the scenarios is necessary. The hypothetical scenarios all include the fact situation of a lobbyist expending funds for meals and refreshment, either solely for the lobbyist, or for the lobbyist and additional individuals. In each scenario it is necessary to determine if the situation involves lobbying at the time the expenses are incurred.

Statutorily, "lobbying" has three components:

1. Influencing or attempting to influence legislative action through oral or written communication with legislative officials;
2. Solicitation of executive officials or other persons to influence or attempt to influence legislative action; or
3. Attempting to obtain the goodwill of legislative officials. ORS 171.725(8)

None of your hypothetical scenarios involve lobbying legislative officials directly through oral or written communication (component 1). Nor do your questions involve attempting to obtain the goodwill of legislative officials (component 3). Rather, all six of the scenarios involve aspects of the possible solicitation of "other persons" to influence or attempt to influence legislative action (component 2).

Lobbying may involve direct contact with legislative officials (component 1, above), but it also may take place indirectly, when an individual "solicits" people other than legislative and/or executive officials to influence or attempt to influence legislative action. As defined in the American Heritage College Dictionary (3rd edition), "solicit" means "to seek to obtain by persuasion, entreaty or formal application." Therefore, if an individual



approaches "other persons" with a request or plea to join him or her in influencing or attempting to influence legislative action, that individual is lobbying. If one is engaged in lobbying, the food, drink and entertainment expenses incurred while doing so are reportable under ORS 171.745(1)(a).

ORS 171.725(8) expands the definition of lobbying beyond legislative and executive officials, to include the solicitation of "other persons". We recognize that this is a very general term, potentially subject to a wide range of differing interpretations. Nevertheless, we are required to give effect to each of the words chosen by the Legislative Assembly. Stated differently, we are not permitted to ignore the legislature's decision to include solicitation of persons other than legislative or executive officials within the definition of "lobbying". In discussing what constitutes "other persons", the Attorney General's Opinion on state employee lobbying explains that state employees would be soliciting others, and therefore lobbying, when meeting with stakeholders outside their agency and asking them to help support or defeat legislation.¹ Following this reasoning, when a lobbyist goes outside his or her firm and solicits others (including another lobbyist) to aid in an effort to influence legislative action, he or she is lobbying. However, when a lobbyist discusses legislation or strategizes with members of their own firm or with a client, he or she is not lobbying because there is no solicitation of others. We approach the problem with a common sense perspective. Our focus is not on the physical location of the lobbyist and the "other" party, but on what the lobbyist is doing when she communicates with the "other" party.

With this analytical framework in mind, the hypothetical situations are answered specifically as follows:

QUESTION:

Hypothetical #1: Lobby/Lobby

Jill and Jack both are registered lobbyists. Jack and Jill go to lunch to discuss legislative measures of mutual interest. No legislators or legislative staff members are present. Jack and Jill each pay for their own lunch. Are Jack and Jill each required to report the amount each expended for food?

ANSWER:

No, unless either lobbyist solicits the other to influence or attempt to influence legislative action. In that case, the soliciting lobbyist must report his or her expenses.

¹ Lobbying occurs when state employees "request or urge members of the stakeholder group to communicate with legislative staff or interim committees about the group's work for the purpose of having the proposed measure sponsored, supported or passed (or contrary legislation defeated)... even if none of the stakeholders so solicited carried through with any attempt to influence legislative action". Attorney General's Opinion #8259, 8/7/1998, p. 12, Section E, paragraph 3.

QUESTION:

Hypothetical #2: Lobby/Client

Ted is a lobbyist for client, Myrna. Ted and Myrna meet for breakfast to review the bills being tracked for the client. They generally discuss legislative activities. The discussion between Ted and Myrna evolves into strategies about opposing and supporting certain legislative bills. Ted picks up the tab for breakfast. Is Ted required to report the amount he expended for food with his client?

ANSWER:

No, because the discussion between a lobbyist and his or her client does not involve "other persons".

QUESTION:

Hypothetical #3: Group of Lobbyists

Larry, Moe and Ralph sit down together for lunch at Capitol coffee shop. Each buys their own lunch. Quite naturally, the conversation involves legislative activities. The conversation among Larry, Moe and Ralph evolves into developing a plan to try to defeat a particular bill. As a result, are Larry, Moe and Ralph required to report the expense of their lunch?

ANSWER:

No, unless one or more of the lobbyists solicited one of the other lobbyists to influence or attempt to influence legislative action, in which case he would be responsible for reporting his expenses. This situation presents the closest case of all your hypotheticals, because you posit that the conversation "evolves into developing a plan to try to defeat a particular bill." To the extent that any of the lobbyists present is "soliciting" the other "to influence or attempt to influence legislative action" on the bill, lobbying is occurring and expenses must be reported.

QUESTION:

Hypothetical #4: State Agency Staff

Andy is a state agency administrator and is a registered lobbyist. Andy arranges a lunch meeting at a local pizza place with his co-workers to develop strategies to help pass a particular piece of legislation. Each attendee, including Andy, pays for his/her lunch-size pizza. Is Andy required to report his expense for lunch with co-workers?

ANSWER:

No, because Andy is not soliciting others.²

² Because these activities do not involve contact with persons outside of the agency, such activities are not communication "with" legislative officials, nor "solicitation of others," nor attempts to obtain the "good will" of legislative officials. Therefore, activities to develop legislative measures that are internal to the agency are not "lobbying". Attorney General's Opinion #8259, 8/7/1998, p. 12, Section E, paragraph 2.

QUESTION:

Hypothetical #5: Same Firm

Harry and Sally work for the same lobbying firm. They meet for breakfast to compare notes on bills for the multiple clients that the firm represents. Harry and Sally spend some time discussing how to kill/promote a particular piece of legislation. Sally, who wants to suck up to her boss, picks up the tab for breakfast. Is Sally required to report this expense?

ANSWER:

No. The discussion does not involve "other persons" because Harry and Sally work for the same lobbying firm.

QUESTION:

Hypothetical #6: Family

This actually is not a hypothetical. Within the lobby community, there are several family partnerships: spouse and spouse; father and son(s); father and daughter; and brother and brother. When members of these family partnerships go out for meals/drinks - with no legislative and executive official present - and the purpose of the meal/drink is to craft lobbying strategies, are these expenses that are required to be reported?

ANSWER:

No. The discussion does not involve "other persons" because the family members are partners in the same firm.

The statutes relevant to issues addressed in this letter are provided as an addendum. This advice is not issued as a formal staff opinion because only the Oregon Government Ethics Commission itself has authority to issue formal advisory opinions on lobby regulations. Please contact our office again if you wish to have this advice letter submitted to the Commission for adoption as a formal advisory opinion pursuant to ORS 171.776.

Sincerely,



Ronald A. Bersin
Executive Director

RAB/dg

ADDENDUM

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this letter of advice:

171.725 (4) "Executive official" means any member or member-elect of an executive agency and any member of the staff or an employee of an executive agency. A member of a state board or commission, other than a member who is employed in full-time public service, is not an executive official for purposes of ORS 171.725 to 171.785.

171.725 (6) "Legislative action" means introduction, sponsorship, testimony, debate, voting or any other official action on any measure, resolution, amendment, nomination, appointment, or report, or any matter that may be the subject of action by either house of the Legislative Assembly, or any committee of the Legislative Assembly, or the approval or veto thereof by the Governor.

171.725 (7) "Legislative official" means any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch, and any staff person, assistant or employee thereof.

171.715 (8) "Lobbying" means influencing, or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of executive officials or other persons to influence or attempt to influence legislative action or attempting to obtain the goodwill of legislative officials.

171.730 Legislative finding. The Legislative Assembly finds that, to preserve and maintain the integrity of the legislative process, persons who engage in efforts to influence legislative action, either by direct communication with legislative officials or by solicitation of executive officials or other persons to engage in those efforts, should regularly report their efforts to the public.

171.745 Lobbyist statements of expenditures. (1) A lobbyist registered with the Oregon Government Ethics Commission or required to register with the commission shall, according to the schedule described in ORS 171.752, file with the commission a statement showing for the applicable reporting period:

(a) The total amount of all moneys expended for food, refreshments and entertainment by the lobbyist for the purpose of lobbying.