

March 14, 2013

Marla Rae
Oregon Capitol Club, Inc
900 Court St NE, 60-G
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.