



PUBLIC DISCLOSURE COMMISSION

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To: Members, Washington State Public Disclosure Commission
From: Andrea McNamara Doyle, Executive Director
Lori Anderson, Communications & Training Officer
Date: May 15, 2014
Re: Rule Making – Lobbyist Expenditures – Disclosure of Legislative Receptions

AGENDA ITEM

At the May 22 meeting, the Commission is scheduled to discuss and consider possible approaches to addressing how lobbyists and lobbyist employers should report expenditures for legislative receptions. The Commission may also discuss whether to modify and/or convert to rule PDC Interpretation 96-03, L-2 Reporting Guide for Entertainment, Travel, and Educational Expenditures.

BACKGROUND

In response to recent stakeholder comments regarding the current requirements for disclosing lobbying expenditures, the Commission expressed interest in making inflationary adjustments to the lobbying disclosure dollar thresholds and also in pursuing an alternative method for disclosing lobbyist expenditures related to legislative receptions. Last month the Commission approved draft adjustments to the dollar thresholds, including the “more than \$25” per occasion threshold that triggers a per-person itemization of entertainment expenditures.¹ Staff has filed notice of the draft rule changes with the Code Reviser and will be scheduling a public hearing at the June 26 meeting for the Commission to receive public comment, consider, and potentially adopt the proposed dollar threshold adjustments.

The remainder of this memorandum addresses the issue of reporting legislative receptions, which necessarily involves consideration of the various interrelated requirements in existing state law concerning the treatment of gifts, food and beverages, meals, and entertainment.

¹ [RCW 42.17A.615](#) provides:

(1) Any lobbyist registered . . . and any person who lobbies shall file with the commission monthly reports of his or her lobbying activities. . . .

(2) The monthly report shall contain:

(a) . . . Each individual expenditure of **more than twenty-five dollars for entertainment** shall be identified by date, place, amount, and the names of all persons taking part in the entertainment, **along with the dollar amount attributable to each person**, including the lobbyist’s portion. (Emphasis added)

Lobbyists currently are directed to disclose expenditures related to receptions by reporting the total and per person costs, as well as a listing of the names of state officials and employees, their family members, and the lobbyists who are in attendance, in accordance with the Commission's long-standing interpretation of RCW 42.17A.615. The Commission's manuals instruct lobbyists to determine the per person cost by dividing the entire cost of the event by the number of individuals who RSVP their attendance, regardless of the actual number of people who end up attending.

Interpretation 96-03 (L-2 Reporting Guide)

In September 1995, amendments to the lobbyist reporting provisions of Chapter 42.17 RCW (now Ch. 42.17A) took effect in conjunction with the enactment of the Ethics in Public Service Act, Chapter 42.52 RCW. These changes prompted the Commission to amend the lobbyist monthly report (Form L-2) and distribute a guide that explained how to report typical expenditures for entertainment as well as other types of expenditures permitted by the newly enacted Ethics Act. The following January, the Commission adopted the L-2 reporting guide as an interpretive statement. PDC Interpretation 96-03 Lobbyist Reporting Guide for Entertainment, Travel, and Educational Expenditures remains in effect today, and has not been revised or updated since 1996.

The Ethics Act determines whether certain lobbying expenditures are allowed and was the basis for Interpretation 96-03. The creation of the L-2 reporting guide and its later adoption as an interpretation were attempts to apply the lobbying disclosure requirements contained in Chapter 42.17/42.17A RCW to the types of expenditures allowed by the Ethics Act.

Gifts

Under the Ethics Act, gifts from a single source to state officers or state employees are limited to \$50 in the aggregate per calendar year. Officials and employees with regulatory, contracting, or purchasing authority are subject to additional restrictions. Certain items are presumed not to influence state officers and employees and may be accepted without regard to the \$50 aggregate limit, including the following:

- unsolicited flowers,
- unsolicited advertising or promotional items of nominal value,
- unsolicited tokens or awards of appreciation,
- ***food and beverages consumed at hosted receptions where attendance is related to the recipient's official duties.*** [RCW 42.52.150\(2\)](#).

The Ethics Act excludes other items from the definition of a "gift" without addressing the manner in which such items might need to be reported.² Items excluded from the definition of "gift" for purposes of the Ethics Act include:

² For instance, the Ethics Act does not reference that a lobbyist or lobbyist employer must report the value of expenditures for these types of items on the L-2 or that certain elected and appointed public officials may need to report the value of such items on their Personal Financial Affairs Statements (F-1).

- Payments of reasonable expenses for travel, lodging, and subsistence in connection with a speech, presentation, appearance, or trade mission in an official capacity; and
- Payments for enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution. [RCW 42.52.010\(9\)\(d\) and \(f\)](#).

The Ethics Act allows *gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties*. [RCW 42.52.150\(5\)](#). You may recall the question of what constitutes “infrequent occasions” is the subject of a current Legislative Ethics Board rule-making proceeding. The next meeting of the LEB is June 17, 2014, and the Board’s announced rulemaking schedule anticipates adoption of a proposal at either the August or October LEB meeting.

This same section of the Ethics Act further provides that gifts of “food and beverage that exceed \$50 on a single occasion *shall be reported as provided in Chapter 42.17A RCW*.” Chapter 42.17A RCW, in turn, includes reporting requirements for both the *givers* and *receivers* of these types of gifts consisting of food/beverages/meals. RCW 42.17A.615 requires lobbyists to report expenditures for “food and refreshments” and for “entertainment.” And RCW 42.17A.710(1) requires certain public officials/employees to report the receipt of such food and beverage events on their F-1, including the date received; donor’s name, city and state; brief description; and actual dollar amount, regardless of whether the gift was paid for by a lobbyist or any other source (other than the official’s government agency).

Receptions

As noted above, the Ethics Act exempts “hosted receptions” from the annual \$50 gift limit. In 1996, the Executive Ethics Board defined reception as a *social function involving a diverse group of people that does not involve a sit-down meal*. EEB Advisory Opinion 96-06 (attached). The Legislative Ethics Board later concurred that a reception should be distinguished from a sit down meal. LEB Advisory Opinion 1996-15 (attached).

Entertainment

The Ethics Act does not reference “entertainment.” In applying the Ethics Act, however, Legislative Ethics Board opinions have distinguished between entertainment events and reception/meal events, and between portions of events that include both an entertainment component and food/beverages.³

Chapter 42.17A RCW does not define “entertainment” for purposes of applying the “more than \$25 for entertainment” threshold that triggers per person attribution of the expenditures. Although the term “entertainment” appears in two other sections of Chapter 42.17A RCW, in one instance the law includes food and refreshments as a type of entertainment, and in the other,

³ See *e.g.*, LEB Advisory Opinions 1996 Nos. 10 & 15; and 1997 No. 10 (attached).

the law treats activities involving food and beverages distinct from activities involving entertainment.⁴ Other references to “entertainment” elsewhere in the RCW offer limited guidance because of the widely varying contexts in which the term is used. In many instances, entertainment is distinguished from food and beverages, but in other instances, they are considered collectively as one type or category of an event/activity.

Currently, PDC Interpretation 96-03 categorizes receptions as entertainment. As previously mentioned, the interpretation has not been revised to incorporate any of the ethics boards’ opinions referenced above.

Other States and Recent Legislation

In researching other states’ lobbyist reporting requirements, staff found very few specific references to “receptions.” Many states, however, distinguish between “entertainment” versus “food and beverages” for purposes of reporting lobbyist expenditures. Additionally, several states determine disclosure requirements for lobbying events based on who was invited to the event. For example, several states do not require a per person attribution if all legislators are invited. Other states have taken this concept one step further and do not require attribution when all members of either chamber are invited, all members of a joint committee or task force of either chamber are invited, all members of a caucus are invited, or a specific governmental body or identifiable group of public servants is invited.

Other ideas gleaned from other states that might be relevant to your consideration of alternative methods for disclosing receptions, include the following features:

- Requiring a certain number of people associated with the sponsor to be in attendance;
- Requiring advance public notice of the reception within a certain time period;
- Capping the per person event cost or, alternatively, the per person food and/or beverage cost for events eligible to use the alternative reporting format;
- Limiting the number of receptions a person may sponsor in a given period of time.

Last session, Representative Sam Hunt introduced HB 2727 (2014), which would have allowed an alternative reporting method for legislative receptions and other types of lobbying events that were attended by multiple people. (excerpt attached). The bill did not receive a public hearing.

NEXT STEPS

The Commission has several alternatives to consider if it seeks to have expenditures related to legislative receptions reported differently than they are reported now. Some of those options would involve seeking changes in the law, but others could be accomplished by rule. Clarifying the Commission’s objectives will help guide staff in developing alternative proposals for future consideration. To help elicit that guidance, we seek your thoughts on the following questions:

⁴ See RCW 42.17A.640, which makes reference to the need for grass roots lobbying campaigns to report expenditures according to financial categories “including but not limited to ... entertainment, including food and refreshments.” See also RCW 42.17A.230, which sets out the standards for using alternative reporting methods for certain fundraising activities when they consist of: “(2)(a)(iii) A gathering where food and beverages are purchased... or (iv) A concert, dance, theater performance, or similar entertainment event ...”

- What makes an event a “legislative reception”? In other words, what makes the event unique or different from other types of food, beverage, or entertainment events that legislators may attend?
 - Is attendance by legislators necessarily related to their official duties?
 - Do they necessarily involve either a “business agenda” or “social” element?
 - Do they necessarily require the invitation or attendance of a certain number or group of legislators? Or other types of people?
 - Are they necessarily closely linked in time and/or location to the legislative session in Olympia or an official legislative function?
 - Other distinguishing features?

- What information is most important for the public to be able to know about legislative receptions from a lobbyist’s report?
 - Identity of the sponsor(s) of the event?
 - Date, time, location of the event? In advance or after the fact?
 - Identity of the guests, by name or category of attendees?
 - Who is *invited* versus who actually *attended*?
 - Total cost of event, versus per person average cost, versus actual cost attributable to each legislator who attended?
 - Costs by category (venue, entertainment, food/refreshments, etc.)?
 - Number of receptions a legislator attends per session or year and/or the value of legislative receptions attended?

- Does the Commission have a preference whether to undertake this effort through rulemaking or legislation?

- What does the Commission want to do with Interpretation 96-03 going forward?

Attachments: PDC Interpretation 96-03
1995 Memo from PDC Staff to Registered Lobbyists
EEB Advisory Opinion 96-06
LEB Advisory Opinion 1996-10
LEB Advisory Opinion 1996-15
LEB Advisory Opinion 1997-10
Excerpt from HB 2727 (2014)

L-2 Reporting Guide For Entertainment, Travel and Educational Expenditures

Typical Expenditures* (Only permitted if receipt could not reasonably be expected to influence the performance of the officer's or employee's official duties.)	Expense Included on Line 5	Expense Included on Line 15	Give Copy of L-2 or Memo Report to Elected Official
Entertaining State Officials, Employees or Their Families:			
<input type="checkbox"/> Any type of entertainment occasion costing <u>\$25 or less</u>	Yes	No	No
<input type="checkbox"/> Breakfast, lunch or dinner for legislator or other state official or employee [singly, or in conjunction with family member(s)] and total cost for occasion is: <ul style="list-style-type: none"> <input type="radio"/> \$25 or less <input type="radio"/> More than \$25, but \$50 or less for legislator/family <input type="radio"/> More than \$25, and amount attributable to legislator/family is more than \$50 	Yes Yes Yes	No Yes Yes	No No Yes
<input type="checkbox"/> Reception for legislators, other officials, staff, association members, etc.	Yes	Yes	See Below**
<input type="checkbox"/> Tickets to theater, sporting events, etc. costing \$50 or less	Yes	Yes	No
<input type="checkbox"/> Golf outing at which no more than \$50 was spent on each official, including any member(s) of the official's family	Yes	Yes	No
Travel-Related Expenditures for Officials, Employees:			
<input type="checkbox"/> Travel, lodging, meals for office-related appearance or speech at lobbyist employer's annual conference	Yes	Yes	Yes
<input type="checkbox"/> Travel, lodging, meals for office-related tour of lobbyist employer's manufacturing plant or other facility	Yes	Yes	Yes
Educational Expenditures for Officials, Employees:			
<input type="checkbox"/> Travel, lodging, meals, tuition to attend seminar sponsored by non-profit organization	Yes	Yes	Yes
Other Lobbying-Related Items:			
<input type="checkbox"/> Flowers costing any amount to officials, staff and/or family	Yes	No	No
<input type="checkbox"/> Candy costing \$50 or less per official or employee	Yes	No	No
<input type="checkbox"/> Golf balls, coffee cups or other promotional items	Yes	No	No
<input type="checkbox"/> Fruit baskets costing \$50 or less per official or employee	Yes	No	No
Note: References to employees or staff do not constitute authority to provide impermissible items to regulatory, contracting or purchasing employees.			

*For information on whether an expense is permitted by the Ethics Law, call the Legislative Ethics Board ((360) 786-7540), the Executive Ethics Board ((360) 664-0871) or the Judicial Conduct Commission ((360) 753-4585). For assistance with reporting lobbying expenditures, call PDC ((360) 753-1111 or toll-free 1-877-601-2828.)

**If the per person cost for food and beverages is \$50 or less and a state elected official is not accompanied by a family member, then no report needs to be given to the official. However, if an elected official attends with a spouse (or other family member) and the combined total for both is over \$50, then notice to the official is required. Also, if the cost for food and beverages is over \$50 per person expected to attend, then all elected officials in attendance must be provided an L-2 Memo Report or a copy of the appropriate L-2.



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm 403, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX: (360) 753-1112

TO: All Registered Lobbyists
FROM: PDC Staff
DATE: September 8, 1995
SUBJECT: Statutory Changes Affecting L-2 Reporting

As you may know, amendments to the lobbyist reporting provisions of the Public Disclosure Law went into effect on September 1, 1995. These changes will not impact your September 15 report covering August lobbying activity. However, beginning with your October 15 report covering September, you are required to report somewhat differently than in the past and the Commission has changed the L-2 and the L-2 Memo Report accordingly.

Enclosed are:

- 1) A summary of ESSB 5684 (Chapter 397, 1995 Session Laws) as it relates to lobbyists;
- 2) An L-2 Reporting Guide to assist you in properly reporting entertainment expenditures as well as other types of expenditures permitted by the Ethics Law;
- 3) Explanations of the changes made to the L-2 and L-2 Memo Report; and
- 4) A pad containing 14 new L-2s and 6 new Memo Reports.

These materials will help you understand the new reporting requirements. The most significant amendments include disclosing the actual amount spent on each person entertained, itemizing all contributions that you delivered or otherwise transmitted, and itemizing expenditures you or your employer made for political advertising, public relations, telemarketing, polling, etc. You will also see that "gift" reporting has been eliminated, but you will be required to report and itemize all expenditures made for meals costing over \$50, travel and seminars for state officials and employees.

Be sure to dispose of all earlier versions of the L-2 and Memo Report forms you have on hand. Since the new forms call for more and different information than was required in the past, beginning with the report due October 15, 1995, you must use the new form (or modify your own computer generated form as needed) or your filing will not be considered complete.

If you have questions, contact one of the political finance specialists listed below at their direct numbers. The area code in all cases is (360).

Phil Stutzman	664-8853	Kurt Young	664-8854
R.S. Petersen	664-8852	Doug Ellis	664-2735
Michael Moran	664-2736	Kathlyn Lawrence	664-2737

"The public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private."

RCW 42.17.010 (10)



ADVISORY OPINION

APPROVAL DATE: May 20, 1996

NUMBER: 96-06

STATUS: **Retired 2010**

SUPERSEDES: N/A

Reason for retirement: Included in FAQs

HOSTED RECEPTION - ACCEPTANCE OF FOOD AND BEVERAGE**QUESTIONS:**

1. Can officers and employees of a state regulatory agency accept food and beverage from persons when they do not participate in regulatory or contractual matters with those persons?
2. What is the definition of hosted reception under RCW 42.52.150(4)(e)?
3. Does the limitation on the acceptance of food and beverage in RCW 42.52.150(4) apply to food and beverage provided by an association which is composed of members who are regulated by the agency or who seek to provide goods or services to the agency?
4. Can a state officer or employee accept food and beverage which they receive as part of training paid for by the state?

SHORT ANSWERS:

1. Officers and employees of a regulatory agency may accept food and beverage from persons if they don't participate in regulatory or contractual matters with those persons. RCW 42.52.150(5) provides that such officers and employees may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance is related to the performance of official duties. RCW 42.52.150(2)(f) also allows officers and employees to accept food and beverage at a hosted reception.
2. A hosted reception is a social event involving a diverse group of people, some of whom are regulated by the agency and others who are not, and some who provide goods or services to the agency and some who do not. It does not involve a sit-down meal.
3. In general, the limitation on the acceptance of food and beverage by officers of a regulatory agency in RCW 42.52.150(4) applies if the food and beverage is provided by an association which is composed of members who are regulated by the agency or who seek to provide goods and services to the agency. However, this limitation will not apply if the persons regulated by the agency or who seek to provide goods or services to the agency comprise less than 10 percent of the association and contribute less than 10 percent of the association's membership funds.

4. Officers and employees may accept food and beverage as part of training that is paid for by the state. In this situation the food and beverage is not a gift to the officer or employee. Rather, it is a meal that has been paid for by the state.

ANALYSIS

These questions all concern acceptance of gifts of food and beverage. RCW 42.52.010(9) defines “gift” as “anything of economic value for which no consideration is given”. Under the definition, the term “gift” excludes a number of items. RCW 42.52.140 prohibits a state officer or state employee from seeking or receiving a gift “if it could be reasonably expected that the gift . . . would influence the . . . judgment of the officer or employee, or be considered as part of a reward for action or inaction”. RCW 42.52.150(1) provides that a state officer or state employee may not accept gifts with a value in excess of fifty dollars from any person in a calendar year. RCW 42.52.150(2) sets forth some exceptions to this fifty dollar limit including (f):

Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties[.]

Another exception to the fifty dollar limitation is set forth in RCW 42.52.150(5) which provides:

A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties.

RCW 42.52.150(4) sets forth stricter limitations on the receipt of gifts by officers and employees of a “regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters”. The Board has used the term “Section 4 employees” to refer to officers and employees subject to the more stringent limitations in RCW 42.52.150(4).

Under RCW 42.52.150(4)(e), a Section 4 employee may accept food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties. On the other hand, Section 4 employees may not accept gifts in the form of food and beverages on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties.

The first questions asks whether officers and employees of a regulatory agency may accept gifts of food and beverage from persons if they do not participate in regulatory or contractual matters with those persons. The answer is yes. RCW 42.52.150(2)(f) authorizes acceptance of food and beverage at a hosted reception and RCW 42.52.150(1)

authorizes acceptance of food and beverage in the ordinary course of meals. The more strict limitations on the acceptance of gifts in RCW 42.52.150(4) only apply if the officers or employees participate in regulatory or contractual matters.

In general, an officer or employee participates in regulatory matters if his or her job includes the authority to participate in such matters—even if there is no actual regulatory transaction taking place. See Advisory Opinion 96-05.

Question 2 asks about the definition of the term “hosted reception” in RCW 42.52.150(2)(f) and (4)(e). The term is important because Section 4 employees may accept food and beverages consumed at hosted receptions where attendance is related to their official duties. The term “hosted reception” is not defined in the statute. The Board has adopted a two-part analysis to determine the meaning of this term. The first part looks to the plain meaning of these terms. The dictionary defines “host[ed]” is “[t]o serve as host for or at”. Webster's II New Riverside University Dictionary 593 (1988). “Reception” is defined as “[a] social function”. *Id.* at 982. Based on the plain meaning of the term hosted reception, the Board concludes that a hosted reception is a social event.

As a social event, a hosted reception is not a function involving solely officers and employees who participate in regulatory and contractual matters and those persons who are requested by the agency to provide goods or services to the agency. Instead, a hosted reception involves a diverse group of people, some of whom are regulated by the agency and others who are not—some who provide goods or services to the agency and some who do not.

The second aid in defining hosted reception is to compare the provision of RCW 42.52.150 (2)(f) and (4)(e) with the other provision in the statute governing gifts of food and beverage. RCW 42.52.150(5) provides that an officer or employee may accept gifts “in the form of food and beverages on infrequent occasions in the ordinary course of meals”. Based on the reference to “meals” in RCW 42.52.150(5) the Board concludes that a hosted reception involves food and beverage that is not a meal. For the purpose of this opinion, the Board considers a meal to be a sit-down meal where the guests are expected to sit down to eat.

To summarize, a hosted reception is a social function involving a diverse group of people that does not involve a sit-down meal. The following examples illustrate how this definition should be applied:

Example 1:

The XYZ Corporation, a person regulated by a state agency, has opened a new facility. The XYZ Corporation invites a number of people to view the facility including state officers and employees who participate in regulatory matters, customers, and officials from other governmental entities. In the evening, at the conclusion of the tour, the XYZ Corporation provides food

and beverages, including substantial hors d'oeuvres. There are some tables where guests may be seated but most people stand. This event is a hosted reception. It is a social event that involves a diverse group of people and does not involve a sit-down meal. Even though some tables and chairs are provided, it is not a regular meal where people sit down and eat.

Example 2

The XYZ Corporation is negotiating a contract with a state agency. The negotiations are expected to last several days. The evening before negotiations are to begin, the XYZ Corporation invites the officers and employees who will participate in the negotiations to an event to meet the XYZ employees who will be participating in the negotiations. The XYZ Corporation serves food and beverages, including substantial hors d'oeuvres. Although there are some tables and chairs, most people stand. This event is not a hosted reception. Even though it is not a sit-down meal, it does not involve a diverse group of people. The only ones attending are state officers and employees who participate in contractual matters and members of XYZ Corporation involved in negotiating the contract.

Example 3

The XYZ Corporation, a person regulated by a state agency, has opened a new facility. The XYZ Corporation invites a number of people to view the facility including state officers and employees who participate in regulatory matters, customers, and officials from other governmental entities. In the evening at the conclusion of the tour, XYZ serves food and beverages. Guests line up and fill up their plates and then are seated at various tables. There are enough tables and chairs so that everyone is expected to eat sitting down. This event is not a hosted reception. Even though it is a social event involving a diverse group of people, the XYZ Corporation is providing a sit down meal to the guests.

Question 3 has to do with the application of the limitation on gifts as applied to associations. At the outset, it is clear that the law applies to associations. RCW 42.52.010 (12) defines person to mean “any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit” (emphasis added).

RCW 42.52.150(4) prohibits officers and employees of a regulatory agency who participate in regulatory or contractual matters from accepting a gift from persons regulated by the agency or seek to provide goods or services to the agency. For ease of reference, the Board will refer to persons who are regulated by an agency or who seek to provide goods or services to an agency as Section 4 donors. If an association is a Section 4 donor, a Section 4 employee may not accept food and beverages from the association (except at a hosted reception).

A more difficult question arises when the association is not a Section 4 donor but is composed of members who are Section 4 donors. The question is whether the limitation on the acceptance of food and beverage in RCW 42.52.150(4) applies to food and beverages provided by an association which is composed of members who are regulated by the agency or who seek to provide goods or services to the agency.

The strict limit on gifts to Section 4 employees provides that they may receive “directly or indirectly only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency”. RCW 42.52.150(4). An association is funded by its members. If the association is composed of Section 4 donors, these members are at least indirectly providing food and beverages to Section 4 employees. Accordingly, the Board concludes that a Section 4 employee may not accept food and beverages under RCW 42.52.150(5) from an association composed of Section 4 donors.

There is a limited exception to this prohibition. If the Section 4 donors comprise only a small part of the association both in terms of membership and financial support, then their participation is too indirect to trigger the restrictions in RCW 42.52.150(4). To qualify for the exception, Section 4 donors must comprise less than 10 percent of the membership of an association and contribute less than 10 percent of the association's funds.

Moreover, this exception only applies if it is clear from the context of the event that it involves the association and not just the members who are Section 4 donors. For example, if Section 4 donors comprise less than 10 percent of an association's membership and financial support, it still would not be acceptable for only those members to host a meal for Section 4 employees—even if it was paid for by the whole association.

Question 4 concerns food and beverage received by the state as part of a state contract. This can happen in several ways. For example, the state buys a piece of equipment. As part of the contract, the vendor agrees to train state officers and employees how to use the equipment. The training takes place over several days and the vendor provides food and beverages to state officers and employees during the training.

Although state officers and employees receive the food and beverage in this example, it does not constitute a gift to them. RCW 42.52.010(9) defines gift to mean “anything of economic value for which no consideration is given”. (Emphasis added.) Thus, there is not gift if the food and beverage is provided as part of a state contract because the state has paid for it. In other words, consideration has been given.

August 8, 1996

Advisory Opinion 1996 - No. 10

The Board has received a request for an advisory opinion from Norman Stanley, Manager of Public and Government Affairs for Texaco, Inc. Mr. Stanley has waived the right to confidentiality afforded to persons requesting advisory opinions.

QUESTION

Would it violate the state ethics law for Texaco to provide complimentary admissions, including food and beverage, to the VIP area at the SEAFAIR hydroplane race, under the following circumstances?

Texaco is the primary sponsor of the SEAFAIR Unlimited Hydroplane Race on Lake Washington, one of the major events of the Seattle SEAFAIR celebration. This year's race is scheduled for August 4, 1996.

Texaco's contract with SEAFAIR began in 1994 and runs for five years. The contract requires that Texaco set aside a "VIP Hospitality Area at the site of the event with VIP credentials for 800 people each day, including at least 400 grandstand seats inside the VIP area." The contract also requires Texaco to "host an additional 250 government officials, SEAFAIR volunteers and associate event sponsors on race day." This complimentary admission also includes sandwiches, salads, and beverages.

The invited guest is allowed to bring an additional guest of his or her choosing. With the full value attributed to the invited legislator, the monetary value would be in excess of \$50. The request further states that "this is not a political event and there is no intention to discuss politics."

OPINION

Such an invitation for complimentary admission, food and beverages would be a violation of the ethics law under the facts stated in the request if issued by Texaco, Inc.

ANALYSIS

RCW 42.52.150(2)(g) provides a rebuttable presumption that the \$50 gift limit, as well as the reasonable expectation rule of RCW 42.52.140, do not apply to the "admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization."

RCW 42.52.010(9)(d) exempts from the gift definition "payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity."

In **Advisory Opinion 1995 - No. 10**, we construed participation on a tour of timber production areas to be an appearance in an official capacity, and found permissible the payment of expenses by a lobbying organization. In **Advisory Opinion 1996 - No. 8**, we interpreted the trade mission language

to include complimentary participation in an international trip. However, the opinion raised a concern about payment of expenses by a third-party lobbyist participant in the trade mission. In that case it was determined permissible because the company's participation was limited to hosting a dinner, which would have been permissible in any case.

In **Advisory Opinion 1996 - No. 1**, we found that acceptance of payment for educational programs from registered lobbyists or lobbyist-employers would be an ethics violation if it exceeded the \$50 annual limit, except when the lobbyist was a sponsor of the program. Similarly, in **Advisory Opinion 1996 - No. 2**, we found that payment of admission in excess of the \$50 limit to a political fundraiser could not be accepted from third-party lobbyists.

In this situation, the legislator's appearance would not be in an official capacity. Although Texaco is required to invite "government officials," there is no official purpose served by the attendance of legislators at the event. The race is purely a sports entertainment event which is not a part of official duties.

The SEAFAIR hydroplane race does fall within the category described in RCW 42.52.150(2)(g): "events sponsored by or in conjunction with a civic, charitable, governmental, or community organization." The statute establishes a presumption that the cost of admission, as well as the cost of food and beverages consumed at such events, will not be subject to the \$50 gift limit, nor "influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction" (RCW 42.52.140; 150).

Even though the statute establishes a presumption in favor of permitting such complimentary admissions, the Board has been careful to examine that presumption when lobbyists or lobbyist-employers are issuing the invitation. For the purposes of the exception in RCW 42.52.150(2)(g), the presumption is overcome if the invitation to a community entertainment event comes directly from a registered lobbyist or lobbyist-employer. When dealing with lobbyist involvement in such events, it is as important to avoid the appearance of a violation as an actual violation. Therefore, the Board will strictly construe the reasonable expectation statute in the kind of circumstances described in this opinion request, where the attendance by legislators does not involve their official duties.

On the other hand, when the invitation comes directly from the "civic, charitable, governmental, or community organization," and there is no link to the lobbyist or lobbyist-employer stated or implied by the invitation, the circumstances are not likely to overcome the presumption and represent a violation. In any event, we will review the strength of the presumption afforded by RCW 42.52.150(2) on a case-by-case basis and will carefully scrutinize the circumstances surrounding events similar to the one presented here.

January 9, 1997

**Advisory Opinion 1996 - No. 15
Restaurant Assoc Event**

The Board has received a request for an advisory opinion from Rebecca Bogard, on behalf of the Washington Restaurant Association, the Washington State Hotel and Motel Association and the Washington Association of Convention and Visitors Bureaus. Ms. Bogard has waived confidentiality.

QUESTIONS

The organizations requesting the opinion have sponsored a biennial dinner event called the "Hospitality Gala." In 1994, the event included "a reception prior to the dinner, an orchestra playing music during dinner service, the presentation of some awards to members of the hospitality community, a video about the tourism industry which included pictures of the legislators, recognition of the legislators by the emcee and an act by a group from Washington State University. After completion of these activities there was dancing."

Following the background information (summarized above), the request asks the following specific questions:

1. Does the fact that the function is black tie have any relevance to determining if the function qualifies under RCW 42.52.150(2)(f)?
2. If there is a band or some type of musical ensemble playing music during the time when dinner is being served, does this affect the ability of the function to qualify?
3. If a video is shown which contains information about the hosting industries, does this affect the ability of the function to qualify?
4. If the video is narrated by someone who makes it both informative and entertaining, does this affect the ability of the function to qualify?
5. Is there any kind of act (e.g., the Washington State University ensemble) which could be included as part of the program and still have the function qualify?
6. If there is dancing to a live band after dinner is completed, does this affect the ability of the function to qualify?

OPINION

The dinner event would not be a violation of the State Ethics Act, provided that it consists of dinner and related, customary, incidental amenities, and does not include non-incidental entertainment aspects.

ANALYSIS

A. STATUTORY CONTEXT

RCW 42.52.150 prohibits gifts in excess of fifty dollars in a single calendar year. The value of the event in this request exceeds the fifty dollar limit.

The opinion request cites the exemption for "food and beverages consumed at hosted receptions . . ." (RCW 42.52.150(2)(f)). However, the event as described does not appear to fit the meaning of the term "hosted reception." The Board concurs with the Executive Ethics Board on this point, which has distinguished hosted receptions from "a sit-down meal where the guests are expected to sit down to eat." A formal dinner such as the Hospitality Gala is clearly a "meal" rather than a reception.

A further exemption from the general limit is provided by RCW 42.52.150(5): "a state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties." The Board finds that this provision more closely matches the nature of the event, and responds to the specific questions in that context.

B. SPECIFIC QUESTIONS

1. Does the fact that the function is black tie have any relevance to determining whether the function qualifies under RCW 42.52.150(2)(f)? Using subsection (5) rather than (2)(f), the answer is that the formality of attire does not *per se* affect whether a meal qualifies under the exemption.

2. If there is a band or some type of musical ensemble playing music during the time when dinner is being served, does this affect the ability of the function to qualify? The answer to this question will depend on the circumstances involved. In many cases background music can be considered part of the ambiance of the surroundings associated with the permissible provision of food and beverage, regardless of whether the music is live or recorded. In such cases, we would consider the background music to be related and incidental to the service of food and beverage. However, if the music is more in the nature of a concert or for the sole purpose of dancing rather than background dinner music, it would not fit the exemption.

3. If a video is shown which contains information about the hosting industries, does this affect the ability of the function to qualify? No, this would seem to support the relationship to the performance of official duties. In this case the official duties include obtaining a better understanding of the industry and its legislative needs and preferences.

4. If the video is narrated by someone who makes it both informative and entertaining, does this affect the ability of the function to qualify? No, this would not change the answer to number 3.

5. Is there any kind of act (e.g., the Washington State University ensemble) which could be included as part of the program and still have the function qualify? Generally such "acts" would be considered entertainment which falls outside the statutory exemption. It would only be permissible if it could be considered related and incidental of the type described in the answer to number 2.

6. If there is dancing to a live band after dinner is completed, does this affect the ability of the function to qualify? If some people dance to the background band described in number 2, that would not appear to go beyond the exemption. The band should not, however, become an entertainment item itself, which would be evidenced by factors like moving to a separate ballroom, or substantially changing the configuration of the dining room to create the feeling of a different function.

C. OTHER CONSIDERATIONS

The exemption requires that attendance at the meal be related to the "performance of official duties." Therefore, at least some of the discussion during the meal has to involve legislative business. Most large banquet settings would not meet this requirement, since they do not typically have the type of direct interaction contemplated by the exemption. In this case, however, it is the Board's understanding that the tables are arranged to ensure that local restaurant and tourism entrepreneurs are present at each table, with the expectation that their industry and legislative concerns will be discussed.

The exemption also requires that hosted meals be "on infrequent occasions." Since this event occurs only once every two years, it clearly meets that test. By way of guidance, the Board notes that "infrequent" may mean different things depending on the nature and cost of the meal. Once a month might be too often for expensive dinners in four-star restaurants, while once a month for breakfast in a coffee shop might still be considered "infrequent." Members and staff should exercise caution and good judgment in this regard.

November 13, 1997

**Advisory Opinion 1997 - No. 10
Museum Reception**

The Board has received a request for an advisory opinion from Ross Baker, Senior External Affairs Manager and Land Use Policy Counsel for AT & T Wireless Services. Mr. Baker has waived confidentiality.

QUESTION

Would it be a violation of the ethics law for legislators to accept complimentary invitations to museum events sponsored by AT&T Wireless assuming the following conditions?

"Both events are part of the continuing AT&T Wireless Services commitment to the community and are charitable fundraisers for the Seattle Art Museum and the Bellevue Art Museum. In both cases, AT&T is the corporate sponsor and is inviting customers and local dignitaries -- including area legislators, local officials, and community leaders -- to a reception and dinner at the museum."

Both events will include a hosted reception and sit-down dinner. The Seattle event includes complimentary entrance to the museum collection. The Bellevue event also includes a costume ball. The reception and dinner portion will include presentations on AT&T Wireless Services. It is also expected that business and legislative issues will be discussed by AT&T representatives with the attending legislators.

OPINION

The reception and dinner portion of the events would not violate the State Ethics Act, but admission to the museum exhibit and the dance are considered non-incident entertainment, subject to the gift limitations. The value of the gift portion may be calculated separately, subject to the conditions stated in this opinion.

ANALYSIS

RCW 42.52.150 prohibits gifts in excess of fifty dollars in a single calendar year. The value of each of the events in this request exceeds the fifty dollar limit.

A. FOOD AND BEVERAGE

The events described in this request are similar to the Restaurant Association event addressed by the Board in **Advisory Opinion 1996 - No. 15**. In that opinion the Board advised that a combination reception and dinner such as that described in this request does not properly fall within the "hosted reception" exception in RCW 42.52.150(2)(f). It may, however, meet the exception stated in RCW 42.52.150(5): "a state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties."

In the earlier opinion, the Board noted that "most large banquet settings" do not meet the "official

duties" test, because they do not carry an expectation of time spent conducting legislative business. In the Restaurant Association situation, the Board found that the test was met because "the tables are arranged to ensure that local restaurant and tourism entrepreneurs are present at each table, with the expectation that their industry and legislative concerns will be discussed." The Board also noted that a video about the restaurant industry would be shown, which "would seem to support the relationship to the performance of official duties. In this case the official duties include obtaining a better understanding of the industry and its legislative needs and preferences."

In this opinion request, it appears that AT&T Wireless intends to discuss its business and legislative concerns in a formal presentation. There is a clear expectation that the legislative concerns will be further discussed with legislators during the evening.

The unique aspects of the events in AT&T's question permit the Board to advise that the food and beverage portion of the evening is permissible. However, the Board cautions that the "third-party lobbyist" policy which the Board has stated in **Advisory Opinions 1996 - Nos. 1, 2, 8, and 10** are still applicable. Registered lobbyists or lobbyist-employers are not permitted to purchase admission, provide table hosting, or otherwise sponsor the attendance of legislators or legislative staff on a third-party basis.

B. ENTERTAINMENT AND VALUATION

As the Board stated in **Advisory Opinions 1996 - Nos. 10 and 15**, any events which purport to include both an entertainment portion and an official appearance will be closely examined to determine whether the overall character of the event is an entertainment one. As noted above, the Board considers the receptions and dinners in this request to be unique events which are structured to permit a clear separation of the "entertainment" from the reception/dinner portion of the evening. When, as here, the entertainment is a subsequent and separate activity, the gift limitation is applied to the value of the entertainment portion only.

For the Seattle Art Museum event, the value of the "gift" would be the value of admission to the museum exhibit at a similar time of day and day of the week. For the Bellevue Art Museum event, the value would be the cost of the dance admission. If there is no stated cost, then the value can be derived from the total cost of the dance divided by the number of those in attendance.

The Board further notes that it is apparently AT&T's intention to issue invitations to individual legislators which will include a "guest" selected by the legislator. When the invitation is extended in this manner, the legislator is made the recipient of the gift for both persons. If the legislator chooses to bring a guest, the value of the gift is the total entertainment portion for both people.

1 **Sec. 3.** RCW 42.17A.615 and 2010 c 204 s 804 are each amended to
2 read as follows:

3 (1) Any lobbyist registered under RCW 42.17A.600 and any person who
4 lobbies shall file with the commission monthly reports of his or her
5 lobbying activities. The reports shall be made in the form and manner
6 prescribed by the commission and must be signed by the lobbyist. The
7 monthly report shall be filed within fifteen days after the last day of
8 the calendar month covered by the report.

9 (2) The monthly report shall contain:

10 (a) The totals of all expenditures for lobbying activities made or
11 incurred by the lobbyist or on behalf of the lobbyist by the lobbyist's
12 employer during the period covered by the report. Expenditure totals
13 for lobbying activities shall be segregated according to financial
14 category, including compensation; food and refreshments; living
15 accommodations; advertising; travel; contributions; and other expenses
16 or services. Each individual expenditure of more than (~~twenty-five~~)
17 seventy-five dollars for entertainment shall be (~~identified by date,~~
18 ~~place, amount, and the names of all persons taking part in the~~
19 ~~entertainment, along with the dollar amount attributable to each~~
20 ~~person, including the lobbyist's portion~~) reported as follows:

21 (i) For legislative-related events in which all legislators are
22 invited, the date, place, total cost of the event;

23 (ii) For events in which ten or fewer individuals are invited,
24 excluding lobbyists, the date, place, and amount attributable to each
25 individual;

26 (iii) For events in which more than ten persons are invited,
27 excluding lobbyists, the date, place, and amount attributable to each
28 individual. It is permissible to average the cost for each attendee;
29 however, if a legislator attends such an event, he or she may request
30 that the actual cost of food or refreshment consumed by the legislator
31 be reported.

32 (b) In the case of a lobbyist employed by more than one employer,
33 the proportionate amount of expenditures in each category incurred on
34 behalf of each of the lobbyist's employers.

35 (c) An itemized listing of each contribution of money or of
36 tangible or intangible personal property, whether contributed by the
37 lobbyist personally or delivered or transmitted by the lobbyist, to any
38 candidate, elected official, or officer or employee of any agency, or