



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 81-12

Value of Food and Beverage Given a
Public Official by a Registrant

A lobbyist has requested the advice of the Ethics Commission concerning the proper method for computing, and reporting pursuant to subsection 1-96(b), General Statutes, the cost of food and beverage provided a public official, a member of his staff or immediate family. The lobbyist had included in its financial report required data for several dinners, occurring prior to July 1, 1981, at which the lobbyist's representative entertained legislators and members of their staff or family. For illustrative purposes, one such entry reported essentially the following: dinner for four, the communicator lobbyist and his wife plus a legislator and the legislator's aide; cost of the meal \$134.10, made up of \$108.00 for the food and beverages, \$8.10 State sales tax, and an \$18.00 tip. The Commission staff questioned the cost per dinner of more than \$33.00. In explaining why it understood no violation of the prohibition in subsection 1-97(a), General Statutes against gifts exceeding \$25 in value in a calendar year had occurred, the lobbyist stated it interpreted applicable statutory provisions as follows:

- (1) the cost of the food and beverage was \$108.00 or \$27.00 per person -- the sales tax and tip not being part of the "cost" for purposes of subsection 1-91(g), General Statutes;
- (2) a gift had been made to the legislator and legislative aide of \$27.00 each minus the \$24.99 each excluded from the definition of gift in the case of food, beverage, or both consumed on a single occasion, or \$2.01 per guest;
- (3) the \$2.01 gift per guest counts toward the gift or gifts which, under subsection 1-97(a), General Statutes may be given by a registrant to a legislator or legislative aide, so long as the gifts do not exceed \$25.00 in the aggregate in any calendar year.

The Ethics Commission does not agree with the registrant's rationale. It interprets the "cost" of a meal, and the "expenditure" by a registrant when it pays a bill for a dinner, to be the menu or beverage list price plus tax plus the tip. Additionally, when the cost of food or beverages or both, consumed on a single occasion exceeds \$25.00 per public official, staff or family member, the entire amount is a gift to the person, assuming that none of the exceptions to the definitions of "gift" apply, and consequently the limitation on gifts imposed by subsection 1-97(a), General Statutes has been breached.

Determination of the amount which a lobbyist may lawfully spend on a meal for a public official, staff or family member depends upon

Sharon (Daly) Smith

30 Liberty Street - Hartford, Connecticut 06115

An Equal Opportunity Employer

several interrelated statutory provisions. The first one, which precipitated the question here, requires a lobbyist to include in his financial report a statement of "...each expenditure of twenty-five dollars or more per occasion made by the registrant for the benefit of a public official in the legislative or executive branch, a member of his staff or immediate family, itemized by date, beneficiary, amount and circumstances of the transaction...." Subsection 1-96(b), General Statutes, before section 4 of Public Act No. 81-339 raised the threshold to \$35.00, effective July 1, 1981. "Expenditure" is defined very broadly. Subsection 1-91(f) id. There is no doubt that payment of the menu price of a meal; for beverages consumed before, during or after the meal; of the State sales tax associated with furnishing the food and drink; and of the tip are all "expenditures" and reportable when made for the benefit of a public official, his staff or family if the amount expended for the occasion was, at the time, \$25.00 or more. Subsection 1-96(b) id.; Ethics Commission Advisory Opinion Number 78-16, 40 Conn. L.J. No. 8, p. 13. A legislator is a "public official". Subsection 1-91(p), General Statutes. The legislator's aide would be a member of his staff for purposes of subsection 1-96(b) and 1-97(a), General Statutes. Cf. Ethics Commission Advisory Opinion No. 78-30, 40 Conn. L.J. No. 26, p. 12. The registrant agrees that at least part of the cost of the meal was a gift to the legislator and the aide, but in the Commission's view the registrant misconstrues the final two provisions applicable, concerning gifts. One states that "[n]o registrant ... shall give to any ... public official ... or a member of his staff ... any gift or gifts that exceed twenty-five dollars in value in the aggregate in any calendar year...." Subsection 1-97(d) General Statutes, prior to amendment by subsection 6 of Public Act No. 81-339, effective July 1, 1981. This is qualified by "... '[gift]' shall not include ... food or beverage or both, consumed on a single occasion, the cost of which is less than twenty-five dollars per person." Subsection 1-91(g), General Statutes, prior to amendment by subsection 1(g) of Public Act No. 81-339, effective July 1, 1981.

In determining what should be included in the "cost" of food, beverage, or both for purposes of subsection 1-91(g), above, "cost" is to "... be construed according to the commonly approved usage of the language" Subsection 1-1(a), id. "The meaning of the word 'cost' is plain and unambiguous [I]t is that amount actually 'expended in performing a particular act or operation '...." Pepin v. Danbury, 171 Conn. 74, 84 (1976), quoting Black's Law Dictionary (4th Ed.) What is actually expended in buying someone a meal is the list price on the menu, the inescapable State sales tax, and whatever tip is volunteered. There is nothing in the floor debate on this provision to indicate otherwise. The debate, in fact, supports this conclusion. It is couched in terms of "bill", "tab", "spend", "expenditure". While, as is pointed out later, there was some understandable confusion between the exclusion from "gift" of food and drink costing less than \$25 per person per occasion and the requirement to report with specificity expenditures of \$25 or more per occasion for food and drink bought for a public official, it is clear legislators (

were considering the total cost of a meal, including tax and tip, not just list price. See 20 H.R. Proc., part 16, 1977 Sess., pp. 6699-6704, 6730-6738, 6775-6782.

The same floor debate indicates the proper application of the exclusion from the definition of "gift" of food and drink costing less than \$25 per person per occasion to the prohibition on gifts by a registrant to a public official and certain others aggregating more than \$25 in a calendar year. The specifics of the debate are sometime hard to follow, principally because the fast-changing text of the bill which became the Code of Ethics for Lobbyists was first considered by the General Assembly on the penultimate day of the 1977 legislative session. None of the three provisions of particular concern here -- the exclusion from gifts in the case of food and drink under \$25, the requirement to report in detail certain expenditures of \$25 or more per occasion for the benefit of a public official, etc., and the \$25 limit on the total value of gifts in a year -- was in the bill presented to the House of Representatives for consideration. See subsection 1(g), section 7, and subsection 3(a) of Substitute House Bill No. 6419, File 1236, 1977 Session. The food and beverage exception to "gift" was contained in House Amendment Schedule "A", a complete redraft of Substitute House Bill No. 6419 created in the day or two before the Bill came up for consideration. The requirement to report certain expenditures for the benefit of a public official, etc. was not introduced until House Amendment Schedule "F", and was later modified by House Amendment Schedule "M". The limitation on gifts was reduced from \$100 per year to \$25 per year in House Amendment Schedule "A". The Amendments are contained in the Connecticut House Journal, Part II, January Session 1977, pp. 2178 through 2190. The corresponding debate on the Code is in 20 H.R. Proc., part 16, 1977 Sess., pp. 6695 through 6787. It is apparent from the debate particularly from the statements of Representative Hendel, floor leader, that a purpose of the bill was to discourage lavish "wining and dining" of public officials and State employees by lobbyists and to publicize the modest entertainment permitted by the bill. At one point Representative Hendel stated, "We made a valued [sic] judgment that meals under \$25.00 were not gifts." 20 H.R. Proc., part 16, 1977 Sess., p. 6703. The obvious implication of this statement is that meals over \$25.00 were gifts. The floor debate cited above also consistently implies that the whole meal is a gift, that food and beverage consumed at a single occasion should not exceed \$25.00 per person when a registrant was hosting a public official or a member of his family or staff. There is no indication whatsoever, by any representative on any side of the issue of wining and dining, that the reform measure being discussed allowed a lobbyist to provide a public official food and drink costing \$49.99 at a single occasion before a violation of the limitation on gifts occurred. (This spring the General Assembly enacted legisla-

tive increasing the exclusion in subsection 1-91(g) to food and drink costing less than \$35.00 per person per occasion, and allowing gifts aggregating up to \$35.00 per person per year. Subsection 1(g) and section 6, respectively, Public Act No. 81-339, effective July 1, 1981. There was no evidence of any understanding that this legislation would allow a registrant to take a public official to a dinner costing \$69.99. In fact, the initially-proposed increase to a less-than-\$50.00 exclusion for food and drink was scaled back to \$35.00, a \$49.99 meal being considered perhaps excessive in these times.)

As a related matter, the total cost of food and drink should be considered its "value" as a gift for purposes of subsection 1-97(a), General Statutes, rather than merely prima facie evidence of value. The financial commitment of the registrant is of at least as much concern in the case of wining and dining as is the benefit to a public official or other recipient. The amount of money spent by a registrant should determine whether or not subsection 1-97(a), General Statutes has been violated, without any necessity for deciding whether or not the registrant got a good buy for his money.

In summary, in computing the cost of food, beverage, or both for purposes of the exclusion from the definition of gift in section 1-91(g), General Statutes, the amount of the total bill -- list price, State sales tax, and tip -- should be utilized. Relating this exclusion to the limitation on gifts in subsection 1-97(a), General Statutes, food, beverage, or both, consumed on a single occasion, costing \$24.99 or less was, prior to July 1, 1981, a zero gift; costing \$25.00 or more at the same time was a gift equal to the cost with no exclusion from the value of the gift provided by subsection 1-91(g), General Statutes. These common sense readings of the statutory language are buttressed by the legislative history of the provisions involved.

It should be remembered that all the \$25.00 thresholds and ceilings referred to in this opinion were raised to \$35.00, effective July 1, 1981, by Public Act No. 81-339.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated

September 4, 1981