



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 90-11

Definition of "In Attendance" for Purposes
of Conn. Gen. Stat. §1-91(g)

Ms. Grace Nome, President of the Connecticut Food Association and a registered lobbyist, has asked the Ethics Commission to issue an advisory opinion interpreting the food and drink exception to the gift law contained in P. A. 89-369. Under Conn. Gen. Stat. §1-97(a), a registered lobbyist may not give any state employee, public official, candidate for public office or a member of his or her staff or immediate family any gift or gifts that amount to fifty dollars or more in value in the aggregate in any calendar year. Under P. A. 89-369, "[g]ift shall not include...food or beverage or both, costing less than fifty dollars per person and consumed on a single occasion at which the person paying, directly or indirectly, for the food or beverage, or his representative, is in attendance."

Prior to the enactment of P. A. 89-369, the food and drink exception contained in the definition of a "gift" did not include the language requiring that the lobbyist, or the lobbyist's representative, be in attendance. In his statement before the Committee on Government Administration and Elections in support of P. A. 89-369, the Commission's Executive Director and General Counsel stated, "[t]he...original intent behind the food and drink exemption was to allow people to discuss legislation...over a meal or a reception. This is now being circumvented by lobbyists using this to in essence give gifts of food and drink when they are not even present." Conn. Joint Standing Committee Hearing, Government Administration and Elections, Pt. 3, 1989 Sess., pp. 863-864. The Executive Director further stated that lobbyists should not be permitted to use the food and drink exception to give gift certificates for meals or to provide gift baskets or bottles of wine for various occasions. Id.

Ms. Nome has asked specifically whether the provision of sandwiches, party trays, cheese and crackers, etc. for special legislative events at the State Capitol and the Legislative Office Building, including opening and closing day activities,

"JF" parties, late night sessions, etc., by the Connecticut Food Association qualifies for the food and drink exemption to the gift law.^{FN} Ms. Nome has stated that the food provided by the Association may be placed in a particular room for individuals to consume as they come and go. A representative of the Association may be in the building, but is not necessarily in the same room as the food. Ms. Nome has also stated that the food provided by the Association may be placed in a room to which lobbyists do not have access.

The provision of food and drink under the circumstances outlined by Ms. Nome does not meet the requirements of the food and drink exemption to the gift law, unless a representative of the lobbyist providing the food and drink is in attendance. In order for the food and drink to qualify for the exemption to the gift law, a representative of the lobbyist providing it must be present while it is being served.

Ms. Nome has also stated that on occasion a lobbyist will provide food or drink to the staff of a legislative committee which can be consumed whenever the committee wants. For example, a lobbyist may provide cases of soda, beer or tins of popcorn to committees at the beginning of the session. Under the language of P. A. 89-369, these items will not qualify for exemption from the gift limitation since the lobbyist will not be in attendance when the food or beverage is consumed. Furthermore, Commission regulations regarding valuation of gifts state that a lobbyist may not give an item of indeterminable value to a public official, etc. Regulations of Conn. State Agencies §1-92-48(c). Therefore, in order to legally provide the food or drink in question the lobbyist must devise an acceptable method for determining the per person benefit conferred. Absent such a system, the value of the gift per person is indeterminable and the items should not be provided.

Under Conn. Gen. Stat. §1-96(b), a lobbyist must provide an itemized statement of each expenditure of fifteen dollars or more per person for each occasion for the benefit of a public official in the legislative or executive branch or a member of the official's staff or immediate family. As previously stated, if the lobbyist providing the food and drink is not in attendance at the event, the provision of food and drink does not qualify for the exemption to the gift law, even if the cost per person is less than fifteen dollars. Therefore, for purposes of complying with the gift limitations, if a representative of the lobbyist providing the food and drink is not in attendance, the lobbyist must make arrangements to

record which public officials, staff people and immediate family members attend the event. If the cost per person does not exceed fifteen dollars, the lobbyist need only report the total cost of the food and drink.

Ms. Nome has also asked how P. A. 89-396 applies in the following situation: A public official and a lobbyist are dining at the same restaurant, but at different tables. If the lobbyist pays the public official's bill or sends over a round of drinks does the food and drink exemption to the gift law apply? Mere presence in the same restaurant does not qualify as being "in attendance" under P. A. 89-396. As stated previously in this opinion, the legislative history supports the Commission's interpretation that there must be some substantive discussion between the public official and the lobbyist, or the lobbyist's representative, for the food and drink to qualify for the exemption to the gift law. The discussion need not, however, be specifically about legislative issues. Discussions in furtherance of lobbying, including general discussions promoting good will, legitimately fit within the terms of the exception. In summary, for the lobbyist to take advantage of the food and drink exemption to the gift law in this hypothetical situation, he or she must be seated at the same table as the public official during the portion of the drinks or meal for which the lobbyist pays.

^{FN}Ms. Nome has also indicated to the Commission that on occasion lobbyists will provide food and drink to charity events in which a legislator might participate. The restrictions set out in this advisory opinion are not intended to limit lobbyist contributions to these events. Of course, the Code's reporting requirements and gift limitations apply to any public officials who attend these events.

By order of the Commission,


Rabbi Michael Menitoff

Rabbi Michael Menitoff
Chairperson

Dated 5-7-90

