

Commonwealth of Virginia

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Virginia Conflict of Interest and Ethics Advisory Council

MEMORANDUM

TO: Virginia Conflict of Interest and Ethics Advisory Council

FROM: Rebekah Stefanski, Staff Attorney

DATE: December 10, 2015

RE: 2015-F-004: § 2.2-426 Lobbyist reporting of a banquet Option A

QUESTIONS:

1. When a registered lobbyist's principal hosts a banquet and extends complimentary tickets to legislative and executive officials, where the intent of the event is not to lobby but the principal cannot guarantee that no lobbying activities take place at the event, is the event a lobbying expense?
2. If the event is a lobbying expense, should it be reported on Schedule A or Schedule B of the Lobbyist's Disclosure Statement?
3. If the event consists of a reception followed by a dinner, and a legislative or executive official attends only the reception portion of the event and does not consume any food or beverages, should his attendance at the event be reported on the Lobbyist's Disclosure Statement?

ANSWERS:

1. Yes. When a lobbyist's principal invites a legislative or executive official to an event, it is assumed that lobbying will take place at the event.
2. The banquet should be reported on Schedule A of the Lobbyist's Disclosure Statement as an entertainment expense.
3. Yes. The Lobbyist's Disclosure Statement requires all legislative and executive official attendees to be listed. The form does not distinguish between legislative or executive official attendees who contribute to the total cost of an event and those who do not.

APPLICABLE CODE:

§ 2.2-419. Definitions.

As used in this article, unless the context requires a different meaning:

...

“Expenditure” means:

- 1. A purchase, payment, distribution, loan, forgiveness of a loan or payment of a loan by a third party, advance, deposit, transfer of funds, a promise to make a payment, or a gift of money or anything of value for any purpose;
- 2. A payment to a lobbyist for salary, fee, reimbursement for expenses, or other purpose by a person employing, retaining, or contracting for the services of the lobbyist separately or jointly with other persons;
- 3. A payment in support of or assistance to a lobbyist or the lobbyist’s activities, including the direct payment of expenses incurred at the request or suggestion of the lobbyist;
- 4. A payment that directly benefits an executive or legislative official or a member of the official’s immediate family;
- 5. A payment, including compensation, payment, or reimbursement for the services, time, or expenses of an employee for or in connection with direct communication with an executive or legislative official;
- 6. A payment for or in connection with soliciting or urging other persons to enter into direct communication with an executive or legislative official; or
- 7. A payment or reimbursement for categories of expenditures required to be reported pursuant to this chapter.

...

“Gift” means anything of value to the extent that a consideration of equal or greater value is not received.

...

“Lobbying” means:

- 1. Influencing or attempting to influence executive or legislative action through oral or written communication with an executive or legislative official; or
- 2. Solicitation of others to influence an executive or legislative official.

...

§ 2.2-426. Lobbyist reporting; penalty.

...

LOBBYIST’S DISCLOSURE STATEMENT

...

SCHEDULE A

ENTERTAINMENT EXPENSES

PLEASE NOTE: Any single entertainment event included in the expense totals of the principal, with a value greater than \$50, should be itemized below. Transfer any totals from this schedule to Part I, item 6a. (Please duplicate as needed.)

Date and Location of Event: _____

Description of Event (including whether or not it meets the criteria of a widely attended event): _____

Total Number of Persons Attending: _____

Names of Legislative and Executive Officials or Members of Their Immediate Families Attending: (List names only if the average value for each person attending the event was greater than \$50.)

Food	\$ _____
Beverages	\$ _____
Transportation of Legislative and Executive Officials or Members of Their Immediate Families	\$ _____
Lodging of Legislative and Executive Officials or Members of Their Immediate Families	\$ _____
Performers, Speakers, Etc.	\$ _____
Displays	\$ _____
Rentals	\$ _____
Service Personnel	\$ _____
Miscellaneous	\$ _____
TOTAL	\$ _____

SCHEDULE B

GIFTS

PLEASE NOTE: Any single gift reported in the expense totals of the principal, with a value greater than \$50, should be itemized below. (Report meals, entertainment and travel under Schedule A.) Transfer any totals from this schedule to Part I, item 6b. (Please duplicate as needed.)

APPLICABLE CODE (as of January 1, 2016):

§ 2.2-419. Definitions.

As used in this article, unless the context requires a different meaning:

...

“Gift” means anything of value, including any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value, and includes services as well as gifts of transportation, local travel, lodgings, and meals, whether provided in-kind or by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

...

DISCUSSION:

A lobbyist is required to disclose lobbying-related expenditures under § 2.2-426. Lobbying is defined as “influencing or attempting to influence executive or legislative action through oral or written communication with an executive or legislative official or solicitation of others to influence an executive or legislative official.”¹ An expenditure includes “a payment in support of or assistance to a lobbyist or the lobbyist’s activities, including the direct payment of expenses incurred at the request or suggestion of the lobbyist.”² When a lobbyist’s principal invites legislative or executive officials to an event, it can be assumed that lobbying will occur during the event even if the purported purpose of the event is not lobbying. Therefore, the banquet in question qualifies as an expenditure.

Currently, meals, lodging, transportation, and waivers of conference attendance fees provided by a lobbyist to a legislative or executive official all fall under the broad definition of a gift in § 2.2-419 and must be reported on the Lobbyist’s Disclosure Statement.³ Under the language of the law going into effect on January 1, 2016, the same will be true.⁴ However, Schedule B of the Lobbyist’s Disclosure Statement specifically instructs the filer to report meals and travel under Schedule A.⁵ Therefore, these types of expenses, such as a banquet meal, should be reported on Schedule A per the instructions on the form in § 2.2-426. Under the disclosure form requirements, a lobbyist must list only those entertainment events that exceed a total cost of \$50.⁶ If the total cost of the banquet is more than \$50, then it must be listed as an entertainment event under Schedule A.

Because the banquet is reported under Schedule A, the cost of attendance for legislative and executive officials should be reported as cost-per-person as opposed to the value of a banquet ticket. To determine the average cost per person, the principal’s total cost is divided by the total number of persons attending the banquet. This includes any attendee who does not contribute to the lobbyist’s total expense. If that average is over \$50, the legislative or executive official must be listed as an attendee at the event, as required by Schedule A. Even though the legislative or executive official who does not eat or drink anything does not contribute to the lobbyist’s total cost, if the dinner qualifies as a reportable entertainment event, legislative and executive official attendees are required to be listed.⁷ The form does not distinguish between legislative or executive official attendees who contribute to the total cost and those who do not. Therefore, trying to split the banquet into two parts, the reception and meal, has no bearing on the reporting requirements. The banquet is one event considered as a whole and not separate parts.

¹ § 2.2-419

² § 2.2-419

³ § 2.2-426

⁴ § 2.2-419 (Effective January 1, 2016)

⁵ § 2.2-426

⁶ § 2.2-426

⁷ The legislative or executive official who pays for his own banquet ticket or does not eat or drink anything is not required to list such meal on his own disclosure form.

The legislation enacted in 2015 did not substantially change the Lobbyist's Disclosure Statement, and the above analysis will still apply for events occurring on or after January 1, 2016.⁸

This analysis applies only to the stated facts. If the facts differ, the analysis will change.

⁸ § 2.2-426 (Effective January 1, 2016)