NATIONAL LEAGUE OF CITIES

Federal Lobbying and Gift Rules for State Municipal Leagues

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A Lobbyist Is

Any individual
(1) who is either employed or retained by a client for financial or other compensation
(2) whose services include more than one lobbying contact; and
(3) whose lobbying activities constitute 20 percent or more of his or her services' time on behalf of that client during any three-month period.

2 U.S.C. §1602(10)

Lobbying Contact

The term "lobbying contact" means any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to –

(i) the formulation, modification, or adoption of Federal legislation (including legislative proposals);

(ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive Order, or any other program, policy, or position of the United States Government;

(iii) the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or

(iv) the nomination or confirmation of a person for a position subject to confirmation by the Senate.

2 U.S.C. §1602(8)

Who Must Register

All lobbyists must register with the Secretary of the Senate and Clerk of The House of Representatives unless:

- The “lobbying contact” is made by a public official acting in the public official’s capacity

  2 U.S.C. § 1602(8)(B)

- A "public official" is any elected official, appointed official, or employee of an organization of State or local elected or appointed officials

  2 U.S.C. § 1602(15)(C)

Three Sets of Gift Rules

1. Legislative Branch
2. Executive Branch (Career Employees)
3. Executive Order 13490 (Political Appointees)

Legislative Branch Gift Rules

- $50 per occasion, can’t exceed $100 per calendar year
- Gifts under $10 don’t count toward $100 annual limit
- Can’t accept gifts from registered lobbyists or private entities that retain or employ lobbyists
- 23 Categories of Acceptable Gifts

Legislative Branch Common Gift Exceptions

- Gifts Given on the Basis of Personal Friendship
- “Widely Attended” Events
- Charity Fundraising Events
- Constituent Events
- Attendance at Receptions
- Incident to a Visit to a Business Site
- Commemorative Items
- Books, Periodicals and Other Informational Materials
- Gifts paid for by Federal, State or Local Government

Executive Branch Career Employee Gift Rules

- $20 per occasion, can't exceed $50 per calendar year
- Common exemptions include:
  - Widely attended gathering (requires pre-clearance from agency)
  - Meals and entertainment from non-prohibited source
  - Personal relationship (factors: personal payment and relationship history)
  - Modest items of food and refreshments, such as *soft drinks*, *coffee* and *donuts*, offered other than as part of a meal
  - Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation
  - Gifts the receipt of which are specifically authorized by statute (*e.g.*, Foreign Gifts and Decorations Act)

Legislative vs. Executive (Career Employee)

- Similarities
  - Personal relationship
  - Widely attended (though executive branch requires agency pre-clearance)
- Differences
  - Prohibited source requirement in executive branch
  - Reception exemption: broader in legislative branch
  - $20/$50 ($0 under Obama EO) in executive branch; $50/$100 ($0 for lobbyists/lobbying firms/lobbyist employers) in legislative branch
  - Items with little intrinsic value intended solely for presentation in executive branch; nominal items ($10) in legislative branch

Executive Order 13490 (Political Appointees)

- Obama's Executive Order prohibits most gifts to political appointees from *registered lobbyists* or *lobbying organizations*
- No $20/$50 or widely attended exemptions, among others
- Limited exemptions remain, including:
  - Personal relationship (factors: personal payment and relationship history)
  - Modest items of food and refreshments, such as *soft drinks*, *coffee* and *donuts*, offered other than as part of a meal, but not including receptions with alcohol like in the legislative branch
  - Press and charity events
  - Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation
  - Gifts the receipt of which are specifically authorized by statute (*e.g.*, Foreign Gifts and Decorations Act)
  - Gifts to the President and Vice President

Limits on Any Exception

None of the exceptions may be used to:

- Accept a gift in return for being influenced in the performance of an official act
- Solicit or coerce the offering of a gift
- Accept gifts so frequently as to create an appearance that you are using public office for private gain
- Accept a gift in violation of any statute.

Among the statutes you should know about are those prohibiting:

- Solicitation or receipt of bribes (18 U.S.C. § 201(b))
- Receipt of salary or any contribution to or supplementation of salary as compensation for Government service from a source other than the United States (18 U.S.C. § 209)

For More Information on Gift Rules

- 5 U.S.C. § 7353
- 5 C.F.R. pt. 2635
- House Rule 23
- House Ethics Manual, 110th Cong. (2008)
- Standing Rules of the Senate, Rule XXXV Gifts
- Ethics Commitments by Executive Branch Personal, Exec. Order No. 13,490, 74 Fed. Reg. 4673 (Jan. 26, 2009)
- www.house.gov/ethics
- www.rules.senate.gov
- www.usoge.gov



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