

**ARKANSAS ETHICS COMMISSION
ADVISORY OPINION 97-EC-06**

ISSUE PRESENTED

Whether it is proper for a lobbyist to exclude either taxes or tips from the cost of food and refreshments provided a public servant when reporting these expenditures.

BRIEF RESPONSE

The cost of the tax related to the meals or refreshments shall be included in the cost and, if the aggregate exceeds \$25 as a result, the expenditure should be itemized pursuant to Rule §511. However, the cost of the tip shall not be included in the cost of the meal or refreshments and need only be included in the amount reflecting the total of all expenditures reported by the lobbyist pursuant to Ark. Code Ann. §21-8-604(b)(1)(A) and Rule §510.

SUMMARY OF FACTS

A lobbyist's representative has inquired whether, for purposes of reporting expenditures on public servants, a lobbyist is to include the cost of taxes or tips relating to the food or refreshments purchased. The lobbyist is concerned that a meal, which costs slightly less than \$25.00 and therefore would not need to be itemized, could become an itemized expenditure when the taxes and tips are included. The representative argues that the benefit of a tax or tip does not go to the public servant in the same manner as the meal. He also contends that taxes and tips are separately listed on a bill, and could be viewed as a separate cost.

DISCUSSION AND DECISION

Ark. Code Ann. §21-8-604 requires lobbyists to report fully the total of all expenditures made or incurred by the lobbyist, for lobbying activity, or on behalf of the lobbyist by his or her employer during the preceding reporting period for the lobbyist. Additionally, §604(b)(2)(A)(ii) requires the lobbyist to provide an itemized listing of payments for food or other things having a value in excess of twenty-five dollars (\$ 25.00) when paid on behalf of a public servant. .

While the Commission has not directly issued a prior opinion on this issue, in 1989, the Arkansas Attorney General issued an opinion which bears some relation to this issue and is helpful in reaching a conclusion here. In Opinion NO. 89-E-6, the Attorney General determined that a lobbyist may be required to report expenditures on a cumulative basis, including relating costs together as one expense, if the series of payments are obviously connected by time and event. The

Commission recently adopted its Rule §511(a)(2) providing its interpretation of §604 in that the Commission believes the \$25 trigger for itemization relates to \$25 per day for food, beverages or both. §511 details how a lobbyist is to itemize each expenditure exceeding \$25 per day.

Neither the statute nor the appropriate Rule specifically uses "for the benefit of" a public servant as the tool in calculating the value of an item purchased by the lobbyist. Instead, the language of both requires listing or itemization of payments "on behalf of" the public servant. While the difference is slight, it appears important in resolving the particular issue at hand. A sales tax may not directly "benefit" the public servant but it certainly is a cost obviously connected to the meal and one which must be paid. It is not discretionary and when paid, the payment is on behalf of the person receiving the meal. If a lobbyist pays for a meal for a public servant and pays the tax related to the meal, the costs for both should be aggregated and reported. Additionally, if, because of the aggregation, the cost exceeds \$25.00, the lobbyist must itemize the payment, listing the information required by §511.

The issue of a tip given by lobbyist to the server in a restaurant poses a different issue. As with the matter of taxes, a tip is certainly related to the meal provided. However, the Commission is of the opinion that there are substantial differences between the cost of a meal (including taxes) and the tip. A tip is a discretionary part of the cost of a meal. It does not have to relate directly to the cost of the meal. A lobbyist may elect to tip a server for many reasons and the amount of the tip may vary greatly depending upon the lobbyist, the server or the restaurant. The public servant may not have any idea of how much was given as a tip or whether a tip was even given. Unless included with the meal as a charge on a credit card, the tip is usually not included on the ticket for the meal, as a tax would be. Finally, as there is no requirement for a tip, similarly, it is not necessarily true that the tip is provided "on behalf of the public servant." not only does the public servant not derive any direct benefit from the tip, arguably the whole purpose of and amount of the tip more appropriate is on behalf of the lobbyist or perhaps his/her client who well wish to express his/her thanks or lack of it for the service he/she received.

Therefore, while a tax is an item obviously connected with the cost of a meal and clearly paid on behalf of the servant receiving the meal, a tip is an independent expense not obviously connected and therefore properly excluded from the cost of the meal. If a meal, including taxes, is less than \$25, the amount of the tip need not be aggregated to the total cost for purposes of itemizing expenditures pursuant to §511. This exclusion is only relevant to the itemization under that particular rule/statute. The cost of the tip, as with any other cost of lobbying, would be included in the amount of the total expenditures made or incurred by a lobbyist during a reporting period pursuant to §21-8-604(B)(1)(a) and Rule §510 of the Commission's Rules for Lobbyist Registration and Reporting. Amounts of tips paid need to be reported generally within the total costs even though the amounts will not act as a trigger device for itemization of a meal not otherwise required to be itemized.

SUMMARY

The cost of the tax related to the meals or refreshments or both provided on behalf of a public servant shall be included in the cost of such meals or refreshments and, if the aggregate exceeds \$25 as a result, the expenditure should be itemized pursuant to Rule §511 as well as categorized in the total expenditures pursuant to Rule §510. However, the cost of the tip shall not be included in the cost of the meal or refreshments and need only be included in the amount reflecting the total of all expenditures reported by the lobbyist pursuant to Ark. Code Ann. §21-8-604(b)(1)(A) and Rule §510.


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