

COMPLYING WITH ETHICS LAWS AT THE LEGISLATIVE AND IN THE EXECUTIVE BRANCH

GARDNER PATE

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ETHICS OF LOBBYISTS

2007 Gallup Poll

- 5% of Americans rate lobbyists as having “high” or “very high” honesty and ethical standards – first or last place, depending on perspective
- Tied with car salesmen (5%) and just above advertising practitioners (6%)

ETHICS OF LOBBYISTS

2013 Gallup Poll

- 6% of Americans rate lobbyists as having “high” or “very high” honesty and ethical standards – again tops in the class
- Lowest rating of 22 professions polled, coming in just ahead of members of Congress (8%)

ETHICS OF LOBBYISTS

2017 Gallup Poll – “Hey, we still got it!”

- 8% of Americans view as “high” or “very high”
- Car salesmen: 10%
- Members of Congress: 11%
- Lawyers: 18%

**HOW TO DO YOUR JOB
WITHOUT BREAKING
THESE LAWS**



HOW TO BE LEGAL IF YOU MIGHT BE A LOBBYIST



WHY DOES THIS EVEN MATTER?

- Private practice attorneys:
 - Ensuring you are in compliance
 - How to advise your [client, boss, executive, etc.] about compliance
- Agency attorneys:
 - Knowing what the rules are to avoid pitfalls

Perception and practice are two different things.

And following the law is always a plus.

THE LAWS AT PLAY

- Chapter 305, Government Code
- Chapter 34, Texas Ethics Commission Rules (1 TAC 34)
- Texas Ethics Commission advisory opinions

WHAT THE LAWS COVER

- Representing others before the Texas legislature
- Representing others before Texas administrative agencies

WHAT THE LAWS DON'T COVER

- Anything dealing with the judicial branch
- Litigation with or against the state
- Representing clients before local government

REGISTERING: THE DOWNSIDE

Reporting your clients and compensation

- Once you register for one client, you must register for all clients you are lobbying for.
- Registration costs money (\$150 or \$750)

REGISTERING: THE UPSIDE!

Reporting your clients and compensation

- Once you register for one client, you must register for all clients you are lobbying for.
- Registration costs money (\$150 or \$750)
- **THIS IS MARKETING!**

REGISTERING: THE DOWNSIDE

Expenditures

- Once you register, you must track and report all expenditures you make on legislative and executive branch members

REGISTERING: THE UPSIDE!

Expenditures

- Once you register, you must track and report all expenditures you make on legislative and executive branch members
- **PROTECTION FROM BRIBERY LAWS!**
- **YOU CAN GIVE GIFTS THAT THE GENERAL PUBLIC CAN'T!**

REGISTERING: THE DOWNSIDE

Statutory Honesty

- You can't lie to a member

REGISTERING: THE UPSIDE!

Statutory Honesty

- You can't lie to a member
- **WHEN YOU TALK TO A MEMBER THEY WILL 100% BELIEVE YOU BECAUSE YOU CAN'T LIE!**

WHEN IS REGISTRATION REQUIRED?

- Lobbying is “communicating directly” with a “member of the legislative or executive branch” for the purposes of “influencing legislation or administrative action”
 - Communicating directly: direct contact
 - Member: officer, officer-elect, employee, or candidate for
 - Legislation: Any matter that is or may be the subject of action by legislature
 - Administrative action: any matter that may be the subject of action by a state agency or executive branch office, including the purchase of products or service

WHEN IS REGISTRATION REQUIRED

Expenditure test

- Spend at least \$500 in a calendar quarter on lobby expenses

Compensation test

- Receive at least \$1,000 in compensation for lobbying and preparing to lobby in a calendar quarter; AND
- Spend at least 40 hours in a calendar quarter lobbying and preparing to lobby

WHAT REGISTRATION LOOKS LIKE

- Pay a fee (\$150 or \$750) & file a form
- Report your clients, including:
 - Subject matters
 - Compensation by brackets
 - Docket numbers if applicable
- Choose regular (monthly) or modified (annual) expenditure reporting

UPDATING YOUR REGISTRATION

- Why update?
 - Adding or dropping clients
 - Change in subject matter, compensation, docket numbers
- Outside of session, update by the 10th of the month after a change takes place
- During session, update within five days after a change
 - Pro tip: Each Monday, look back at the previous week

EXPENDITURE REPORTING

- Only expenditures for the benefit of members, family, and guests
- Report by recipient
- Report by category
- Don't report political contributions

DETAIL REPORTING

- \$114 per person, per day
 - Food & Beverage
 - Entertainment
 - Transportation & Lodging
- \$50 per item
 - Gifts
 - Awards or Mementos
- Any expenditures for charity or political fundraisers

DETAIL REPORTING – PRO TIPS!

- Food & Beverage, Entertainment, Transportation & Lodging
 - \$114 per person, per day
 - Does not include tax or tip
 - You can split with another lobbyist; each lobbyist reports his or her share
- Gifts, awards, and mementos
 - You can't split these expenditures to avoid detail reporting

ALL LEGISLATORS ARE INVITED

- Do not break down expenditures based on type (food & beverage, entertainment, etc.)
- Do not break down expenditures based on recipient (senator, legislative staff, etc.)
- Do not detail report any expenditures
- The catch: it actually must be true

PROHIBITIONS

- Generally prohibited from providing transportation & lodging
- You can't lie to a member
- No gifts of cash, negotiable instruments, loans, or loan guarantees

TRANSPORTATION AND LODGING

TRIVIA TIME!!

- Transportation: Reaction to railroads
- Lodging: Reaction to hotels

TRANSPORTATION AND LODGING

- Generally prohibited
- Exceptions:
 - *De minimis* travel around town
 - Fact-finding trips
 - Informational conferences
 - Seminars
 - Educational programs
- Pro tip: check with an ethics professional before doing these

GIFTS

- The Public: Up to \$50 unless independent relationship
- Lobbyists: Up to \$500 in a calendar year
- Obviously this is because lobbyists can't lie and are trustworthy and ethical.

- Gifts include food & beverage up to \$50 delivered by common or contract carrier outside the Capitol Complex
 - The Thanksgiving turkey exception

LIMITS

- Award or memento: \$500 per award or memento
- Entertainment: \$500 per year
- Gifts: \$500 per year

- Food & Beverage: none
- Transportation & Lodging: none
- Charity/Political Events: none

HOW TO ADVISE YOUR CLIENT

Hypothetical situation:

Client/boss/executive bemoans action by state government and insists that if he/she could just meet with the right person, everyone would understand and things would be great. You go about setting up one or more meetings with legislators or executive agency employees/officials. Your client/boss/executive starts to spend more time doing meetings. You mention that he/she may need to register as a lobbyist.

“I’M NOT A LOBBYIST! Now, when is our next meeting with ____?”

HOW TO ADVISE YOUR CLIENT

- First, check the law. Are they required to register?
 - Don't let them make expenditures directly
 - If a lobbyist makes them and is reimbursed: lobbyist's expense, not the client's
- Look to exceptions. Do any apply?
 - 40 hour rule is the most common

HOW TO ADVISE YOUR CLIENT

- Classic case of risk vs. reward

WHERE TO GO FOR MORE HELP

- Texas Ethics Commission
 - www.ethics.state.tx.us
- Professional Advocacy Association of Texas
 - www.paat.org

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