

**NEW YORK
TEMPORARY STATE COMMISSION
ON LOBBYING**

OPINION NO. 58 (05-3)

FACTS

A Client/Lobbyist in New York has provided public officials with gifted production, distribution and broadcasting costs for a political message for which the Client/Lobbyist provider has an interest. These things were provided during a period of time leading up to an election that the public officials were involved in. The New York State Board of Elections has given an opinion to our requestor, which we accept, that these good and services need not be considered political contributions, if the message delivered did not advocate the election or defeat of any particular candidate. As such, the value of these goods and services do not fit the exemption provided by Section 1(c)(j)(1) of the New York State Lobbying Act as being reportable contributions under Article 14 of the New York State Election Law.

ISSUE

Does the providing of production, advertising, and broadcasting costs to a public official, as outlined in the facts stated, constitute an illegal gift under Section 1(c)(j) of the New York State Lobbying Act, if the gift has a fair market value in excess of \$75.

DISCUSSION

A gift requires that the recipient receive items having a fair market value in excess of \$75 (Opinion No. 54 (04-01)). Where the recipient provides the giver with something of an equal or greater value and said transaction occurs contemptuously, no gift having a value in excess of \$75 has occurred under the Act. In the case at hand, the Client/Lobbyist is providing production, advertising and broadcast costs on an issue of importance to them. In return, a politician or public official recognized in his own political district, contributes his image, reputation, notoriety and oratorical skills in presenting the message to the public and his constituents. This seems to be a mutually beneficial relationship. The fair market value of the Client/Lobbyist contribution can definitely be calculated, the value of the public official's contribution ..."priceless".

Therefore there is no gift in this case under the Lobbying Act.

OPINION

This Commission holds that when there is a "quid pro quo" - value for value - and that which each side contributes is not illegal, unethical or prohibited by law, there is no gift. If there is no gift, then there is no "illegal gift". In the case at hand, all parties are benefiting from the contributions of the other, it is a bargain and exchange, not a gift.

APPROVED BY COMMISSION: OCTOBER 5, 2005

CONCURRING: PATRICK J. BULGARO, VICE CHAIRMAN; JOSEPH A. DUNN, MEMBER; KENNETH J. BAER, MEMBER; PETER J. MOSCHETTI, JR., MEMBER.

/S/

PATRICK J. BULGARO
Vice Chairman