

**NEW YORK
TEMPORARY STATE COMMISSION
ON LOBBYING**

OPINION NO. 61 (05-06)

FACTS

An entity required to file reports with the Commission sponsored an event during a 2004 political party's national convention. The event, while not part of the official program of the national convention, was held during the same period of time as the convention and within the same city as the convention. Some of the attendees of the event were "public officials" as defined by the Act. The event is not a reportable expenditure under New York State Election Law.

The entity has claimed that the per-person cost of the event is \$74.81, nineteen cents below the threshold for illegal gifts under the New York State Lobbying Act. For purposes of this opinion, the Commission will accept this figure of \$74.81. The entity has stipulated that in several instances, multiple invitations were delivered to a single public official.

ISSUE

1. What constitutes the political event for purposes of the exemption contained in New York State Lobbying Act, Section 1-c (j)(1)?
2. Is the value of gifts aggregated when delivered to one public official, although used by multiple individuals?

OPINION

This Commission has issued an opinion unanimously on August 3, 2004, on the very facts presented by the entity herein (see Advisory Opinion 55). The fact that the attorney for the entity believes that "...the longstanding practice of the national and state political parties and the host committees in seeking private sector sponsors to support social events related to the conventions is as old as the republic" is both irrelevant and extraneous. Counsel for the entity is correct that, if the entity had contributed the amount in question to the political party, which in turn could have paid for the event itself, there would be no question of the political event exception applying. Had the legislature intended the political event exemption to extend to events attendant to or appurtenant to a political event, it would have included such language in the Act.

As to the issue of aggregation, the legality of the gift turns upon the value of the gift. The definition of "gift" under the Lobbying Act Section 1-c (j), states as follows:

Section 1-c (j) - The term "gift" shall mean anything of value given to a public official.

There is a fundamental difference between "value" and "cost." Cost is a function of what the giver pays for an item, value is what it is worth to the recipient. The Commission has previously determined that the value of an expense is not the cost of the expense to the lobbyist, but rather, the value of the expense as measured by what the fair market value of that expense would be to a consumer of the expense (Advisory Opinion 54). Applying a similar analysis to a gift would result in the value of the gift being determined not by the actual cost to the giver but rather the fair market value as applied to the recipient. In the instant case, a calculation of the value of the gift is determined by the value of what the recipient receives. Where the recipient is given a series of items over which he or she has complete control relative to whom the items may be distributed, the Commission believes that the value of the gift is the aggregate value of the items received. For example, where a public official receives five tickets to a sporting event having an individual value of \$20, the value of the gift is \$100 if the public official has the ability to distribute those tickets as he or she sees fit. A more illustrative

example is as follows: If a lobbyist were to give a public official a \$100 bill, there is no question that an illegal gift has occurred. We can find no rational reason to differentiate the \$100 bill from five \$20 bills.

APPROVED BY COMMISSION: April 5, 2005

CONCURRING: BARTLEY F. LIVOLSI, CHAIR; PATRICK J. BULGARO, VICE-CHAIR; JOSEPH A. DUNN, MEMBER; KENNETH J. BAER, MEMBER; PETER J. MOSCHETTI, JR., MEMBER.

/S/

Bartley F. Livolsi
Chairman