



ADVISORY OPINION 07-07

Interpretation of T.C.A. §§ 3-6-304 and 3-6-305 with respect to an association's provision of various benefits, goods and services to its members who are state officials, when such association is an employer of a lobbyist.

INTRODUCTION

The following Advisory Opinion is in response to a written inquiry from Ms. Candi Rawlins on behalf of the Tennessee Recreational Parks Association ("TRPA") as to whether certain conduct is permitted under the Comprehensive Governmental Ethics Reform Act of 2006 (the "Act").

Ms. Rawlins poses the following questions:

- (1) Is the TRPA permitted to pay a portion of its President's and President-Elect's travel and lodging expenses to conferences and meetings, if the President or President-Elect is also a state official?
- (2) Is the TRPA permitted to provide a working lunch or refreshments to members of its Executive Committee, if such members are also state officials?
- (3) Is the TRPA permitted to provide a meal ticket or a registration fee, or a post-event meal, as a token of appreciation to volunteers or members of its event host committee, if such volunteers or members are also state officials?
- (4) Is the TRPA permitted to offer state agency membership packages that include membership benefits and discounts for the state employees working in the agency?
- (5) Is the TRPA permitted to offer discounts to members, such as allowing a fourth member from the organization to attend a workshop free, if admission is paid for three other members from the same agency?
- (6) Is the TRPA permitted to co-sponsor an educational training event in conjunction with a state agency? Specifically, is the TRPA permitted to share in the costs of the meals and materials being provided to the attendees, and the rental of meeting space?
- (7) Is the TRPA permitted to provide food and refreshments to TRPA members who are also state officials at an event which is hosted by TRPA, but is sponsored by an employer of a lobbyist other than the TRPA?
- (8) Is the TRPA permitted to rent meeting space from state agencies or local governments? Will the answer remain the same if TRPA leases space in state parks while lobbying the state on

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issues relating to parks, recreation, and the environment? Will the answer remain the same if the city of Memphis adopts the state ethics laws?

ANSWERS

In response to the above questions, the Tennessee Ethics Commission (“Commission”) concludes:

- (1) The TRPA is permitted to pay travel expenses of its President and President-Elect to attend out of state conferences, if the President or President-Elect is a state official.
- (2) The TRPA is permitted to provide a working lunch and refreshments to members of its Executive Committee who are state officials, if the value of the meal is less than \$50.00 and the meal otherwise complies with the requirements of T.C.A. § 3-6-305(b)(9) and (10).
- (3) The TRPA is permitted to provide meal tickets and registration fees, or a post-event meal, to volunteers or to members of an event host committee who are state officials, if the value of the meal tickets, event registration fees or post-event meal does not exceed \$50.00 per person, per day, and otherwise complies with the requirements of T.C.A. § 3-6-305(b)(10).
- (4) The TRPA may provide membership packages and discounts to state agencies if the benefits of such packages are not enhanced due to the status of the employees as state officials.
- (5) The TRPA may offer discounts, under the facts described to the Commission.
- (6) The TRPA may co-sponsor an educational training event in conjunction with a state agency, under the facts described to the Commission.
- (7) The TRPA may provide members food and refreshments at an in-State event that is sponsored by an employer of a lobbyist other than TRPA if the value of such food and refreshments does not exceed \$50.00 per person, per day and otherwise complies with the requirements of T.C.A. § 3-6-305(b)(10).
- (8) The TRPA is permitted to rent space, equipment, and other goods and services, from state agencies and local governments if the TRPA pays fair market value. The answer remains the same if the TRPA leases space in state parks while lobbying the state on issues relating to parks, recreation, and the environment. The answer remains the same if a local government votes to place itself under the Act.

BACKGROUND

Ms. Rawlins is the Executive Director and a lobbyist for the TRPA. TRPA is an affiliate of the National Recreational Parks Association, but is established as a separate legal entity. The TRPA’s membership includes public employees who work in parks and recreation at the city, county, state and federal levels, and private citizens who have an interest in parks and recreation. In the past, the TRPA has provided financial assistance to its President and President-Elect to travel to its national conferences and regional meetings, thereby requiring the attendees to be

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responsible for the remainder of the expenses. Additionally, the TRPA's administrative budget allows it to pay for lunch or refreshments when its Executive Committee meets. Members of the TRPA also work at events as volunteers and are given a meal ticket or a ticket to the event in appreciation. Persons who serve on the host committee for a conference in Tennessee are provided a lunch or dinner. Moreover, the TRPA offers membership packages that include "citizen membership" for advisory boards or elected boards of public agencies. The package includes the TRPA's magazine, member directory and discounts on educational programs. There are no membership restrictions. The membership package is available to everyone, including persons employed with various agencies. Lastly, the TRPA may offer discounts to events (for example, allowing a fourth person from a state agency to attend a workshop free if admission is paid for three others from the agency). The events are open to all employees of the agency. TRPA has co-sponsored educational training events with the Department of Environment and Conservation. In exchange for a \$500.00 sponsorship, the TRPA receives advertisement at the conference. Additionally, the TRPA shares in the costs of providing food and beverages to the participants at a networking event, shares in the costs of the meeting room rental, and provides advocacy training to local government employees, private citizens and members of the TRPA's advisory council. Typically, with this scenario, a sponsor pays the other portion. The TRPA has no knowledge whether or not the sponsor is an employer of a lobbyist, nor control over how the money is used. Ms. Rawlins additionally states that the TRPA will hold its 2008 conference at the Memphis Convention Center. The TRPA will pay the City of Memphis for the meeting space. The cost of meals will be paid to the Memphis Marriott.

DISCUSSION

A. PAYMENT OF STATE OFFICIAL MEMBERS' TRAVEL AND LODGING EXPENSES

Is the TRPA permitted to pay a portion of its President's and President-Elect's travel and lodging expenses to its national conferences and regional meetings if the President and President-Elect are also state officials?

First, Ms. Rawlins' questions use the terms "state employees" and "state officials." The Act covers "official[s] in the executive branch" (T.C.A. § 3-6-301(19) and "official[s] in the legislative branch" T.C.A. § 3-6-301(20)).¹ Throughout the remainder of this Advisory Opinion,

¹(19) "Official in the executive branch" means the governor, any member of the governor's staff, any member or employee of a state regulatory commission, including, without limitation, directors of the Tennessee regulatory authority, or any member or employee of any executive department or agency or other state body in the executive branch.

(20) "Official in the legislative branch" means any member, member-elect, any staff person or employee of the general assembly or any member of a commission established by and responsible to the general assembly or either house of the general assembly who takes legislative action. "Official in the legislative branch" also includes the secretary of state, treasurer, and comptroller of the treasury and any employee of those offices.

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the term “state employee[s]” or “state official[s]” will be deemed a reference to officials as defined in §§ 3-6-301(19) and (20).

1. “Outside Activity” Exception

Regarding lodging expenses, the general provision of T.C.A. § 3-6-304(h) provides:

Except to the extent permissible under T.C.A. § 3-6-305, no employer of a lobbyist, lobbyist or any person acting at the direction of an employer of a lobbyist shall pay the lodging expenses of an official in the legislative or executive branch or immediate family of the official.

[Emphasis added.]

Then, T.C.A. § 3-6-305(b)(1) provides:

Benefits resulting from business, employment, or other outside activities of a candidate or official or the immediate family of a candidate or official, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the candidate or official;

Membership in the TRPA by a state official is outside of the day to day activities of the official. If it were not, the official’s own agency would be paying for the travel and lodging. There is no indication that the state officials who belong to the TRPA could not perform the duties of their jobs without belonging to the TRPA, or that membership in the TRPA was a condition of their employment.

Even if membership in the TRPA were paid for by the state agency and the agency sanctioned the member’s attendance at TRPA events, it is not part of a state official’s job to serve as President or President-Elect of the TRPA. Thus, under any scenario, serving as President or President-Elect is an “outside activity” for the state official.

The TRPA pays or contributes toward travel expenses for whomever holds the positions of President and President-Elect, regardless of whether they are employed by the state, a local government, the federal government, or are not employed by a government at all. The payments are not enhanced due to the status of the official. Therefore, payment of travel expenses for the President and President-Elect are within this exception.

2. “Established and Recognized Umbrella Organization” Exception

T.C.A. § 3-6-305(b)(7) provides:

(A) Expenses for out-of-state travel, if such expenses are paid for or reimbursed by a governmental entity or an established and recognized organization of elected or appointed state government officials, staff of state government officials or both officials and staff, or any other established and

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recognized organization that is an umbrella organization for such officials, staff, or both officials and staff;

(B) Entertainment, food, refreshments, meals, beverages, amenities, health screenings, lodging, or admission tickets that are provided in connection with, and are arranged or coordinated through the employees or designated agents of, a conference, if the conference is sponsored by an established and recognized organization of elected or appointed state government officials, staff of state government officials or both officials and staff, or any other established and recognized organization that is an umbrella organization for such officials, staff, or both officials and staff;

The TRPA can be described as an “other established and recognized organization that is an umbrella organization for” state officials and staff and is therefore within this exception.

B. PURCHASING LUNCH OR REFRESHMENTS FOR EXECUTIVE COMMITTEE MEMBERS, WHICH MAY INCLUDE STATE OFFICIALS

T.C.A. § 3-6-305(b) contains exceptions to the gift ban for meals associated with an in-state event, as follows:

(9) Entertainment, food, refreshments, meals, amenities, or beverages that are provided in connection with an in-state event at which a candidate for public office, an official in the legislative branch or an official in the executive branch, or an immediate family member of the candidate or official is a speaker or part of a panel discussion at a scheduled meeting of an established and recognized membership organization that has regular meetings; however, the cost of the entertainment, food, refreshments, meals, amenities, or beverages shall be paid for or reimbursed by the membership organization and the per person cost of the event, which shall not exceed fifty dollars (\$50.00) per person per day, excluding sales tax and gratuity. The value of any such gift may not be reduced below such monetary limitation by dividing the cost of the gift among two (2) or more lobbyists or employers of lobbyists. The fifty dollar (\$50.00) limitation shall be increased to the nearest one dollar (\$1.00) amount to reflect the percentage of change in the average consumer price index (all items-city average) as published by the United States Department of Labor, Bureau of Labor Statistics, every odd-numbered year on January 1 starting in 2007. The ethics commission shall publish the increased amount on its web site;

(10) Food, refreshments, meals, or beverages that are provided by an employer of a lobbyist in connection with an in-state event to which invitations are extended to an official or officials in the legislative branch or official or officials in the executive branch; provided, that:

(A) No employer of a lobbyist may provide food, refreshments, meals, or beverages, the value of which to the official exceeds fifty dollars (\$50.00) per event per day, excluding sales tax and gratuity; nor may such

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employer of a lobbyist provide any such items to any official pursuant to this subdivision (b)(10)(A)(i) that have a cumulative value of more than one hundred dollars (\$100) to the official during a calendar year;

(B) The value of any such gift may not be reduced below such monetary limitations by dividing the cost of the gift among two (2) or more employers of lobbyists;

(C) This exception to the prohibition in subsection (a) only applies to a member or members of the general assembly, if the member or members do not receive a per diem allowance pursuant to § 3-1-106, for the day on which the event is held and the member or members do not receive any food, refreshments, meals or beverages that are provided in connection with the in-state event that are not offered or provided to other nonmembers in attendance at the event; and

(D) An officer or management-level employee of each employer of a lobbyist paying for the event shall attend the event; however, a lobbyist shall not be considered to be an officer or management-level employee of an employer of the lobbyist paying for the event for purposes of this subdivision.

Accordingly, under either of the foregoing, the TRPA is permitted to provide lunch and/or refreshments to members of its Executive Committee who are state employees if the value of any food, refreshments, or beverages that are provided by TRPA does not exceed \$50.00 per person, per day, and the other statutory requirements listed above are followed.

C. MEAL TICKETS AND REGISTRATION FEES FOR STATE OFFICIALS WHO VOLUNTEER AT EVENTS

T.C.A. § 3-6-301(11) specifically excludes from the definition of “gift” the waiver of a registration fee to a conference or educational seminar. Accordingly, TRPA may waive the registration fee for volunteers who are state officials.

State officials may accept a meal ticket or meal as long as it complies with the “in-state event” exception contained in T.C.A. § 3-6-305(b)(9) and (10), as discussed in Section B, above.

D. MEMBERSHIP PACKAGES AND DISCOUNTS FOR STATE AGENCIES

From the information provided to the Commission, a membership package provides opportunities and benefits for the state employees working in the agency, such as monthly magazines, access to employment vacancies, notice of educational workshops and access to a membership listserv. Additionally, there are no restrictions on agency membership. Anyone who has an interest in parks and recreation can become a member.

T.C.A. § 3-6-305(b) provides an exception to the gift ban:

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(6) Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to:

(A) Discounts afforded to the general public or specified groups or occupations under normal business conditions, except that such discounts may not be based upon on the status of the candidate or official;

The exception contained in this statutory section permits the TRPA to provide membership packages and discounts to state agencies as long as the benefits of such packages are not enhanced due to the status of the employees as state officials.

E. OFFERING DISCOUNTS AS INCENTIVES TO INCREASE ATTENDANCE AT EVENTS

T.C.A. § 3-6-305(b) provides:

(6) Opportunities and benefits made available to all members of an appropriate class of the general public, including, but not limited to:

(A) Discounts afforded to the general public or specified groups or occupations under normal business conditions, except that such discounts may not be based on the status of the candidate or official;

The exception contained in this subsection permits the TRPA to provide discounts to events under the facts described.

F. CO-SPONSORING TRAINING EVENTS WITH STATE AGENCIES

TRPA states that it pays \$500.00 for a sponsorship. This amount is not set by the co-sponsoring state agency, but by what the TRPA can afford. Moreover, the TRPA has no control over how the monies are used by the other agency. In fact, any portion of the \$500.00 sponsorship may be used to provide a tabletop display, or to defray the costs of food, materials, equipment, or reduce attendance fees. The event attendees are typically private citizens, government employees, and members of the TRPA's advisory board.

Through sponsorship of such events, TRPA is purchasing the right for certain of its members to attend the event, and additionally purchasing the right to advertise the TRPA to attendees. Under T.C.A. § 3-6-301(11), as long as the TRPA purchases goods or services from a state agency and "consideration of equal or greater value is received," TRPA is not providing a "gift" and the gift restrictions of T.C.A. § 3-6-305 do not apply.

G. PROVIDING FOOD AND REFRESHMENTS TO STATE OFFICIAL MEMBERS AT EVENTS SPONSORED BY AN EMPLOYER OF A LOBBYIST OTHER THAN TRPA

On occasion, the TRPA will host a training event. An employer of a lobbyist, other than TRPA, may pay for food, beverages and refreshments that are provided to state employees who

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are attendees and volunteers at an event hosted by the TRPA, if the employer of a lobbyist complies with the “in-state event” exception contained in T.C.A. § 3-6-305(b)(10)(A)-(D), as discussed in Section B, above.

H. RENTING MEETING SPACE FROM A STATE OR LOCAL GOVERNMENT ENTITY

Is TRPA permitted to rent meeting space from state or local agencies? Will the answer remain the same if TRPA leases space in state parks while lobbying the state on issues relating to parks, recreation, and the environment? Will the answer remain the same if the city of Memphis moves to adopt the state ethics law?²

T.C.A. § 3-6-301(11) exempts from the definition of “gift” items or services for which consideration of equal or greater value is received. Accordingly, TRPA may rent meeting space, a/v equipment, etc. from the state, including those state agencies that TRPA directly lobbies, as long as TRPA pays fair market value for the items and services.

The Commission does not have jurisdiction over TRPA’s activities as they relate to local government. Even if a local government were brought within the Act and, thus, became subject to the Commission’s jurisdiction, an employer of a lobbyist would not be prohibited from renting office space from a local government if it rented such space at fair market value.

It is not certain that the TRPA’s contract with the Memphis Convention Center is with an entity that is allowed by law to place itself under the jurisdiction of the Commission. Assuming, arguendo, that such entity is allowed to do so and in fact does so, the TRPA is not prohibited from entering into a contract under which it pays fair market value for the accommodations, goods and services that it receives.

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Commissioners

Date: December 3, 2007

² The Commission notes that, in accordance with Public Chapter 161, codified, in relevant part, in T.C.A. § 8-17-103(b), Shelby county may vote to adopt the state ethics law. No provision currently exists which would allow Memphis city government to adopt the state ethics law.