

2015

MANUAL FOR SUPERVISORY PERSONNEL

OF THE

EXECUTIVE BRANCH



TENNESSEE BUREAU OF ETHICS AND CAMPAIGN FINANCE

TENNESSEE ETHICS COMMISSION

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INTRODUCTION

Pursuant to T.C.A. § 3-6-112, the Tennessee Ethics Commission (Commission) is required to publish a manual for supervisory personnel of the executive branch concerning compliance with the statutes enforced by the Commission. This manual is required to include ethics statutes and regulations, explanations of statutes, requirements of the statutes, examples of applications of the statutes and summary of advisory opinions.

In addition to this manual, the Commission is required to provide an annual ethics course, for supervisory personnel in the executive branch of state government, concerning compliance with the statutes enforced by the Commission. The Commission has determined that the most effective and efficient method of providing this training class is through a web based training program.

Please note that the examples used in this manual are not meant to be legal advice. After reviewing the manual, if you have questions concerning a specific situation you are encouraged to contact your agency's ethics officer or the Commission.

TENNESSEE ETHICS COMMISSION

The Tennessee Ethics Commission was created with the passage of the *Comprehensive Governmental Ethics Reform Act of 2006*, signed into law by Governor Bredesen on February 15, 2006. The Commission's jurisdiction was effective October 1, 2006. Among its many mandates, the Commission has the responsibility to:

- Promulgate rules and regulations (pursuant to the Uniform Administrative Procedures Act) to implement the provisions of the Act;
- Recommend "Guiding Principles of Ethical Conduct" for the General Assembly, the executive agencies, lobbyists, and employers of lobbyists;
- Receive complaints and conduct investigations, in conjunction with the Tennessee Attorney General's office;
- Compel the attendance of witnesses and the production of documents as needed to conduct its investigations;
- Conduct an annual ethics course for supervisory personnel of the Executive Branch, the General Assembly, and lobbyists;
- Provide an ethics manual for lobbyists and employers of lobbyists with the employer of the lobbyist, on its initial Lobbyist Registration Statement, being required to verify receipt of the manual;
- Collect and disseminate Disclosure of Interests Statements for the General Assembly, Governor, Governor's Cabinet, the Constitutional Officers, other state officials, local elected officials and candidates and appointees to such positions;
- Provide public access to the documents and forms filed with the Commission to the extent financially and technologically practical; and
- Provide an annual report to the Governor and the General Assembly by February 1st concerning the administration and enforcement of laws under the jurisdiction of the Commission, including the necessity, or lack of necessity, for any additional action or additional legislation that will serve to further the purposes of the law.

In 2009, the Bureau of Ethics and Campaign Finance was created in order to consolidate management and administrative functions of the Tennessee Ethics Commission and the Registry of Election Finance, in order to save the taxpayers of Tennessee and the regulated entities several hundred thousand dollars per year. The separate six-member boards of the Commission and the Registry continue to exist, with no change in their respective jurisdictions, powers, duties and authority.

SEEKING ADVICE

If you have questions concerning a specific situation after you review the manual you may seek assistance from the Ethics Commission in several ways:

- For simple questions, you may contact the Ethics Commission by e-mail, ethics.counsel@tn.gov, or telephone, (615) 741-7959.
- For a more detailed question, you may request an informal response (IR). (Please note that the Commission may be required to issue an IR, even if not requested, because of the nature of the question.) The facts of the situation must be provided in writing (e-mail or letter). The Commission will respond with an answer, by e-mail, usually within 24 hours. (T.C.A. § 3-6-117)
- For a question that deals with a statute that is subject to interpretation, the Commission must issue a formal advisory opinion (AO). The facts of the situation must be provided in writing. Because AOs are more complex and are issued by the Commission, the response time is longer than for an IR. You may view past AOs by clicking on the link at the bottom left of the training site.

In addition to seeking advice from the Commission, the Commission's website (www.tn.gov/sos/tec) can provide answers to many questions. For example, because lobbyists and employer of lobbyists are subject to gift prohibitions (covered in more detail later) you may want to go to the Commission's website to determine if someone is a lobbyist or employer of a lobbyist.

DEFINITIONS

Definitions for the statutes discussed in this manual are contained in T.C.A. § 3-6-301. Below are some of the definitions used frequently in discussing the statutes that apply to executive branch employees. To review a complete list of the definitions please see a copy of the statute in Appendix A.

“Employer of a lobbyist” or “employer” means any person or entity that employs, retains or otherwise arranges for a lobbyist to engage in lobbying on behalf of the person or entity for compensation. “Employer of a lobbyist” or “employer” specifically includes any such person or entity notwithstanding the lobbyist's status as an employee, agent, contractor, subcontractor or other representative lobbying on behalf of such person or entity for compensation. “Employer of a lobbyist” or “employer” does not include the individual employees, officers, directors, or members of a corporation, labor organization, association, or membership organization other than the chief executive officer and the chief financial officer or comparable individuals within such corporation, labor organization, association, or membership organization. For purposes of employer registration and disclosure pursuant to this part, a lobbying firm is not deemed to be the employer of any lobbyist within the firm. (T.C.A. § 3-6-301(8))

“Gift” means any payment, honorarium, subscription, loan, advance, forbearance, rendering or deposit of money or services, unless consideration of equal or greater value is received. “Gift” does not include a campaign contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person's immediate family or from a relative within the third degree of consanguinity of the person or of the person's spouse, or from the spouse of any such relative. “Gift” does not include the waiver of a registration fee for a conference or educational seminar. (T.C.A. § 3-6-301(11))

“Immediate family” means a spouse or minor child living in the household. (T.C.A. § 3-6-301(12))

“Lobby” means to communicate, directly or indirectly, with any official in the legislative branch or executive branch for the purpose of influencing any legislative action or administrative action. (T.C.A. § 3-6-301(16)(A))

“Lobbyist” means any person who engages in lobbying for compensation. (T.C.A. § 3-6-301(18))

“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. “Official in the executive branch” also includes any administrative governmental official or employee of any county exercising the authority set forth in § 8-17-103(b). (T.C.A. § 3-6-301(20))

“Solicit” means to entreat, to implore, to ask, to attempt, or to try to obtain. (T.C.A. § 3-6-301(24))

PROHIBITIONS

T.C.A. § 3-6-304 provides specific prohibitions on an executive branch employee accepting items from a lobbyist, employer of lobbyist or a person acting at their specific direction. Specifically:

- No executive branch employee or their immediate family may solicit or accept anything of value from a lobbyist, employer of a lobbyist or person acting at their specific direction with the stated or tacit understanding that their vote, action, or judgment would be influenced. (T.C.A. § 3-6-304(c))
- No executive branch employee or their immediate family may solicit or accept a loan of money from a lobbyist. (T.C.A. § 3-6-304(e))
- No executive branch employee may accept travel expenses, meals, or lodging provided pursuant to T.C.A. § 2-10-116, (honorarium statute discussed later) if paid for by a lobbyist or employer of a lobbyist unless an exception is specifically provided for under T.C.A. § 3-6-305. (T.C.A. § 3-6-304(n))

In addition to the prohibitions placed on executive branch employees in T.C.A. § 3-6-304 for accepting items from a lobbyist or employer of lobbyist, there are two additional prohibitions placed on lobbyists and employer of lobbyists. Specifically, no lobbyist or employer of a lobbyist or any person acting at their direction may:

- Agree to pay an executive branch employee compensation for property or services substantially in excess of that charged in the ordinary course of business. (T.C.A. § 3-6-304(f))
- Allow an executive branch employee or their immediate family to use their credit or credit card. T.C.A. § 3-6-304(g))

GIFTS – IN GENERAL

The statutes take a unique approach to prohibiting gifts to executive branch employees. The statute prohibits all gifts to executive branch employees from lobbyists and employer of lobbyists and then provides exemptions to the ban on all gifts.

T.C.A. § 3-6-305(a)(2) provides that an executive branch employee or their immediate family may not solicit or accept, directly or indirectly, a gift from a lobbyist or employer of a lobbyist.

T.C.A. § 3-6-305(b)(1) through (12) provide specific exemptions to the gift ban in T.C.A. § 3-6-305(a)(2). In addition, the definition of “gift” (T.C.A. § 3-6-301(11)) excludes certain items.

Over the next several pages, the manual will detail the exemptions to the gift prohibition. When applying these exceptions to the gift ban, executive branch employees should use caution. If at any time there is a question as to whether a gift qualifies under an exception to the gift ban, the employee should contact the Commission for advice as detailed in the **Seeking Advice** section of the training.

EXCEPTIONS TO GIFT PROHIBITIONS

Benefits of Employment

Benefits resulting from business, employment, or other outside activities if such benefits are normally provided to others in similar circumstances and the benefits are not enhanced due to the status of the executive branch employee. (T.C.A. § 3-6-305(b)(1))

Informational Materials

Informational materials in the form of books, articles, periodicals, other forms of written materials, audiotapes, videotapes, or other forms of communications provided to an executive branch employee. (T.C.A. § 3-6-305(b)(2))

Close Personal Friendship

Gifts that are given for a non-business purpose that are motivated by close personal friendship to the extent that the gifts are specifically defined and authorized by the Rules of the Ethics Commission. (T.C.A. § 3-6-305(b)(3))

The Rules of the Commission state that the Commission may consider the following factors when determining if a gift given to an executive branch employee by a lobbyist or employer of a lobbyist is given based on a close personal friendship:

- Whether a lobbyist or an employer of a lobbyist paid for the gift out of their own funds or whether the gift is instead being paid for out of the lobbyist's business account or by an employer of the lobbyist.
- Whether the cost of the gift is taken as a business deduction by the lobbyist or employer of the lobbyist.
- Whether there has been a history of gift giving between the lobbyist or the employer of a lobbyist and the executive branch employee or his or her immediate family; and the nature of previous gift giving.
- Whether the executive branch employee or immediate family member has reciprocated with a gift to the lobbyist or the employer of the lobbyist in the past, and whether the gift has been of similar value.
- Whether the lobbyist or the employer of a lobbyist provides the same or similar items to other executive branch employees or their immediate families at the same time, who are not close personal friends.

EXCEPTIONS TO GIFT PROHIBITIONS

- Whether the timing and circumstances of the gift are appropriate; whether a lobbyist or an employer of a lobbyist has a matter that is currently before the executive branch official.
- In the case of a gift given by an individual who works for an employer of a lobbyist, whether the gift-giver is involved in lobbying activities on behalf of the employer.

Promotional Items

Sample merchandise, promotional items, and appreciation tokens, if such merchandise, items and tokens are routinely given to customers, suppliers or potential customers or supplies in the ordinary course of business. (T.C.A. § 3-6-305(b)(4))

Honors and Awards

Unsolicited tokens or awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a plaque, trophy, or similar item which may not be readily converted into cash. (T.C.A. § 3-6-305(b)(5))

Benefits Available to the General Public

Opportunities and benefits made available to all members of a class of the general public, including (T.C.A. § 3-6-305(b)(6)):

- Discounts afforded to the general public or specific groups or occupations under normal business conditions.
- Prizes and awards given in public contests
- Benefits of participation in an in-state event sponsored by or for the benefit of a charity provided:
 - The event is open to participation by persons other than executive branch employees, legislative branch employees and their immediate families (benefits received cannot be enhanced due to status of the employee) or
 - Invitations are provided to the entire general assembly

EXCEPTIONS TO GIFT PROHIBITIONS

Governmental Entities

Expenses for out-of-state travel, if the expenses are paid for 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. (T.C.A. § 3-6-305(b)(7)(A))

Entertainment, food, refreshments, meals, beverages, amenities, goody bags, health screenings, lodging admission tickets and promotional items given in the exhibit hall of a conference that are provided as part 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. (T.C.A. § 3-6-305(a)(7)(B))

In-State Events for General Assembly

Entertainment, food, refreshments, meals, beverages, or health screenings that are given in connection with an in-state event provided:

- The entire General Assembly is invited
- An invitation is delivered to each member of the General Assembly at least seven (7) days in advance of the event
- An invitation is delivered to the Ethics Commission at least seven (7) days in advance of the event
- Per person cost of the event (based on the number of persons invited) may not exceed \$59 per person per day, excluding sales tax and gratuity (value of gift may not be reduced by dividing the cost between two or more hosts)

Within 30 days of the event, the employer of the lobbyist hosting the event must report to the Commission the cost of the event. (T.C.A. § 3-6-305(b)(8))

Speaker or Panel Member at In-State Event

Entertainment, food, refreshments, meals, amenities, or beverages that are provided in connection with an in-state event provided (T.C.A. § 3-6-305(b)(9)):

- You are a speaker or a panel member at a scheduled meeting of an established and recognized membership organization that has regular meetings
- The entertainment, food, refreshments, meals, amenities, and beverages provided do not exceed \$59 in cost per day

EXCEPTIONS TO GIFT PROHIBITIONS

In-State Event Hosted by Employer of Lobbyist

Food, refreshments, meals, or beverages that are provided by an employer of a lobbyist in connection with an in-state event provided (T.C.A. § 3-6-305(b)(10)):

- The value of the items provided do not exceed \$59 per day (value may not be reduced by dividing by two or more employer of lobbyists)
- An officer or management-level employee of each employer of a lobbyist hosting the event must attend the event

Local Travel

Occasional or incidental local travel for which no fare is ordinarily charged. (T.C.A. § 3-6-305(b)(11))

SAFE HARBOR PROVISION

If a prohibited gift is received by executive branch employee from a lobbyist or employer of a lobbyist the gift will not be considered a violation if (T.C.A. § 3-6-305(d)):

- The gift is not used and is returned within ten (10) days after receipt of the gift or ten (10) days after learning that the gift is prohibited; or
- The gift is paid for within ten (10) days after receipt of the gift or ten (10) days after learning that the gift is prohibited

HONORARIUM

Acceptance of an honorarium (payment of money or anything of value for an appearance, speech or article but does not include actual and necessary travel expenses associated with such appearance, speech or article) by a member of a governor's cabinet or cabinet level staff is prohibited. (T.C.A. § 2-10-116):

The acceptance of an honorarium for an appearance by the official in their capacity as a private business person is not prohibited.

(Please note that this statute is enforced by the Registry of Election Finance.)

CONSULTING

If any entity, other than a state, county or municipality contracts to pay a fee, commission or other form of compensation for consulting services to an executive branch employee, the employee must disclose the following to the Ethics Commission on form (SS-8006) within five (5) days of entering into the contract (T.C.A. § 2-10-126):

- The employee's name and contact information
- The name of the individual or entity paying the fee and contact information
- The amount of the fee
- The date of the services renders
- A general description of the services rendered

EXECUTIVE ORDERS

While the Ethics Commission has the authority to enforce ethics statutes, the Governor has the authority to issue Executive Orders placing additional responsibilities on executive branch employees. Gov. Haslam has signed Executive Order 20, "Concerning Ethics Policies and Disclosures by the Executive Branch", which places additional filing responsibilities on certain executive branch employees.

While these Executive Orders are not enforced by the Ethics Commission, these Executive Orders should be read by all executive branch employees. Questions concerning these Executive Orders should be addressed to the Governor's office.

SAMPLE QUESTIONS

Below are sample questions involving executive branch employees. The answers and explanations to these questions are on the following pages.

Close Personal Friendship

Sheryl, an official with the Department of Correction, has been invited to dinner by Margaret, a lobbyist. Sheryl and Margaret attended the University of Tennessee together and have remained in touch since graduation. Sheryl checks the law and knows that there is an exception for gifts from lobbyists which are for a non-business purpose and based on a close personal friendship subject to the Rules of the Commission. According to the Rules, what is not a factor?

- a. Margaret bills her lobbyist business for dinner.
- b. Dinner is less than \$59.
- c. Margaret and Sheryl have a long history of going out to dinner.
- d. None of Margaret's clients have business before the Department of Correction

Members of Trade Association

John, a Department of Health employee, is performing an inspection of a nursing home facility. The nursing home is a member of the Tennessee Association of Small Town Nursing Homes, a trade organization, which is an employer of a lobbyist. The nursing home has offered to provide John lunch in the facility cafeteria which is open to employees and visitors.

- a. John may not have the lunch because the nursing home is a member of the Tennessee Association which is an employer of a lobbyist.
- b. John should check the Commission's website to determine whether the nursing home is an employer of a lobbyist separate from the Association.
- c. John should check with the Department of Health whether there are any agency rules covering free meals from regulated entities.
- d. b and c.

Waiver of Registration Fee

Tom, an information technology official with the Department of Public Safety, has been asked to attend an education conference on the latest developments in cyber security by a software company. The software company charges a \$250 registration fee for the daylong event which includes coffee and light refreshments between sessions and a luncheon. Tom checks the Commission's website and verifies that the software company is an employer of a lobbyist.

- a. Tom may not accept the waiver of the registration fee because it is from an employer of a lobbyist.
- b. Tom may not accept the waiver of the registration fee because it exceeds the \$59 prohibition on gifts.

SAMPLE QUESTIONS

- c. Tom may accept the waiver of the registration fee but must pay for the luncheon.
- d. Tom may accept the waiver of the registration fee and the luncheon.

Tokens of Appreciation

Gerald is an official with the Tennessee Regulatory Authority and often meets with industry groups to discuss the agency's conservation policies. Gerald also collects small figurines which are valued at about \$40. Gerald will be speaking at the annual meeting of the Tennessee Association of Green Utilities, an employer of a lobbyist, and has let the sponsor know if it wants to give a token of appreciation for his speech, he would prefer a figurine over a plaque.

- a. Gerald may not accept the figurine because he has solicited it.
- b. Gerald may not accept the figurine because it is readily convertible to cash.
- c. Gerald may not accept the figurine because of both a. and b.
- d. Gerald may accept the figurine because it less than \$59.

Mouse Pads

Margaret, an official with the Office for Information Resources, is attending a technology trade fair at the local convention center that is open to the public. Blink, a software company, which is an employer of a lobbyist, has a table set up at the convention center in which they have displayed a variety of informational CDs about the company and its software, and mouse pads with the company's Blink logo. Margaret asks if she can take a couple of the mouse pads and is told by Blink's representative, "Sure, we give these out by the hundreds."

- a. Margaret may take the informational CDs but not the mouse pads because she asked for them.
- b. Margaret may take the informational CDs and the mouse pads because Blink "gives these out by the hundreds."
- c. Margaret may take the information and the CDs and the mouse pads provided they are valued at less than \$59.
- d. Margaret may take the informational CDs but only one mouse pad.

ANSWERS TO SAMPLE QUESTIONS

Close Personal Friendship

The correct answer is b.

Explanation:

Under the Commission's Rules, all the other factors would be taken into consideration but not the actual cost of the meal.

Members of Trade Association

The correct answer is d.

Explanation:

T.C.A. § 3-6-301(8) states that a member of a membership organization is not considered an employer of a lobbyist. In [Advisory Opinion No. 07-01](#), the Commission held that a member of an association is, itself, not an employer of a lobbyist unless the member has its own lobbyist notwithstanding that the association is an employer of a lobbyist.

Please be aware that the Governor has issued an Executive Order concerning gifts that covers more than just gifts from lobbyists and employer of lobbyists.

Waiver of Registration Fee

The correct answer is d.

Explanation:

The definition of gift excludes "the waiver of a registration fee for a conference or educational seminar." (T.C.A. § 3-6-301(11)). In [Advisory Opinion No. 08-06](#), the Commission held that the waiver of a registration fee would also include a meal provided as part of the registration fee.

Tokens of Appreciation

The correct answer is c.

Explanation:

While tokens of appreciation such as awards and plaques are a permissible exception under the ethics law, they must be unsolicited and not be readily convertible to cash. In this case, Gerald requested a figurine and the figurine, unlike most plaques and awards, is readily convertible to cash. (T.C.A. § 3-6-305(b)(5))

Mouse Pads

The correct answer is b.

Explanation:

The informational CDs would qualify under the exception for "informational materials in the form of books, articles, periodicals, other written material, audiotapes, videotapes, or other forms of communication." (T.C.A. § 3-6-305(b)(2))

ANSWERS TO SAMPLE QUESTIONS

The mouse pads would qualify under the exception for “sample merchandise, promotional items, appreciation tokens, if such merchandise, items and tokens are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business,” based on Blink’s assertion that it “gives these out by the hundreds.” (T.C.A. § 3-6-305(b)(4))

Under the above exception, the value of the promotional item and whether it was unsolicited is not relevant.