



## PUBLIC DISCLOSURE COMMISSION

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To: Members, Washington State Public Disclosure Commission  
From: Lori Anderson, Communications & Training Officer  
Date: January 16, 2014  
Re: Continued Discussion – Lobbying Disclosure Thresholds and Reporting of Lobbying Expenses for Entertainment, Food and Beverages – January 23, 2014 Meeting

### **Agenda Item**

At the January 23 meeting, the Commission is scheduled to continue its discussion regarding lobbying disclosure thresholds and reporting of lobbying expenses for entertainment, food and beverages.

### **Status**

The Commission's September 2013 rule making related to lobbyist forms drew stakeholder comments regarding lobbying disclosure thresholds, reporting of entertainment, and how the current thresholds in RCW 42.17A compare and relate to gift reporting set out in the State Ethics Act at RCW 42.52. Since that meeting, staff has:

- Met with the staff of the Legislative Ethics Board (LEB) to better understand how RCW 42.17A and RCW 42.52 interrelate;
- Held a stakeholder meeting to hear comments regarding potential adjustments to lobbying-related disclosure thresholds the definition of "entertainment" as it relates to disclosing lobbyist expenditures;
- Attended the LEB December 10, 2013 meeting to provide an update of PDC activities on this topic to the Board; and
- Conducted additional research of other methods and thresholds for lobbyist reporting used by other states.

The stakeholder comments were summarized for the Commission during the December 2013 meeting. As you will recall, stakeholder opinions differed as to whether the lobbying disclosure thresholds should be adjusted, but participants agreed that receptions should be reported differently than other food and beverage expenditures.

After considering the stakeholder comments made at the stakeholder meeting and hearing additional stakeholder comment during the December 2013 meeting, the Commission asked staff to provide more information regarding:

- alternatives for disclosing legislative receptions enacted by other states and
- how public agency lobbying disclosure requirements differ from private sector disclosure requirements.

That information is provided here along with two options showing possible adjustments to the lobbying disclosure dollar thresholds for the Commission's consideration.

## **LEGISLATIVE ETHICS BOARD UPDATE**

As mentioned above, staff attended the LEB's December 10 meeting and provided an update of the Commission's activities related to lobbyist reporting. Representative Jamie Pedersen commented that the LEB's concern is the ability to track how frequently legislators and staff accept food and beverages in order to implement the statutory standard in the ethics law that legislators accept meals only on an "infrequent" basis. He noted that lobbying reports filed with the Commission are currently used for this purpose, and any change in the lobbyist reporting thresholds would affect the information available to review complaints about this provision of the ethics law.

On December 18, 2013, the LEB issued an Order of Dismissal – Notice of Intent to Engage in Rulemaking in response to the complaint it had been investigating concerning alleged violations by five legislators of the ethics laws for accepting free meals and beverages from lobbyists on more than infrequent occasions. A copy of the Order/Notice is attached to this memorandum for your review.

## **RECEPTIONS**

Washington State's current disclosure requirement: *Each individual expenditure of more than \$25 dollars for entertainment shall be identified by date, place, amount, and the names of all persons taking part in the entertainment, along with the dollar amount attributable to each person, including the lobbyist's portion.* RCW 42.17A.615(2)(a). This means that the total reception cost – food and beverage, facility and equipment rental, entertainment, etc. – is itemized along with the names of those in attendance and the per person cost.

## **Alternative Disclosure Method for Legislative Receptions**

Many states have adopted an alternative method for reporting legislative receptions. Generally, the alternative method still requires that the reception be itemized as an event and the total cost reported, but there is no requirement to list those in attendance or the per person cost. Louisiana and Ohio require an average cost of just food and beverage purchased for the reception. Pennsylvania and Texas require no itemization of receptions.

The states with alternative methods for reporting receptions have established criteria for what is considered a reception (or similar event) and how they may be differently reported than other food and beverage or entertainment expenditures, and it differs a bit among the states. The criteria are:

- **An entire body is invited.** The common thread between the 23 states is that an entire body is invited to the event. Generally that means the entire legislature. Some of the 23 states have sanctioned smaller bodies, such as either chamber, a legislative committee, a party caucus, a regional delegation, or any members of these groups who attend a meeting of a national organization whose primary purpose is addressing general legislative policy. A few states also have provisions for boards, commissions, and legislative task forces. Arkansas and North Carolina use more generic terms, "identifiable group of public servants" and "qualifying group", respectively. Wisconsin requires the invited group to be identified when the reception is disclosed.

- **Timing.** Iowa requires the reception to be held during a regular session. Connecticut and Oklahoma limit the number of receptions a person may hold in a calendar year.
- **Advance notice.** In some cases, invitations need to be sent a prescribed number of days before the reception. Maryland and Tennessee require advance notice of the reception be filed with the regulatory body.
- **Invitees.** Some states have set a minimum number of people that must be invited such as 15, 20 or 25. Arkansas and North Carolina, who have broadly defined what groups may be invited, also require a certain number of individuals associated with the sponsor to be invited.
- **Amount spent.** Connecticut and Tennessee limit the per person cost of food and beverage to \$50 and \$55, respectively. Kansas places restrictions on what can be served – “only beverages and/or snack foods, not offered as part of a meal.”

Finally, Florida has banned any expenditure that benefits a legislator, but allows legislators to partake in events held out-of-doors on the capitol grounds that are open to the general public and free of charge.

## **PUBLIC AGENCY LOBBYING DISCLOSURE**

The Commission’s discussion thus far has focused on entertainment disclosure requirements, which are set out at RCW 42.17A.615. PDC Interpretation 96-03 describes most food and beverage events, including receptions, as “entertainment.” However, the State Ethics Law provides a threshold of more than \$50 for when certain foods and beverages are “gifts” and it describes when certain foods, beverages and attendance at receptions are not “gifts.”

Public agencies may not spend agency funds to entertain those who are lobbied without the express authority to do so.<sup>1</sup> *Any agency, not otherwise expressly authorized by law, . . . . Public funds may not be expended as a direct or indirect gift to any elected official or officer or employee of any agency.* RCW 42.17A.635(3). The statute goes on to define a “gift” as *a voluntary transfer of any thing of value without consideration of equal or greater value . . . .* Furthermore, the State Administrative & Accounting Manual produced by the Office of Financial Management precludes state agencies from making expenditures for meals that are intended to lobby a legislator or a governmental official. SAAM 70.15.20.

Even though agency funds may not be spent on gifts, RCW 42.17.635 contemplates that nonpublic funds could be spent in connection with a public agency’s lobbying efforts. Itemized disclosure is required when an elected official or public employee spends nonpublic funds exceeding \$15 in any 3-month period for or on behalf of legislators or state elected officials, public officers or state employees in connection with lobbying activities. RCW 42.17A.635(5)(d)(v)(B). PDC Declaratory Order No. 15 ruled that the University of Washington’s gift moneys and discretionary funds raised through private donations are not public funds and are not subject to the gift prohibition. Nonpublic funds could also, for example, be the personal funds of an elected official or public employee used to entertain or buy gifts for state officials or employees who are being lobbied.

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<sup>1</sup> Port districts, for example, may involve legislators when engaging in industrial development, trade promotion, or promotional hosting. RCW 53.36.120 – .150.

Public agency lobbying disclosure differs in other ways from private sector lobbying disclosure. Those other differences are not discussed here, since the Commission's current focus is disclosing entertainment expenditures.

### **ADJUSTING LOBBYING DISCLOSURE THRESHOLDS**

Since 2010, the Commission, when adjusting dollar amounts, has been required to make revisions that equally affect all thresholds within a category (campaign finance, lobbyist activity, or personal financial affairs). Revisions are "guided by" the change in the consumer price index for the period commencing with the month of December preceding the last revision and concluding with the month of December preceding the month the revision is adopted. RCW 42.17A.125(2). The last revision to any lobbying threshold was made before 2010, so this will be the first time revisions are made across the board should the Commission proceed.

Strictly applying the formula described above, the >\$25 threshold under which lobbying entertainment expenditures are itemized would result in a new threshold of >\$80. Some of the stakeholders who offered comments during the November 2013 meeting thought the threshold should be revised. None of them, however, thought it should be raised beyond >\$50. Consequently, two charts are attached. Chart A is a strict application of the inflationary index; Chart B's calculations used the formula necessary to reach the >\$50 amount for the entertainment itemization threshold.

### **NEXT STEPS**

1. Does the Commission still wish to engage in rule making to adjust the lobbying disclosure thresholds? [The CR-101 was filed with the Code Reviser on November 1, 2013 to give notice that the Commission was soliciting stakeholder comments and the potential rule making.]

RCW 42.17A.615(2)(e) requires that lobbyist reports include a *listing of each payment for an item specified in RCW 42.52.150(5) [food & beverage] in excess of \$50 and each item specified in RCW 42.52.010(10)(d) and (f) [travel and education expenditures] made to a state elected official, state officer, or state employee.* In the event the entertainment disclosure threshold is revised above >\$50, further changes to the lobbyist's monthly expense form and the lobbyist employer's annual report form will be required in order to meet this requirement.

2. Does the Commission wish to pursue legislation that would allow for alternative disclosure of receptions or entertainment?

This would give the Commission an opportunity to better align disclosure requirements with the Ethics Act and develop a reporting scheme that would make it easier for the public to find the most relevant data. Under the current requirements, lobbyists are reporting by event and then listing who attends. The public would benefit if, instead of reporting a narrative of each occasion, a report simply named the person entertained, how much was spent, and the purpose of the expenditure.

3. Does the Commission wish to pursue legislation that would revise the per person attribution requirement, regardless of the threshold amount?

Stakeholders thus far have agreed that simplifying the reporting requirements will likely result in more accurate and timely reports. Some lobbyists described how difficult it is to attribute an accurate per person amount for food and beverage when menu items are shared, attendees are eating and drinking different amounts, and attendees are arriving and departing mid-event.

A possible alternative to reporting the actual per person cost would be a disclosure method that used set dollar ranges such as \$0 - \$25, \$25.01 - \$50, \$50.01 - \$75, etc.

In the event the Commission wishes to pursue legislation, staff would work with stakeholders in the next few months to develop proposals for the Commission's consideration. It is also possible to include in proposed legislative amendments any changes to the disclosure thresholds the Commission wants to make.

Should the Commission proceed with agency request legislation, it would do so in 2015. It is likely, however, that there will be legislation introduced this session that may address these same issues. Staff recommends that, if the Commission is able to determine its preferred approach or at least a more specific direction, at this time, that would allow staff to more effectively participate in the legislative deliberations by, for example, testifying in legislative committee hearings concerning the Commission's position regarding:

- whether and how receptions should be reported differently from other entertainment; and
- whether and how per person attribution should be disclosed when reporting food, beverage, gifts, and other entertainment.

Attachments: Legislative Ethics Board Order of Dismissal – Notice to Engage in Rulemaking re: (Complaint 2013 – No. 1)

Charts A & B – revisions to lobbying disclosure thresholds

# Legislative Ethics Board

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## COMPLAINT 2013 – NO. 1

In Re Ericksen, Litzow, Fain, Hewitt and Schoesler

Complimentary Legislative Business Meals  
December, 2013

Order of Dismissal – Notice of Intent to Engage in Rule Making

### 1. Nature of the Case

The complaint was received on July 10, 2013. An investigation was conducted pursuant to RCW 42.52.420 and the Legislative Ethics Board (Board) discussed the complaint at regularly scheduled meetings on September 4, October 10, and December 10.

There are two allegations in this complaint and each is related to gifts to legislators in the form of food and beverage.

- (1) Respondents violated RCW 42.52.150(5) of the Ethics in Public Service Act (Act) when they accepted free meals and beverages from lobbyists on more than infrequent occasions.
- (2) Respondents violated the Act when they requested and received the maximum daily legislative expense allowance for those days when they received a meal or meals from lobbyists on a complimentary basis.

With regard to the first allegation, the statute reads as follows:

*A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance is related to the performance of official duties. Gifts in the form of food and beverage that exceed fifty dollars on a single occasion shall be reported as provided in chapter 42.17A RCW (RCW 42.52.150(5)).*

With regard to the second allegation, which is related to the legislative expense allowance, no provisions of the Act are cited.

## 2. Determinations of Fact

There is reasonable cause to believe that the following are pertinent facts in this case.

1. Lobbyists are required to report to the Public Disclosure Commission (PDC) any meal occasion which costs more than \$25.00, identify the legislators who are present, and itemize the amount spent on each legislator. This level of specificity is seldom found in the reports.
2. Legislators are required to report to the PDC a gift of food and beverage that exceeds \$50.00 on a single occasion.
3. No PDC statutes, rules or regulations require lobbyists or legislators to report gifts of food and beverage which are less than \$25.00 so the actual number of free meal occasions cannot be determined.
4. The PDC has the authority to adjust the \$25.00 reporting threshold and is currently considering making an upward adjustment. An upward adjustment would result in fewer PDC records available to the public and the Board by which to judge the frequency of complimentary meals.
5. Lobbyist reports are inconsistent. The same meal event may be reported differently by different lobbyists. It is difficult to obtain reliable data from these reports of complimentary meals due to these inconsistencies.
6. Attribution of dollar amounts for complimentary meals for particular legislators may not be made with any level of confidence.
7. The number of meal occasions may be determined with a greater degree of accuracy than the cost of the meals.
8. Based upon lobbyists' reports the number of meal occasions over \$25.00 for the Respondents most likely ranged from 41-75 for the period beginning January 1, and ending June 30, 2013. Based upon these reports it is most likely the Respondents received the following numbers of complimentary meals from lobbyists, valued at over \$25.00 per occasion, from January 1, through June 30, 2013: Ericksen – 75; Schoesler – 68; Litzow – 44; Fain – 44; Hewitt – 41.

## 3. Conclusions

1. The Act does not define "infrequent occasions." There is no legislative history on what the term means nor are there any opinions of the Board directly on point. The absence

of any standard or guidance has created a situation where legislators do not know at what point their actions may constitute a violation of the Act. Because of the uncertainty surrounding the statute the Board is divided on the question of whether there is reasonable cause to believe the Act has been violated in this case.

2. The Board finds that there is no reasonable definition of "infrequent" with which the number of known gifts received by these legislators could be permitted under the Act. The Board agrees that legislators would benefit from having clear guidance about the number of gift meals that are permitted over a particular period by the statute. Given the lack of such guidance previously, the Board concludes it would be unfair to establish a standard in this case and then apply it to these legislators or any other legislators who have accepted complimentary meals.
3. The statute should be clarified. The Board recognizes that the Legislature, in adopting the Act's gift provisions, provided many definitions which this Board has enforced. In addition, the Legislature was explicit when it established the fifty dollar gift limit for most gifts other than the meals in question in this case and the Board has enforced this limit. In other words, the Legislature has provided the Board and legislators with clear standards in other sections of the gift laws and may wish to do so with RCW 42.52.150(5).
4. If the Legislature should choose not to address this issue in the 2014 session, the Board will proceed with a post-session rule-making process designed to establish an enforceable standard through a definition of "infrequent occasions."
5. This complaint is dismissed. A similar complaint was received after this one was taken under consideration. The second complaint alleged an additional thirty-two legislators violated the law on gift meals. It contains no documentation other than unsubstantiated dollar amounts associated with each legislator and these amounts are not attributed to any identifiable source. The complaint focuses on dollars while the gift meal statute addresses occurrences.

Because of the Board's determination to dismiss Complaint 2013 No. 1 for the reasons previously stated, the second complaint is rendered moot. It follows that the Board will not entertain similar complaints on the subject of what constitutes "infrequent occasions" until such time as an enforceable standard is adopted.

6. In Complaint 2006 No. 10, it was alleged that a legislator had violated the Act because he accepted the full legislative reimbursement rate for days he was not present during the legislative session. The legislative reimbursement rate is established pursuant to the authority granted to the Legislature by RCW 44.04.120 and is known as the "in lieu of per diem" statute. However, RCW 42.52.320 limits the jurisdiction of the Board to



enforcement of the Act. The Board determined that the Act "...confers no authority on the Board to adjudicate issues relating to the conditions of payment of per diem to legislators provided for in RCW 44.04." The complaint was dismissed for lack of jurisdiction. The allegation in this case, that Respondents violated the Act when they received the maximum daily legislative expense allowance for a day when they also received a complimentary meal, is dismissed for lack of jurisdiction.

7. During the course of the investigation it became apparent to the Board that lobbyists are not always accurate when they report gift meals to the PDC. Lobbyists and legislators are reminded that the lobbyist-host must be present.

*Unsolicited food and beverages in the form of hosted receptions and meals related to official duties are exempted from the fifty dollar limit by RCW 42.52.150(2)f and (5). In order to come under that provision, however, the event has to include participation by the lobbyist-host. **If a meal is involved, there must be direct contact and discussion of legislative business, as stated by the Board in Advisory Opinion 1996 – No. 15, Restaurant Association Event (emphasis added).***

#### 4. Summary

1. The Board has serious concerns about the allegations raised in this complaint. The Board has held three meetings over several months to discuss those allegations and their relationship with the Act. The Board will continue to work on resolutions to the questions that have been raised.
2. Even if the lobbyist reports on file with the PDC were accurate and complied with reporting requirements the statute in question lacks an enforceable standard. After the 2014 legislative session the Board will consider the adoption of a rule, or rules, that define "infrequent occasions."
3. Until an enforceable standard is established, either by board rule or legislative action during the 2014 session, the Board will not entertain ethics complaints based upon allegations that free meals and beverages have been accepted on more than infrequent occasions. Any rule of the Board which establishes a definition of "infrequent occasions" will be applied prospectively.
4. The Board reminds lobbyists and legislators that the lobbyist or lobbyists who propose to pay for a gift meal must be present at the occasion. Otherwise, the receipt of the gift meal would be a violation of the Act (RCW 42.52.150(5)).
5. The allegation with regard to acceptance of complimentary meals on days when the maximum legislative reimbursement was also received is dismissed for lack of subject-matter jurisdiction.

Order

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this complaint is dismissed.

*Kristine F. Hoover*

Kristine F. Hoover, Chair

Date: *12/18/2013*



## CHART A

### LOBBYING THRESHOLD ADJUSTMENTS PRELIMINARY ANALYSIS - DRAFT FOR DISCUSSION PURPOSES strict application of inflationary index

RCW	SUBJECT MATTER	CURRENT THRESHOLD	ENACTED DATE	ADJUSTED THRESHOLD
.600(1)(i)	lobbyist employer discloses on registration members or funders who paid over \$500 in either of the past 2 years or will pay over \$500 in the current year	\$500.00	Jan-73	\$2,224.06
.610(5)	no registration required if lobbying is restricted to 4 days during 3 months and no more than \$25 is spent on those lobbied	\$25	Jul-82	\$56.06
.615(2)(a)	entertainment expenditures more than \$25 per occasion are itemized, must include per person cost	\$25.00	Jan-78	\$78.59
.615(2)(e)	lobbyist must disclose expenditures for food and beverage exceeding \$50	\$50.00	amount derived from Ethics Act (RCW 42.52.150(5))	
.625	special report required when lobbyist or lobbyist employer makes last minute aggregate contribution of \$1,000 or more within 7 days of primary or 21 days of general elections	\$1,000	amount derived from reports of campaign finance category (RCW 42.17A.265)	
.630(1)	a person other than an individual who does not employ a lobbyist must disclose large contributions to state campaigns or independent expenditures made to influence state campaigns	amounts adjusted in WAC 390-05-400		
.630(1)(a)	compensation paid to a state official or state office candidate by a lobbyist employer/major contributor	amounts adjusted in WAC 390-24-301		
.630(2)(a)	lobbyist employer files special report when making political contributions of \$100 or more that are not reported by the lobbyist	\$100	Jun-90	\$157.89
.635(5)(d)(v)	public agency reporting exception when lobbying activity is restricted to 4 days in quarter and no more than \$15 non-public funds spent on gifts	\$15	Sep-79	\$44.05
.640(1)	grass roots lobbying campaigns are disclosed when more than \$500 spent in 1 month or more than \$1,000 spent during 3 consecutive months	\$1,000	Dec-85	\$1,963.36
		\$500	Dec-85	\$946.99

The Commission may revise, at least once every five years but no more often than every two years, the monetary reporting thresholds and reporting code values of this chapter. The revisions shall be only for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the period commencing with the month of December preceding the last revision and concluding with the month of December preceding the month the revision is adopted. As to each of the three general categories of this chapter, reports of campaign finance, reports of lobbyist activity, and reports of the financial affairs of elected and appointed officials, the revisions shall equally affect all thresholds within each category. The revisions authorized by this subsection shall reflect economic changes from the time of the last legislative enactment affecting the respective code or threshold. (RCW 42.17A.125(2))

## CHART B

### LOBBYING THRESHOLD ADJUSTMENTS PRELIMINARY ANALYSIS - DRAFT FOR DISCUSSION PURPOSES guided by inflationary index

RCW	SUBJECT MATTER	CURRENT THRESHOLD	ENACTED DATE	ADJUSTED THRESHOLD
.600(1)(i)	lobbyist employer discloses on registration members or funders who paid over \$500 in either of the past 2 years or will pay over \$500 in the current year	\$500.00	Jan-73	\$1,442.91
.610(5)	no registration required if lobbying is restricted to 4 days during 3 months and no more than \$25 is spent on those lobbied	\$25	Jul-82	\$36.29
.615(2)(a)	entertainment expenditures more than \$25 per occasion are itemized, must include per person cost	\$25.00	Jan-78	\$50.21
.615(2)(e)	lobbyist must disclose expenditures for food and beverage exceeding \$50	\$50.00	amount derived from Ethics Act (RCW 42.52.150(5))	
.625	special report required when lobbyist or lobbyist employer makes last minute aggregate contribution of \$1,000 or more within 7 days of primary or 21 days of general elections	\$1,000	amount derived from reports of campaign finance category (RCW 42.17A.265)	
.630(1)	a person other than an individual who does not employ a lobbyist must disclose large contributions to state campaigns or independent expenditures made to influence state campaigns	amounts adjusted in WAC 390-05-400		
.630(1)(a)	compensation paid to a state official or state office candidate by a lobbyist employer/major contributor	amounts adjusted in WAC 390-24-301		
.630(2)(a)	lobbyist employer files special report when making political contributions of \$100 or more that are not reported by the lobbyist	\$100	Jun-90	\$108.75
.635(5)(d)(v)	public agency reporting exception when lobbying activity is restricted to 4 days in quarter and no more than \$15 non-public funds spent on gifts	\$15	Sep-79	\$27.70
.640(1)	grass roots lobbying campaigns are disclosed when more than \$500 spent in 1 month or more than \$1,000 spent during 3 consecutive months	\$1,000	Dec-85	\$1,295.05
		\$500	Dec-85	\$647.52

The Commission may revise, at least once every five years but no more often than every two years, the monetary reporting thresholds and reporting code values of this chapter. The revisions shall be only for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. *The revisions shall be guided by the change in the index* for the period commencing with the month of December preceding the last revision and concluding with the month of December preceding the month the revision is adopted. As to each of the three general categories of this chapter, reports of campaign finance, reports of lobbyist activity, and reports of the financial affairs of elected and appointed officials, the revisions shall equally affect all thresholds within each category. The revisions authorized by this subsection shall reflect economic changes from the time of the last legislative enactment affecting the respective code or threshold. (RCW 42.17A.125(2)) (emphasis added)