

ETHICS UNDER THE CAPITOL DOME

A Guide for Lobbying in Texas



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Outline of Presentation

- I. Why Do Ethics Matter?**
- II. Are You a Lobbyist?**
- III. Gifts**
- IV. Texas Public Information Act**
- V. Confidentiality**
- VI. Political Contributions**
- VII. Tips on Effective Lobbying**



I. Why Do Ethics Matter?

1. *Morality:*

God and Santa Claus are watching.



I. Why Do Ethics Matter?

2. *Criminal Penalties:*

The District Attorney is watching.



I. Why Do Ethics Matter?

2. Criminal Penalties

The law provides criminal and civil sanctions for violation of the Lobby Law or the Penal Code:

- **Bribery**

Second degree felony, 2-20 years imprisonment, fine up to \$10,000

- **Contingent fees for lobbying**

Third degree felony, 2-10 years imprisonment, fine up to \$10,000

- **Other violations of the Lobby Law or the Penal Code**

Class A misdemeanor, up to one year imprisonment, fine up to \$4,000



I. Why Do Ethics Matter?

3. Controversy;

Distraction from Policy Efforts:

The Press
and The Opposition
are Watching.



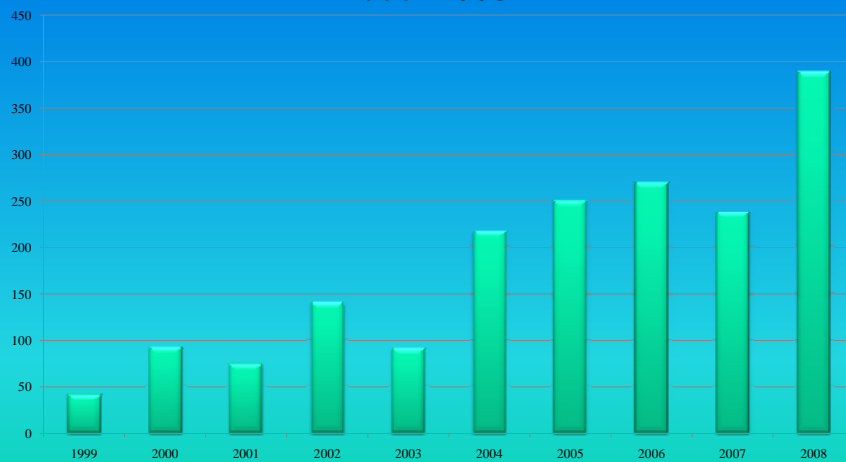
I. Why Do Ethics Matter?

4. Reputation:

Everyone is Watching.



**Texas Ethics Commission
Complaints Filed
1999-2008**



I. Why Do Ethics Matter?

LOOKING OUT FOR YOU;

LOOKING OUT FOR LEGISLATORS & STAFF

Anyone who participates in the Legislative Process should be extremely careful of getting themselves, their company, or a public official and their staff, into ethics trouble.



I. Why Do Ethics Matter?

Is it Legal?

How Does it Smell?



I. Why Do Ethics Matter?

*The Golden Rule of
Ethics at the Capitol:*

*"How would this look in the
Austin American-Statesman
tomorrow morning?"*



I. Why Do Ethics Matter?

When In Doubt, Ask First!

Who Can You Ask?

*A Legislator or Staffer
The Texas Ethics Commission
A Private Ethics Attorney*

II. Are You a Lobbyist?

II. Are You a Lobbyist?

The Lobby Law defines "Lobbying" as the combination of:

1. Lobbying Communications;
PLUS
2. Lobbying Expenditures over
Certain \$ Threshold



II. Are You a Lobbyist?

1. "Lobbying Communications"

Defined as "Direct Communications" with members of the legislative or executive branch of state government to influence legislation or administrative action.



II. Are You a Lobbyist?

1. "Lobbying Communications"

Certain Communications are not considered "Lobbying Communications":

Testifying at a legislative hearing;

Responding to a specific request for information from government ;

Submitting info required by law;

II. Are You a Lobbyist?

1. "Lobbying Communications"

Certain Communications are not considered "Lobbying Communications":

Requesting a written opinion from a state agency;

Communicating with an agency to achieve compliance with existing laws; or

Communication documented as part of a public record in a proceeding of an rulemaking or adjudicative nature.

II. Are You a Lobbyist?

2. Monetary Thresholds

(i) the "Compensation and Reimbursement Threshold"
More than \$1,000 in lobbying compensation or reimbursements in a calendar quarter

or

(ii) the "Expenditure Threshold"
More than \$500 in lobbying expenditures in a calendar quarter



II. Are You a Lobbyist?

Major Exemptions

“Incidental Lobbying”

If lobbying constitutes no more than 5% of your compensated time during a calendar quarter., you do not have to register as a lobbyist.

Note:

But this is not an exception to registration if you make lobby expenditures that exceed the “expenditure threshold.”

II. Are You a Lobbyist?

Major Exemptions

Local Officials & Employees

The Act exempts an officer or employee of a political subdivision of the state who communicates to influence legislation or administrative action in his or her governmental capacity.

Lobbying by Local Governments

“Taxpayer-funded lobbying distorts the democratic process,” said Peggy Venable, Texas director of Americans for Prosperity. “While citizens are hard at work, taking care of their families, volunteering in their communities, and paying their taxes, they should not have to worry that some of those tax dollars are going to lobby against taxpayer interests.”

Michael Quinn Sullivan, president of Texans for Fiscal Responsibility, pointed to a newspaper article quoting City of Denton officials who praised their Austin lobbyists for stopping bills that allow voters to rein in local tax increases and limit government spending.

“The taxpayers in Denton who had several thousand people turn out at tea parties demanding tax relief... got home that night, saw their property tax appraisal bill, and probably didn’t know that their tax dollars paid to the City of Denton being used in Austin to lobby against them. That’s immoral.”

Lobbying by Local Governments

Local government lobbyists and trade associations defend what they do as helpful to taxpayers because they fight unfunded mandates and other bills that make city government less efficient.

Fred Hill, a former state representative who now lobbies for cities and counties, noted that in this session about 1,800 bills affect cities and counties.

“And the vast majority of them would affect local governments in a negative way. So it’s a pretty busy job, simply trying to keep up with all the different types of legislation that are filed — that would appear on the surface to be good ideas, but when you drill down to the core of the issue you find that the law is being misapplied, or is costing the taxpayer a lot of money.”

II. Are You a Lobbyist?

So You ARE a Lobbyist: What Now?

Registered Lobbyists are subjected to stricter restrictions, and more oversight, than other citizens.

1. Registration & Fee
2. Stricter Guidelines
3. Reporting of Compensation & Expenditures



San Antonio Express-News

Lobbyist isn't returning calls to explain why he's not registered
April 3, 2007

The question cropped up repeatedly via telephone and e-mail just about as soon as a recent column about lawyer/lobbyist David Earl was published. "Why isn't David Earl a registered lobbyist?" one of those messages began. "He does not appear on the Texas Ethics Commission Web site list of registered lobbyists for 2007."

Earl's a central player in efforts in Austin this legislative session trying to change several laws dealing with municipal development rules.

Three state lawmakers that I know of have either talked to Earl personally or have been paid a visit in their Austin offices by Gonzalez concerning those issues.

III. Gifts

- Cash*
- Meals*
- Entertainment*
- Travel & Lodging*
- Gift Items*



III. Gifts

Is it LEGAL for me to give this to this public servant?

Is it SMART?

How would it look in the newspaper?



Lobbyists run \$12.8 million tab for lawmakers

Meals, trips buy access in Austin

Jan. 24, 2009

Since 2005, lobbyists have spent at least \$12.8 million wining and dining Texas lawmakers and other state workers — including thousands of dollars for trips to a Ritz-Carlton lodge in Georgia, a resort in British Columbia and the Hyatt Regency in Lake Tahoe, according to a Houston Chronicle review.

The lavish gifts and entertainment reflect how much lobbyists acting for companies and special interest groups are willing to spend to influence the lawmakers and officials who decide public policy in Texas.

Lobbyists say they spend money on lawmakers and officials to inform them of their clients' concerns. But critics say lobbyists use meals and entertainment to get close to lawmakers and other state officials, giving them an advantage over those who can't afford to do the same.

III. Gifts



Bribery

Legislators and Employees may not solicit or accept any benefit, gift, favor, or service for having performed their official duties in favor of another.





Abramoff Sentenced to Four Years in Prison

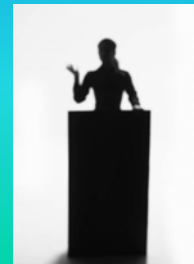
WASHINGTON - Jack Abramoff, the powerhouse Washington lobbyist who admitted running a wide-ranging corruption scheme that ensnared lawmakers, Capitol Hill aides and government officials, yesterday received a sentence of four years in prison.

III. Gifts

Honorariums

A Legislator or Employee may not accept an “Honorarium” of any kind.

An "Honorarium" is payment for services (for example, a speech) that a Legislator or Employee would not have been asked to provide but for their official status.



III. Gifts

Certain Gifts ARE Allowed

Legislators and Employees may accept certain Gifts under certain circumstances.

Whether a gift is acceptable may depend on whether the donor is a Registered Lobbyist or not.



III. Gifts

1. Cash, Loans or Negotiable Instruments

Rarely an acceptable gift.

Never acceptable from a Lobbyist.



III. Gifts



2. Food & Beverages

**The "Presence Requirement":
You must be present at the meal or event.**

If you are a lobbyist and the Food & Beverages costs over \$100 (60% of the legislative per diem), "Detailed Reporting" applies.

There is no annual limit on the amount of Food & Beverages you can give.

Star-Telegram.com

Panel to dine on lobby's dime

May 5, 2005

AUSTIN - In a move that has good-government groups crying foul, a Texas House committee chairman has elected to hold a end-of-session dinner for his committee at the posh \$4 million home of one of the state's most powerful lobbyists.

Invited are all seven members of the House Regulated Industries Committee. The panel deals with some of the most powerful companies in telephone, cable and electric utilities.

The Austin lobbyist's clients include energy providers with business before the committee.

Catering for the Monday dinner comes courtesy of telecommunications companies, also with business before the committee.

III. Gifts

3. Entertainment



The "Presence Requirement":

You must be present at the meal or event.

If you are a lobbyist and the Entertainment costs over \$100, "Detailed Reporting" applies.

A lobbyist may give only \$500 in entertainment to a single Legislator or Employee in a calendar year.



Austin American-Statesman
statesman.com

Wined, dined and rubbed the right way

Wine and cheese give way to massages, manicures and charitable donations.

Tuesday, January 30, 2007

Chardonnay and cheese are no longer enough to draw a Capitol crowd to receptions hosted by trade associations or their lobbyists.

Tonight at the Four Seasons Hotel, the "ladies of the Legislature," as the invitation from Texans for Lawsuit Reform refers to them, will be offered mini-massages (feet, hands and necks only), manicures and pedicures, along with "food and cocktails galore" at the tort reform group's "girls' night out."

Lobbying, in all its forms, is an evolving practice that ebbs and flows with public opinion and changes in the law. Austin, over the years, has flirted with keeping up with the lobbying efforts of Washington, but that was a fast crowd with which to compete, even before Jack Abramoff got his federal prison number.

Still, from time to time, the Austin crowd has stirred the public's attention — and the Legislature passes laws that tend to spur the perception of money or good times sullyng the state's business.

III. Gifts



4. Travel & Lodging

A non-Lobbyist may provide Travel & Lodging for any type of trip, so long as he or she is present on the trip.

...

A Lobbyist may not provide a Legislator or Employee with Travel or Lodging for a "pleasure trip".

A Lobbyist may provide Travel and Lodging in connection with a *fact-finding trip* or a *trip to a seminar or conference* at which the Legislator or Employee is providing services, such as speaking, that are "more than perfunctory." The Lobbyist must be present at the event.



Lobbyists run \$12.8 million tab for lawmakers

Meals, trips buy access in Austin

Jan. 24, 2009

In the summer of 2007, a trade association for engineers spent nearly \$15,000 to send several lawmakers to the Fairmont Chateau Whistler Resort in British Columbia, Canada. The association reported spending an estimated \$3,000 apiece on the members for the trip.

In exchange for speaking, the officials each received food and beverages worth between \$450 and \$600. They also received two golf outings, each valued at between \$100 and \$150. One lawmaker who attended defended the trip as a chance for members to mix with one another and talk to industry leaders who have a stake in state policy.

III. Gifts

4. Travel & Lodging

Professor Alan Rosenthal of Rutgers University had this joking advice to Legislators and Employees:

"Don't go anywhere where it's warmer than your winter or cooler than your summer, or somewhere where there is a body of water or gambling."



III. Gifts

5. Gift Items

A non-Lobbyist may give a Legislator or Employee a gift with a value of less than \$50. This does not include cash, checks, or negotiable instruments.

* * *

A Lobbyist may give a Legislator or Employee gifts of any value, so long as together they do not total more than \$500 during a calendar year.

A Lobbyist may also give a Legislator or Employee "awards and mementos" of an unlimited total value, so long as they worth no more than \$500 apiece.



Lobbyists' payments for gifts criticized

May 20, 2005

AUSTIN - A House committee chairman was criticized by consumer groups Friday for letting lobbyists pay directly for expensive end-of-session gifts that many have traditionally bought with their own accounts.

The chairman gave gold rings with the legislative insignia to the eight members of his committee Thursday to express appreciation for their work.

The rings were paid for by lobbyists and contributors who had asked early in the session if they could contribute to the gifts, he said. Some of the lobbyists had issues before the committee, and some did not.

"It's become very apparent this session how blatant they've gotten with figuring out ways to circumvent the whole idea of putting some limits on what lobbyists can do in terms of wining and dining," said Suzy Woodford of Common Cause, a lobby watchdog and consumer group. "It seems that it at least violates the spirit of the ethics laws."

III. Gifts

Is it LEGAL for me to give this to this public servant?

Is it SMART?



How would this look in the newspaper tomorrow?

IV. The Texas Public Information Act

The Texas Public Information Act gives members of the public the right to access government records.



All government information is presumed to be available to the public. Certain protections may apply to "confidential information," if permitted by the Attorney General.

Governmental bodies must promptly release requested information that is not confidential by law.

IV. The Texas Public Information Act

*"Don't write it if you can say it,
Don't say it if you can whisper it,
Don't whisper it if you can nod it,
Don't nod it if you can wink it."
~ Louisiana Governor Earl K. Long*



"How would this look in the newspaper tomorrow?"

V. Confidentiality



"Who are those lobbyists
at that table, and what are
they talking about?"

V. Confidentiality: INTERNET POLITICAL BLOGS



"Dinner With Friends"

Filed under: General@ 7:23 am

So Wednesday night I went out for dinner, as I sometimes do, and -lucky me! - I was seated at a table next to a Republican legislator, who shall remain nameless, and a couple of well-tailored lobbyists.

Broad Disclaimer - I was not eavesdropping. Not really. It's not like I was hiding under their table, wired to a van outside recording the entire conversation. But when a certain legislator talks LIKE THIS, it's hard not to listen...

V. Confidentiality



VI. Political Contributions

Chapter 253 of the Election Code contains a number of restrictions regarding the acceptance and use of political contributions, including the following:

- Legislators and most statewide officers may not accept contributions during a period that begins 30 days before a regular legislative session convenes and ends 20 days after adjournment.
- Contributions in the Capitol are prohibited at any time.



VI. Political Contributions

- Political contributions from labor organizations and from most corporations are prohibited.
- Federal law generally prohibits the acceptance of contributions from foreign sources.



VI. Political Contributions

Your daily information source
HoustonChronicle.com

Legislator questions rejection of donation request
July 20, 2005

AUSTIN – A state representative questioned Tuesday whether an executive of a telecom company had violated state bribery laws by rejecting the lawmaker's request for a campaign contribution because of a vote he made on a specific telecommunications bill. The company's President's hand-written reply said:

"Because of your vote in support of SB21 during the special session, our PAC committee cannot support you at this time."

...ues important to you, and thank you in advance for your support.

For Texas,

Corbin

Corbin Van Arsdale

*Corbin -
Because of your vote in
support of SB-21
during the special
session our PAC
Committee cannot
support you at this
time.*

Arsdale Campaign, 55 Waugh Dr., Ste. 200, Houston, TX 77002

...nticed or mailed at state expense.

VII. Tips on Effective Lobbying

*“To be persuasive we must be believable.
To be believable we must be credible.
To be credible we must be truthful.”*

Edward R. Murrow

VII. Tips on Effective Lobbying

- 1. Be Prepared*
- 2. Be Honest*
- 3. Tell Both Sides*
- 4. Respect Staff*



VII. Tips on Effective Lobbying

Beware: False Communications

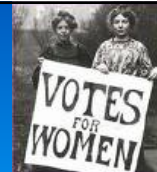


A person commits a crime if, for the purpose of influencing legislation or administrative action, the person knowingly or willfully:

- makes a false statement or misrepresentation to a Legislator or Employee.
- provides a document containing a false statement to a Legislator or Employee.

Class A misdemeanor, up to one year imprisonment, fine up to \$4,000.

TEXAS WEEKLY



Indian Gaming Bill Hits a Snag Over Voting Rights March 30, 2009

By accident, at the end of a meeting with the leaders of the Tigua Indians, Rep. Valinda Bolton (D-Austin) learned that women cannot vote or hold elected positions in that tribe.

Rep. Bolton was exchanging pleasantries with Tigua Gov. Frank Paiz at the end of the meeting. She said she stands for election every two years; he replied that he stands for election every year by the men of the tribe, and that women can't run and can't vote.

"I said 'Really?'" and then, 'Okay, see you later.' I needed time to process that one."

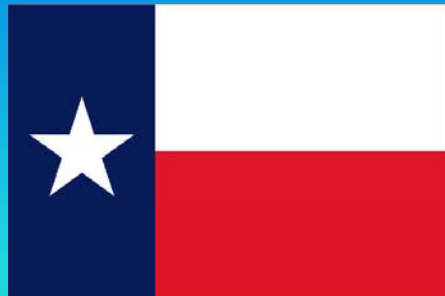
VII. Tips on Effective Lobbying

*Beware:
False Communications*



Conclusion:

*"How would this look in the newspaper
tomorrow morning?"*



Thanks. Go Forth and Lobby Ethically.

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