


FROM	NAME & TITLE	Office of the City Solicitor	CITY of BALTIMORE MEMO 
	OFFICE NAME & ADDRESS	Department of Law Suite 101 City Hall	
	SUBJECT	State Ethics Law	

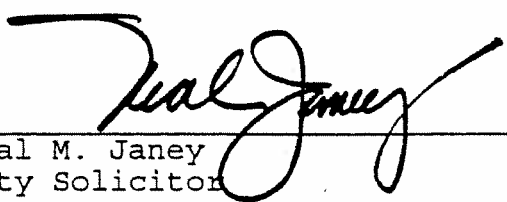
TO

DATE:

Honorable Chair and Members
 Baltimore City Boards and Commissions

November 1, 1995

For your information, I am providing you with a copy of a paper by Paul A. Tiburzi, Esquire, and Carville B. Collins, Esquire, that explains the provisions of the new State Ethics Law.



 Neal M. Janey
 City Solicitor

NMJ/alb

Attachment

For Publication Prior
to November 1, 1995

**TOUGHER ETHICS LAW CHANGES THE GROUND RULES
FOR LOBBYISTS AND STATE OFFICIALS**

By
Paul A. Tiburzi and Carville B. Collins

After October 1, 1995, the world of Annapolis will never be the same. On that date, a revised State Ethics Law significantly changed the manner in which lobbyists, legislators and State officials may interact. At its 1995 Session, the General Assembly passed several bills governing the ethical standards of conduct for lobbyists, legislators and certain State officials. In addition to the "lobbyist reform" bills that were widely publicized during the Session, the General Assembly repealed and reenacted the entire State Ethics Law for the purpose of recodifying it into a new title within the State Government Article of the Maryland Code. All of these bills were signed into law by Governor Glendening and became effective October 1, 1995 (with the exception of HB 3, which will be effective on November 1).

**Gifts of Tickets or Free Admission
(HB 362)**

The State Ethics Law has generally permitted elected constitutional officers to receive gifts of tickets or free admission to professional or intercollegiate sporting events, as well as charitable, cultural, or political events. Elected constitutional officers include the Governor, Lieutenant Governor, Attorney General, Comptroller, State Treasurer, General Assembly members, sheriffs, state's attorneys, judges, registers of wills, and clerks of the courts. Gifts of tickets to other state officials or employees are prohibited.

While continuing to allow these gifts, HB 362 adds a new requirement that any such ticket or free admission given by a lobbyist to a member of the General Assembly (or the member's immediate family) must be disclosed if the ticket price exceeds \$15. Thus, bleacher seat tickets to Oriole Park (\$5) need not be disclosed, but box seat tickets (\$18) are subject to this new requirement. (When such a gift is made for a non-ticketed event, the intent of HB 362 is to require disclosure if the admission fee for the event exceeds \$15.)

Disclosure must be made by the lobbyist and must include the date and value of the gift (donor's share if partial), the donor or donors if more than one employer is paying the cost (and the nature of the cost sharing among donors), and the cumulative value of such gifts as to each recipient. This disclosure must be made regardless of whether the ticket or admission was provided in connection with lobbying activities, although the lobbyist is free to indicate in the disclosure that the gift was made for purposes unrelated to lobbying. Gifts reported under the new requirements of HB 362 are not \$75 Rule Gifts and thus are not to be counted or reported for purposes of the \$75 Rule (discussed below).

Generally, tickets can only be accepted if they do not impair impartiality or, if of significant value, do not give the appearance of doing so. HB 362 further clarifies that a ticket that might be prohibited under this general rule could still be accepted if it is given as part of a personal interaction that arises from a purely social relationship between the lobbyist and the legislator, and if: (1) not related to previous or subsequent legislative business, or (2) during the interaction no previous or subsequent legislative business is discussed.

Elimination of the Lobbyist's Disclosure Exception (HB 3)

Under current law, lobbyists must disclose the names of State officials or employees (or their immediate family members) who receive gifts with a cumulative value of \$75 or more during a six-month reporting period (the "\$75 Rule"). Effective November 1, 1995, HB 3 modifies the \$75 Rule by exempting certain gifts from the count toward the \$75 cumulative threshold. However, the cost of other gifts continue to count toward this threshold ("\$75 Rule Gifts").

The effect of HB 3 is that, once a lobbyist reaches the \$75 threshold for any one recipient during the reporting period, each \$75 Rule Gift *under and above* that threshold must be individually disclosed, along with the applicable donor or donors (if more than one donor is paying the cost), the recipient, the date and value of the gift (donor's share if partial), the nature of the gift or gifts, and the total cumulative value of gifts being reported.

This represents a subtle but important change in the disclosure of multiple donors of a gift or gifts to a single State official or employee. Under prior law, a lobbyist giving \$700 in \$75 Rule Gifts to a single State official or employee in a reporting period could avoid the \$75 cumulative threshold -- and thus avoid disclosure -- by arranging equivalent donations from each of 10 employer donors (\$70 per donor). HB 3 prohibits this arrangement by tracking all gifts to a single State official or employee on a *per lobbyist basis*. In this example, the lobbyist, having given \$700 in \$75 Rule Gifts, would exceed the \$75 disclosure cumulative threshold by \$625, and thus each of the \$70 gifts from each of the 10 employer donors must be disclosed. HB 3 also repeals the provision

that a \$75 Rule Gift under \$15 expended in a day does not count toward the \$75 cumulative threshold.

Gifts of Meals or Beverages (HB 3)

The State Ethics Law has generally permitted State officials and employees (and members of the immediate families of such officials and employees) to receive gifts of meals and beverages. Since 1987, such gifts must be consumed in the presence of the donor or sponsoring entity.

HB 3 requires additional disclosure by lobbyists when gifts of meals or beverages are made to certain persons. The name of any State executive branch official (Governor, Lt. Governor, Attorney General, Treasurer, Comptroller, sheriff and state's attorney) or member of their immediate family receiving *any* gift of meals or beverages during the reporting period must be disclosed on a first penny basis. In the case of a member of the General Assembly, the name of the member (or immediate family member) must be disclosed *only* if the meal or beverage gift to an individual recipient costs \$15 or more.

This disclosure must state the name of each recipient, the date and value of each gift (donor's share if partial), the total cumulative value of all gifts made in the reporting period calculated as to each recipient, and the donor or donors if more than one employer is paying the cost (and the nature of the cost share among donors).

As in the case of gifts of tickets or free admission, this meal and beverage disclosure must be made regardless of whether the gift was provided in connection with lobbying activities, but the lobbyist is free to indicate in the disclosure that the gift was made for purposes unrelated to lobbying. Gifts reported under the new requirements of HB 3 are not \$75 Rule Gifts and thus are not be counted or reported for purposes of the \$75 Rule.

All of the provisions of HB 3, including the new provisions governing the \$75 Rule, will become effective November 1, 1995 so as to coincide with the start of the November 1, 1995 to April 30, 1996 reporting period for lobbyists. The new reporting requirements do not apply to an event to which are invited all members of the General Assembly, all members of either House, or all members of a Standing Committee.

Lobbyists Now Held Accountable Under the State Ethics Law (HBs 6 and 362)

The new law prohibits a lobbyist from *making* a gift, directly or indirectly, to a State official or employee that the lobbyist knows or has reason to know is in violation of the State Ethics Law. Previously, the law only prohibited the State official or employee from *accepting* such a gift.

**Gifts Made in Connection with Certain Meetings
(HB 362)**

State officials and employees are also generally permitted to receive gifts of reasonable expenses for food, travel, lodging and scheduled entertainment associated with a meeting and given in return for the recipient's participation on a panel or speaking engagement at that meeting.

When a lobbyist proposes to pay the expenses of a State official of the legislative or executive branch for speaking participation in a meeting, and such expenses are expected to exceed \$500, HB 362 requires the recipient to notify the appropriate advisory body (Joint Committee on Legislative Ethics or State Ethics Commission) before going on such a trip. No requirements are imposed here on lobbyists, but for practical reasons they may wish to consider giving the recipient timely notice if expenses are expected to exceed the \$500 threshold, so as to avoid the possibility that the trip could be ruled an unallowable gift in whole or in part during or after the trip.

**Unsolicited Gifts of Nominal Value
(HB 6)**

For many years, the State Ethics Law has allowed the making of unsolicited gifts of nominal value to State officials and employees. HB 6 has narrowed this practice by prohibiting a State official of the executive or legislative branch (Governor and Lieutenant Governor, Attorney General, Comptroller, State Treasurer, state's attorneys, sheriffs, and Members of the General Assembly) from accepting an unsolicited gift of nominal value from a lobbyist if the gift exceeds \$15 in cost. The Ethics Commission has advised that under the new law items such as T-shirts, caps, flowers, paper weights, and the like, not exceeding \$15 in cost, are permissible unsolicited gifts.

**"Cooling Off" Period For Former General Assembly Members
Seeking to Become Lobbyists
(SB 181)**

SB 181 expands Maryland's "revolving door" law by prohibiting a former member of the General Assembly from certain lobbying activities until the conclusion of the next regular session that begins after that member leaves office. During this period, the member may not assist or represent another party for compensation in a matter that is the subject of legislative action by the General Assembly. Legislative action includes such activities as introduction, consideration, amendment, passage and veto of legislation, as well as nominations, appointments, reports and any other matter within the General Assembly's jurisdiction.

This prohibition does not apply in the case of a former member's representation of a municipal corporation, county or State governmental entity. In addition, a former

member who left office before the October 1, 1995 effective date of this legislation is not subject to this prohibition.

**General Assembly Members Representing Parties Before State Agencies
(HB 1198)**

Under current law, a member of the General Assembly representing any person for compensation before a State agency must file a disclosure with the Joint Committee on Legislative Ethics and with the presiding officer of the House or Senate. The disclosure must state the name of the person being represented, the services performed, and the consideration. The term "person" is defined in §1-101(d) of the State Government Article to include such entities as individuals, partnerships, associations and corporations, but does not include local governments or governmental units.

HB 1198 imposes additional restrictions on this practice by *prohibiting* a legislator from representing any person for compensation before a State agency in any matter involving procurement or the adoption of regulations. This prohibition does not apply, however, to any contested case hearing conducted under the Administrative Procedure Act, Title 10, Subtitle 2 of the State Government Article.

**The Recodified State Ethics Law
(HB 12)**

As part of its ongoing code revision process, the General Assembly repealed the State Ethics Law, which had been in Article 40A, and reenacted it in HB 12 as a new Title 15 in the State Government Article.

As with all recodifications, HB 12 was intended to modernize and clarify the State Ethics Law, supposedly without making any substantive change to its meaning or effect. However, the recodification includes several subtle and important changes that must be reviewed with care by those affected.

For example, "lobbyist" is a new term, defined at §15-1022(gg), to substitute for the use of "registrant" in the old Article 40A. This is intended to eliminate Article 40A's confusing use of both "registrant" and "lobbyist", the latter of which constituted a portion of "registrants". The use of "lobbyist" provides a single self-descriptive and inclusive reference that applies to any person, qualifying as a lobbyist or the lobbyist's employer, under the tests enumerated in §15-701.

Further Guidance From The State Ethics Commission

A September 18, 1995 memorandum from the State Ethics Commission to officials and lobbyists includes a general description of the new law, and a series of questions and answers that provide informative interpretation and examples of the practical effect of these measures.

Paul A. Tiburzi and Carville B. Collins practice in the State Legislation and Public Policy Group of Piper & Marbury L.L.P. Mr. Tiburzi was a member of the General Assembly's Ethics Law Code Revision Committee which drafted the recodified State Ethics Law and Mr. Collins is currently serving on the Task Force to Review the State's Election Law, established by the Governor and the General Assembly.