

To: Honorable Betsey Bayless

December 22, 2000
Re: Ban on Lobbyists Paying for
Entertainment for state Officers or
Employees

Arizona Secretary of State

I00-031
(R00-047)

Question Presented

You have asked whether a State officer or employee may attend a sporting or cultural event at the invitation of a lobbyist if the State officer or employee reimburses the lobbyist for the cost of such entertainment.

Summary Answers

Section 41-1232.08, Arizona Revised Statutes ("A.R.S.") (effective January 1, 2001), prohibits a lobbyist from making an "expenditure for entertainment for a State officer or State employee" and prohibits State officers and employees from accepting such expenditures. This law prohibits a lobbyist from purchasing entertainment, defined as the expenditure paid to attend or participate in a sporting or cultural event or activity, for the benefit of a particular State officer or employee, even if the State officer subsequently reimburses the lobbyist for the expenditure. If, however, a lobbyist paid for entertainment that, at the time of the payment, was not for a particular State officer or employee, a State officer or employee may purchase the entertainment from the lobbyist, at full cost, before receiving the ticket.

Background

The Legislature has enacted several statutes regulating lobbyists.⁽¹⁾ A.R.S. §§ 41-1231 through -1239. These statutes require lobbyists to register and file expenditure reports with the Secretary of State and prohibit a private sector lobbyist from giving any State officer or employee "gifts" with a value of more than ten dollars during any calendar year. A.R.S. § 41-1232.02. This gift limitation has included a number of exemptions, including, for example, food or beverages, and travel and lodging. A.R.S. § 41-1231(9). Those items exempt from the gift limitation are not subject to the ten dollar annual cap but, with some exceptions, are subject to disclosure requirements. *Id.* For public sector lobbyists, the gift prohibition applies only to gifts to a member of the Legislature. A.R.S. § 41-1232.03 (expenditure reporting for public bodies and public lobbyists).

In its 2000 regular session, the Legislature amended the statutes governing lobbyists. 2000 Ariz. Sess. Laws ch. 364. This legislation, which becomes effective January 1, 2001, eliminates the entertainment exemption from the gift limit and adds a new section, A.R.S. § 41-1232.08(A), which provides:

A principal, designated lobbyist, authorized lobbyist, lobbyist for compensation, public body, designated public lobbyist or authorized public lobbyist or any other person acting on that person's behalf *shall not make an expenditure or single expenditure for entertainment for a State officer or employee.* A State officer or State employee shall not accept an expenditure or single expenditure for entertainment from a principal, designated lobbyist, authorized lobbyist, lobbyist for compensation, public body, designated public lobbyist or authorized public lobbyist or any other person acting on that person's behalf.

(Emphasis added.)⁽²⁾

"Entertainment" is "the amount of any expenditure paid or incurred for admission to any sporting or cultural event or for participation in any sporting or cultural activity." A.R.S. § 41-1231(5) (as amended by 2000 Ariz. Sess Laws ch.

364, § 1, effective January 1, 2001). The only exceptions are for entertainment in connection with a special event and entertainment that is "incidental" to a speaking engagement.⁽³⁾ A.R.S. § 41-1232.08(C). Rather than simply requiring disclosure of the expenditures, as the law had previously required, the Legislature has now prohibited, with limited exceptions, State officers and employees from accepting free tickets to sporting and cultural events, free rounds of golf, and other types of "entertainment" from lobbyists.⁽⁴⁾

Analysis

In interpreting statutes, the primary task is to determine the intent of the Legislature. See *Canon Sch. Dist. No. 50. v. W.E.S. Constr. Co.*, 177 Ariz. 526, 529, 869 P.2d 500, 503 (1994). The best indication of legislative intent is the statutory language. *Id.*

The prohibition in A.R.S. § 41-1232.08 applies to "an expenditure or single expenditure for entertainment." An "expenditure" is broadly defined to include:

a payment, distribution, loan, *advance*, deposit or gift of money or anything of value and *includes a contract, promise or agreement, whether or not legally enforceable, to make an expenditure that provides a benefit to an individual state officer or state employee* and that is incurred by or on behalf of one or more principals, public bodies, lobbyists, designated public lobbyists or authorized public lobbyists.

A.R.S. § 41-1231(6) (emphasis added).⁽⁵⁾ The ordinary meaning of "advance" is "a furnishing of something (as money or goods) before a return is received; payment beforehand; money or value supplied beforehand." *Webster's Third International Dictionary* at 30 (1983). The statutes do not expressly address reimbursement; however, the definition of "expenditure" is broad enough to preclude, under some circumstances, State officers reimbursing lobbyists for entertainment expenses.⁽⁶⁾

Under the broad definition of expenditure, a lobbyist could not, for example, purchase a ticket for a sporting event for a State officer or employee with the understanding that the State officer or employee will subsequently pay the lobbyist for the ticket. At the time of purchasing the ticket for a State officer or employee, the lobbyist has made an expenditure prohibited by A.R.S. § 41-1232.08(A) because the lobbyist has made a payment or advance that provides a benefit to an individual State officer or employee. It might be argued that the State officer or employee does not "benefit" at the time of the purchase, but rather benefits when he or she uses the ticket to attend the event. Such a narrow interpretation, however, overlooks the broad statutory definition of expenditure, which includes advances, loans and promises to make payments. It also suggests a lobbyist could, for example, purchase a season ticket for a particular legislator with the expectation of game-by-game reimbursement. That arrangement obviously benefits the State officer or employee in violation of the statute. Given the broad definition of "expenditure," the statute prohibits a lobbyist from purchasing entertainment for a particular State officer or employee unless the State officer or employer has paid the lobbyist for the full price of the ticket before the lobbyist purchases the ticket.

The analysis differs if a lobbyist did not purchase entertainment for a particular State officer or employee. If, for example, a lobbyist has season tickets that were not purchased to provide a benefit to a particular State officer or employee, then the lobbyist did not make an "expenditure" at the time of the purchase of the tickets. If subsequently the lobbyist would like to give a ticket to a State officer or employee, that State officer must pay the lobbyist full price for the ticket before receiving the ticket. Although State officers and employees cannot accept "an expenditure for entertainment" from a lobbyist, if the State officer or employee pays for the entertainment in advance, the State officer or employee has paid for the entertainment. Under this circumstance, such reimbursement does not violate the prohibition in A.R.S. § 41-1237.08.

This distinction, which is based on whether the lobbyist purchased the entertainment for a particular State officer or employee, is consistent with the statutory language and the policy that the statute reflects. The entertainment prohibition aims to eliminate certain special favors from lobbyists to State officers and employees, thereby eliminating a potential appearance of impropriety. The statutory scheme does not prohibit State officers and employees from attending entertainment events with lobbyists; it does, however, require that State officers and employees pay their own way.

Conclusion

Section 41-1237.08, A.R.S., prohibits lobbyists from purchasing entertainment for a particular State officer or employee, even if the State officer or employee will subsequently

reimburse the lobbyist for the purchase. It does not, however, preclude a State officer or employee from paying a lobbyist the full price of entertainment if the lobbyist did not purchase the entertainment for the particular State officer or employee.

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1. A lobbyist is any person, other than a designated public lobbyist or authorized public lobbyist, who is employed by, retained by or representing a person other than himself, with or without compensation, for the purpose of lobbying and who is listed as a lobbyist by the principal in its registration Lobbyist includes a lobbyist for compensation, designated lobbyist and authorized lobbyist. Lobbyist includes attorneys whose practice involves bonding, underwriters of bonds and investment bankers whose business includes bonding.

A.R.S. § 41-1231(12). The terms "authorized public lobbyist" and "designated public lobbyist" are defined elsewhere in statute. *See* A.R.S. § 41-1231(2), (4). "Lobbying," with some exceptions, means attempting to influence the passage or defeat of any legislation by directly communicating with any legislator . . . or attempting to influence any formal rule making proceeding pursuant to chapter 6 of this title or rule making proceedings that are exempt from chapter 6 of this title by directly communicating with any state officer or employee.

A.R.S. § 41-1231(11).

2. The statute prohibits both making and accepting the expenditures for entertainment. Violations may result in criminal or civil penalties. A.R.S. §§ 41-1237(A) (class 1 misdemeanor); -1231.01 (civil penalties).

3. A "special event" is a "function to which all members of the [L]egislature, either house of the Legislature or any committee of the [L]egislature are invited." A.R.S. § 41-1231(9)(e). A speaking engagement is: the amount of any expense paid or incurred for entrance fees, lodging, food and beverage, entertainment, travel and other expenses for the state officer's or employee's attendance at an event, committee, meeting, conference or seminar, including meetings of state, regional or national organizations or their committees concerned with legislative or governmental activities if the state officer or employee participates in the event as a speaker or panel participant. . .

A.R.S. § 41-1231(20).

4. A State officer is a person "who is duly elected, appointed or retained through election to any state office, or a member of any state board, commission or council, and includes a member of the [L]egislature." A.R.S. § 41-1231(22). A State employee is "an employee of the [L]egislature, a university under the jurisdiction of the Arizona [B]oard of [R]egents, the judicial department or a State office, agency, board, commission or council." A.R.S. § 41-1231(21).

5. A "single expenditure" is "an expenditure that provides a benefit of more than twenty dollars to an individual state officer or state employee. . . ." A.R.S. § 41-1231(19). The lobbyist expenditure reports itemize single expenditures

identifying the State officer or employee benefitting from each single expenditure. A.R.S. §§ 41-1232.02(B), -1232.03(B). Other expenditures are reported in the aggregate. A.R.S. §§ 41-1232.02(C), -1232.03(C).

6. The Legislature considered expressly prohibiting any reimbursement from a State officer or employee to a lobbyist, but the language that would have done so was eliminated in conference committee. *See* HB 2554, 44th Leg. 2nd Reg. Sess. (Ariz. 2000) (House Engrossed version, Senate engrossed version). The language eliminated in Conference Committee provided that a gift included:

Reimbursement for the cost of admission to any entertainment or sporting event for an employee or member of the Legislature, public official or state employee or the spouse or child of a member of the Legislature, public official or state employee paid to a principal, lobbyist, public body, designated public lobbyist or authorized public lobbyist or any other person acting on that person's behalf.

Conference Committee Amendment to HB2554, 44th Leg. 2nd Reg. Sess (Ariz. 2000).

The legislative record does not indicate why the Legislature failed to include the proposed language that addressed reimbursement. The failure to include that language could indicate the Legislature's intent to allow reimbursement or it could indicate a determination that the definition of "expenditure," which includes loans, advances and other payments, already adequately covered the issue. *Cf.* Norman J. Singer, Sutherland on Statutory Construction, § 48.18 (6th ed. 2000) (legislative action on proposed amendments).

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