

§934.1 Definitions

(b) *Bona fide* political event: shall mean a function initiated and organized by a political organization or political candidate exclusively to advance and promote a political purposes or political candidate(s).

REVISED RULE – Now reads, "*Bona fide* political event: shall mean a function initiated and organized exclusively to advance and promote a political organization or political candidate(s). We believe this amendment makes clear that public official participation is allowed at a bona fide political event hosted by a private entity.

(f) Complimentary Attendance: shall mean the waiver of all or part of a registration or admission fee, or waiver of all or part of a fee or charge for the provision of food, refreshments, entertainment, instruction, or materials. "Complimentary attendance" shall not include registration or admission without charge to the public official to *any recreational activity that is collateral to the conference or event*, or travel or lodging. [Italics added]

COMMENT: From this language, it is unclear what constitutes a "recreational activity," and when such activity is secondary or subordinate to the overall event. Previously, the Commission had provided The Business Council with guidance indicating that recreational activities that are part of an event's formal agenda, and whose costs are included in the general admission charge for the event, are considered as part of the widely attended, officially related event for which complimentary attendance is allowed. We believe this approach is more workable than the one proposed in subparagraph (f) here.

To clarify the Commission's proposal, this provision could be amended as follows:

"Complimentary attendance" shall not include registration or admission without charge to the public official to any recreational activity that is collateral to the conference or event and for which a separate registration or admission charge is otherwise required, or travel or lodging.

REVISED RULE – Now reads, "Complimentary attendance" shall not include registration or admission without charge to the public official to any recreational activity that is not part of the regular agenda of the event or open to all attendees of the event." While an improvement, this fails to provide clear criteria, and we will continue to push our original proposal.

(g) Educational Program: shall mean a program that provides continuing education credits to attendees. "Educational Program" shall also mean a program presented by a public official as part of his or her public duties.

COMMENT: The statute does not limit the term “educational program” to programs that provide continuing education credits to attendees. This proposed definition would improperly limit this provision to a limited number of professions. As this definition imposes limitations not authorized in statute, we recommend its deletion.

REVISED RULE – Now reads, “Educational program shall mean formal instruction provided to attendees or a program presented by a public official to the public as part of his or public duties,” and adds that factors to be considered include, “ the curriculum, qualifications of the instructor, whether the entity providing the program is an accredited educational entity, and whether the program is provided in a classroom setting.” We support the first part of this edit, but question the appropriateness and completeness of the proposed criteria.

(m) Nominal value: shall mean such an insignificant value, such as the value of a regular cup of coffee or soft drink, given under circumstances that it could not be reasonably inferred as something that is intended to influence, or could reasonably be expected to influence a public official, in the performance of his or her official duties or responsibilities, or was intended as a reward for any official action on his or her part. A meal or an alcoholic beverage is deemed to have a value greater than “nominal value.”

COMMENT: The term “nominal value” is used in the Lobbying Act to define the term “gift,” i.e., “anything of more than nominal value given to a public official...” For purposes of implementing Legislative Law Article 1-A, “nominal value” is not based on any presumed intent of the giver or recipient. The statutory reference to circumstances where “it is not reasonable to infer that a gift was intended to influence...public officials” relates to the prohibition on gift giving, not the value or nature of a gift. If an item is exempted from the statutory definition of “gift,” the circumstances under which it is offered or given is not relevant for Lobbying Act compliance purposes. We believe the regulation adequately addresses this issue in section 934.2(a) below. Therefore, we recommend that this paragraph be deleted.

REVISED RULE – No changes.

(n) Political organization: shall mean any organization that is affiliated with or a subsidiary of a political party including, without limitation, a partisan political club or committee, or a campaign or fund-raising committee for a political party or political candidate.

COMMENT: This definition pertains to the exclusion of bona fide political events from the definition of “gift.” The draft rule states that complimentary attendance at such events is not excluded if offered by someone other than the organization whose political purpose the event advances. Both this definition and the gift exclusion language presented later in the bill are inconsistent with statute and need to be amended. This definition improperly excludes bona fide political events, such as

fundraisers, hosted by business, labor, trade associations and other entities, where the sponsor is not the entity benefiting from the event. We believe that a fundraising event that is subject to reporting requirements of the Election Law should be included in this definition.

REVISED RULE – No changes.

(r) Widely Attended Event: shall mean an event that *is intended to be open* to a large number of persons from a given industry or profession, *including invitees who represent a broad and diverse range of interests* in a given subject matter. The event must provide the opportunity for an exchange of ideas and opinions among those in attendance. [Italics added]

COMMENT: We have two comments on this paragraph. First, the Commission is proposing a change to statutory language for no clear purpose. The Lobbying Act exempts from the definition of gift, “complimentary attendance...offered by the sponsor of an event that is widely attended or was in good faith intended to be widely attended...” The proposed rule changes “intended to be widely attended” to “intended to be open to” to for no particular purpose. Second, the proposed rule adds additional criteria stating that, to qualify as widely attended, an event must include “invitees who represent a broad and diverse range of interests.” This additional criteria is not in statute, and is not reflected in legislative history. Further, it does nothing to help clarify what constitutes a “widely attended” event. In fact, it does the opposite by adding additional subjective criteria. Since the Commission’s new language is no more clear or precise than those in statute, we strongly recommend that the final rule remain consistent with the statutory language.

REVISED RULE – Now reads, “Widely Attended Event shall mean an event that is intended to be open to a large number of persons, a substantial number of which must include invitees who are not members, employees or agents of the sponsoring organization, their spouses or public officials.” In our view, this language continues to reflect the Commission’s intent of restricting receptions hosted by single organizations, a stance that is unsupported by statute. Furthermore, the term “substantial number” fails to provide meaningful, consistent compliance criteria.

934.2 Gifts

(c) Offering or giving multiple items, regardless of value, from a single donor on a recurrent basis could create a reasonable basis for the impression that the donor was influencing or rewarding or attempting to influence or reward the public official or enjoying his or her favor in connection with the performance of the public official’s official duties.

COMMENTS: The purpose of subsection (c) is unclear. The Legislative Law provides a definition of “gift,” including eleven categories of items that are excluded from the definition, and prohibits the offering or giving of gifts by registered clients and lobbyists to public officials. This section of the draft

rule refers to the offering or giving of multiple “items,” apparently without regard to whether they meet the definition of “gift.” Therefore, there seems to be no relationship between this proposed language and the statutory provisions it purports to implement. As such, we recommend deletion of subsection (c).

REVISED RULE – it changes “items” to “gifts,” but otherwise no change. This provision still leaves the Commission with absolute discretion in determining that some number of “multiple gifts” is a violation of law, and as such is unacceptable.

934.3 Exceptions to the Definition of Gift

(2) Complimentary attendance at a bona fide charitable or political event offered, given or paid for by a person or entity other than the charitable or political organization whose charitable or political purposes the event advances or promotes shall be considered a prohibited gift to the public official.

COMMENT – The Lobbying Act exempts complimentary attendance at “bona fide ...political event[s]” from the definition of “gift,” without any qualification as to how or by whom such complimentary attendance is offered. Since the legislature chose to apply such qualifications to some categories of complimentary attendance, and chose to not apply them here, the legislative intent is clear. As written, the proposed rule would prohibit “third party” offers of attendance at such events even by persons that are not otherwise subject to regulation under the Lobbying Act. Regardless of any merits of this proposal, the Commission cannot “mix and match” statutory provisions in a way that is unauthorized by the Legislature. Therefore we recommend deletion of subparagraph (2).

REVISED RULE – This entire provision was dropped.

(5) An event is related to the public official's duties or responsibilities if it has as its *principal purpose* promoting the exchange of information about an issue or issues of public interest. [Italics added]

COMMENT: We have two sets of concern regarding this proposed subparagraph (5). First, we believe this is inconsistent with statute. The Lobbying Act precludes from the definition of “gift” complimentary attendance at widely attended events if such attendance “is *related to the attendee’s duties or responsibilities as a public official.*” This proposal to create a new requirement that the event’s “principal purpose” is the exchange of information on a public issue is inconsistent with statute. Second, this proposal raises more compliance questions than it answers. It is unclear how the Commission would determine the “principal” purpose of an event. We have been told by Commission staff that compliance can be demonstrated by having a formal agenda, yet the draft rule provides no indication of what criteria will be applied here. Will additional, non-promulgated criteria be employed by the Commission in making determinations of “primary purpose?” We believe that large events that

bring public officials together with members of the public with a clear opportunity and purpose of discussing legislative or regulator issues is consistent with the statutory intent behind the “widely attended, officially related” event exemption. We recommend that the Commission strike the provisions regarding the “principal purpose” of the event from the final rule.

REVISED RULE – Now reads, “An event is related to the public official's duties or responsibilities if it includes a presentation of information and an exchange of ideas and opinions among those in attendance about an issue or issues that are related to the public official's official duties.” Again we view this language as simply unsupported by statute, and driven by the Commission's intent to preclude reception-type events. Even so, it still presents unclear compliance requirements.

(8) In determining whether complimentary attendance should be accepted, the following factors should be considered:

- (i) the nature of any pending matter affecting the donor's interest,
- (ii) the importance of the event in relation to the public official's agency, department or other governmental unit,
- (iii) the relevance of the event to the public official's duties and responsibilities,
- (iv) the timing of the event,
- (v) the purpose of the event, the identity of other expected participants and the monetary value of the complimentary attendance, and
- (vi) whether the event provides the opportunity for an exchange of ideas and opinions among those in attendance.

(9) The public official's agency, department or governmental unit shall, in each instance, make a written finding that the public official's attendance at the event has been approved in accordance with the factors set forth in the preceding paragraph.

COMMENT: We raised numerous concerns regarding both (8) and (9).

REVISED RULE – Both subsections were dropped.

(g) Discounts for Goods and Services

(1) Goods and services, or discounts for goods and services, offered to the general public or a segment of the general public defined on a basis other than status as a public official and offered on the same terms and conditions as the goods and services are offered to the general public or segment thereof.

(2) Broad based discounts made available to all public officials shall not be considered gifts.

COMMENT: The meaning of subparagraph (2) is unclear. Is the Commission attempting to define a sub-category of discounts targeting all public officials that meet the statutory exemption for “discounts...offered to the general public?” If so, it seems to be inconsistent with statutory provisions precluding such discounts defined on the basis of a person's status as a public official.

(3) *The following factors should be considered when any other type of discount is made available to a select group of public officials to determine whether the discount would be considered to be a gift:* [Italics added]

- (i) the scope of the class of public officials who are offered the discount;
- (ii) the amount and duration of the discount; and
- (iii) whether the offeror has a nexus to the class of public officials who are offered the discount, *i.e.*, whether the offeror has a pending matter, is regulated by or is seeking to contract with the public official's governmental entity; and
- (iv) whether the criterion for the offer is based on factors other than the public officer's official duties and responsibilities

(4) Public officials should contact their Ethics Officer for guidance prior to accepting such a discount.

COMMENT: The statutory basis for paragraph (3) is unclear. This provision may be aimed at situations such as is the case with some professional associations and similar groups, that offer registration discounts to "government employees." Even so, it appears to have no basis in statute. The Lobbying Act's gift exemption for generally available discounts applies only in instances where such discounts are offered "on a basis other than status as a public official." This proposed language seems to directly contradict statute, by saying there can be some permissible "type of discounts" explicitly for public officials.

REVISED RULE – No changes made.