



ADVISORY OPINION 07-02

Interpretation of T.C.A. § 3-6-305(b)(6)
with respect to Members of the Legislature
participating in a charitable event in which
their cost of attending is paid for by an employer of a lobbyist.

INTRODUCTION:

The following Advisory Opinion is in response to a request from Representative Randy S. Rinks, Majority Caucus Chairman, with regard to a charitable event hosted by the Rural West Tennessee Democratic Caucus (“Caucus”) to benefit the St. Jude Children’s Research Hospital (“St. Jude”).

Representative Rinks asks the following questions:

(1) Does the Ethics Reform Act (“Act”) permit legislators to participate in this event even if an organization that employs a lobbyist may have paid St. Jude for the sponsorship of the team?

(2) St. Jude, as a part of the tournament, has a reception for all participants and volunteers. Does the Act permit legislators to attend such a reception even if St. Jude credits the reception to an organization which may employ a lobbyist?

(3) St. Jude, as part of the tournament, provides participants and volunteers with goodie bags. Does the Act permit legislators to receive “goodie bags” that have items some of which may have been donated by organizations that employ lobbyists?

(4) St. Jude provides complimentary beverages on the day of the event. Does the Act permit legislators to receive complimentary beverages?

In response to the above questions, the Tennessee Ethics Commission (“Commission”) concludes the following:

(1) Yes. Since the event is open to the first 50 (or the chosen number for 2007) sponsors, this constitutes an “appropriate class of the general public” and the charitable event exception to the gift ban is applicable.

(2) Yes. Legislators may attend the reception because it is allowable under the “charitable events exception” analyzed in Question 1.

(3) Yes. Legislators may receive a “goodie bag” as long the legislators do not receive an enhanced or special “goodie bag.”

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(4) Yes. Legislators may receive beverages provided by St. Jude as part of the tournament, even if employers of lobbyists have contributed to St. Jude to make it possible for St. Jude to provide the beverages.

BACKGROUND:

The Caucus annually hosts the Wild West Shootout to benefit St. Jude, which is itself an employer of a lobbyist. This is a charity golf event with 100% of all funds raised and all donations made going exclusively to St. Jude. From the funds raised, St. Jude pays for all expenses incurred and prizes given at the tournament. The Caucus has held this event for the past fourteen (14) years, raising over \$730,000.00 during that time.

The event is open to anyone who pays the registration fee. Sponsors provide checks directly to St. Jude. Sponsors may include entities that directly employ a lobbyist.

Representative Rinks has provided the Commission a copy of the 2006 announcement for the event. For 2006, the field was limited to the first 50 teams which paid in advance. Team sponsorship was set at either \$1,500.00 or \$1,000.00 per team. The format of the tournament "is a four person scramble and each team sponsor is responsible for creating his or her own team."

Representative Rinks states that all expenses associated with the Wild West Shootout and all prizes awarded for the golf tournament are paid directly by St. Jude.

DISCUSSION:

A. ADMISSION TO THE TOURNAMENT

Does the Act permit legislators to participate in this event even if an organization that employs a lobbyist may have paid St. Jude for the sponsorship of the team?

It is the Commission's understanding that:

Any individual or entity may sponsor a golf team by making a contribution to St. Jude. Thus, there may be team sponsors that are not employers of lobbyists.

Any sponsor of a team may invite a legislator to play on the sponsor's team.

The team sponsors and the prize sponsors make their payments or contributions to St. Jude. The money or prizes become the property of St. Jude and are no longer the property of the contributor.

Since St. Jude makes all disbursements in connection with the tournament, the Commission assumes that St. Jude pays the overhead associated with the tournament, e.g., the golf course for its charges for the golf rounds (unless the golf course is also contributing the value of the use of the course to St. Jude), the cost of the reception to which participants and contributors are invited, and the cost of the food and beverages that are served during the tournament.

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T.C.A. § 3-6-305(a)(1) provides that no lobbyist or employer of a lobbyist may provide a gift, directly, or indirectly, to a candidate for public office, official in the legislative branch, official in the executive branch, or immediate family of such candidate or official.

However, the statute contains numerous exceptions to this gift prohibition,¹ several of which may apply to the current facts.

Representative Rinks' question specifically refers to those employers of lobbyists that contribute to St. Jude to sponsor the fundraising event. Although St. Jude is itself an employer of a lobbyist, Rep. Rinks's questions have to do with whether it is permissible for an employer of a lobbyist to sponsor a team that includes a legislator. Thus, it is not St. Jude which is making it possible for the lobbyist to participate in the event. The result would be the same whether or not the charity receiving the revenue and paying the overhead is itself an employer of a lobbyist.

One of the exceptions to the gift prohibition is T.C.A. § 3-6-305(b)(6), which provides:

(b) The following are not subject to the prohibition in subsection (a):

(6) Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to:

(C) Benefits of participation in events held within the state and sponsored by, or for the benefit of, charitable organizations as defined in § 48-101-501(1), if provided by an employer of a lobbyist to an official in the executive branch or to an official in the legislative branch; provided, that such events must be open to participation by persons other than officials in the executive branch or officials in the legislative branch or such official's immediate family and any benefits received must not be enhanced due to the status of the official in the executive or legislative branch, or provided that invitations are extended to the entire membership of the general assembly.

This exception permits an official in the executive or legislative branch to attend a charitable event sponsored by an employer of a lobbyist if: (1) such events are open to participation by persons other than the legislative official or such official's immediate family, (2) any benefits received are not enhanced due to the status of the official, and (3) participation in the event is an opportunity and benefit made available to all members of an appropriate class of the general public. Under T.C.A. § 3-6-305(b)(6)(C), "appropriate class of the general public" must include "persons other than . . . officials in the legislative branch . . .").

It is permissible for an employer of a lobbyist to make a contribution to a qualified charitable organization as a sponsor of an event whose purpose is to raise money for the charity, if the public or "an appropriate class of the general public" is provided the opportunity and benefit to attend. For example, a large healthcare corporation that is an employer of a lobbyist could sponsor a free admission to a museum, paying the normal ticket price so that members of

¹ For a complete list of exceptions, see T.C.A. §§ 3-6-301(11) and 3-6-305(b)(1) – (11).

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the public are admitted for free. Presumably, the number of individuals whose tickets would be paid for by the corporation would be limited.

Similarly, if the corporation provides free tickets to all school teachers or all senior citizens, these groups would qualify as “an appropriate class of the general public.”

Under the foregoing examples, the fact that some part of the invited “appropriate class of the general public” may be legislative or executive officials is of no relevance to the larger class’s eligibility for free tickets. Thus, the charitable event exception to the gift ban would apply.

Under the facts set forth in Representative Rinks’ request, the Wild West Shootout is open to anyone who pays the registration fee to be a team sponsor. The event is therefore not limited to officials in the legislative branch, but is instead open to any member of the general public who is one of the first 50 to purchase a team sponsorship. In addition, other levels of sponsorship are available to the public, including sponsorship of a hole or a prize. Although there are different levels of sponsorship, there is no indication from the facts presented that St. Jude enhances participation in the tournament, or prizes awarded, in any way due to an individual’s status as a state legislator.

Accordingly, the Wild West Shootout is hosted by the Caucus but is paid for by St. Jude, the charitable organization, and St. Jude:

- (a) allows participation by persons other than officials in the executive or legislative branch or such officials’ immediate family,
- (b) does not enhance any of the benefits of participation that it provides due to the status of a legislative official, and
- (c) makes the opportunity and benefit of participation available to all members of an appropriate class of the general public (i.e., the first 50 teams to pay in advance).

Thus, the Wild West Shootout meets the above-referenced “charitable events exception” to the gift ban and legislators may participate in the golf tournament. Employers of lobbyists who are among the team sponsors are permitted to invite legislators to play on their teams. The result is not affected by the fact that St. Jude itself is an employer of a lobbyist.

Participation in the tournament as a member of a team entitles one to (1) attend a reception for all participants and volunteers, (2) receive a “goodie bag,” and (3) have beverages that are provided on the day of the event. These are all part and parcel of participating in the tournament as a member of a team.

B. ATTENDANCE AT RECEPTION

St. Jude, as a part of the tournament, has a reception for all participants and volunteers. Does the Act permit legislators to attend such a reception even if St. Jude credits the reception to an organization which may employ a lobbyist?

See the analysis of Question 1 above. Attendance at a reception for all participants and volunteers is a part of, and a benefit of, participating in the tournament. Everyone attending receives the same benefit and there is no preference due to the fact that one is a legislator. Attendance at the reception is therefore permissible under T.C.A. § 3-6-305(b)(6)(C) for a legislator who is a member of a team sponsored by an employer of a lobbyist.

C. RECEIPT OF “GOODIE BAG”

St. Jude, as part of the tournament, provides participants and volunteers with goodie bags. Does the Act permit legislators to receive “goodie bags” that have items some of which may have been donated by organizations that employ lobbyists?

See the analysis of Questions 1 and 2, above. Receiving a goodie bag is a part of, and a benefit of, participating in the tournament. Everyone who plays in the tournament receives the same goodie bag, and there is no indication that a legislative official receives a goodie bag that is different from the bag provided to all other non-legislative participants and volunteers. Receiving a goodie bag is therefore permissible under T.C.A. § 3-6-305(b)(6)(C) for a legislator who is a member of a team sponsored by an employer of a lobbyist.

D. RECEIPT OF BEVERAGES DURING TOURNAMENT

St. Jude provides complimentary beverages on the day of the event. Does the Act permit legislators to receive complimentary beverages?

See the analysis of Questions 1, 2 and 3 above. Receiving beverages on the day of the event is a part of, and a benefit of, participating in the tournament. Everyone who plays in the tournament is allowed to drink the beverages on an equal basis. Receiving beverages is therefore permissible under T.C.A. § 3-6-305(b)(6)(C) for a legislator who is a member of a team sponsored by an employer of a lobbyist.

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