

Compilation of Informal Advice to Lobbyists

This compilation is based on actual questions submitted to the Executive Director and General Counsel of the Indiana Lobby Registration Commission (referred to as “Commission” in this compilation) and the informal written advice provided in response to those questions. **The Commission has stated that “while informal written advice provided by its Executive Director and General Counsel presents some level of weight, it does not represent the official position of the Commission and should not be relied upon as such.”** In addition to this compilation, a lobbyist is strongly encouraged to review the various Final Advisory Opinions (referred to individually as “FAO” in this compilation) issued by the Commission. **In its FAO 97-05, the Commission stated that “Each Advisory Opinion represents a formal policy determination of the Commission and may be relied upon in making filing and reporting decisions.”** The FAOs issued by the Commission are available on the Commission’s website (www.in.gov/ilrc).

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Question 1.10. When is one required to register as a lobbyist with the Indiana Lobby Registration Commission?

Answer. Under the definition of “lobbyist” set forth in IC 2-7-1-10, one is not required to register as a lobbyist unless the potential registrant: (1) engages in legislative lobbying, and (2) during a registration year, also receives or expends at least \$500 in compensation or expenditures reportable under IC 2-7. As defined in IC 2-7-1-9, “lobbying” means communicating by any means, or paying others to communicate by any means, with any legislative person with the purpose of influencing any legislative action. Unless one meets both tests, registration is not required.

Question 1.12. If an organization that does not engage in lobbying makes a gift valued at \$200 to a state senator, does the gift trigger a requirement for the organization to register with and report to the Indiana Lobby Registration Commission?

Answer. If the organization that made the gift is not engaged in "lobbying" as defined in IC 2-7-1-9 (communication with a legislative person with the purpose of influencing legislative action), then the organization does not come under the definition of "lobbyist" set forth in IC 2-7-1-10 and is not required to register with nor report to the Commission.

Questions 1.13. Does IC 2-7 limit the ability of a former official of the Executive/Administrative Department of state government to lobby the Indiana General Assembly? If such a former official receives no compensation for lobbying, is he required to register with and report to the Indiana Lobby Registration Commission?

Answers. IC 2-7 does not in any way limit the ability of such a former official of the Executive/Administrative Department of state government to lobby the Indiana General Assembly. Under IC 2-7-5-7, the 365 days limitation against functioning as a legislative lobbyist or a legislative liaison applies only to former members of the General Assembly. With respect to your second question, IC 2-7-2-6 (e) provides that a person whose lobbying services are performed without compensation is not required to register with nor report to the Commission. In addition, IC 2-7-2-6 (f) makes it clear that a private citizen operating on his or her own behalf has a right to free and open communication with members of the General Assembly.

Questions 1.15. If a firm that is registered as both an employer lobbyist and a compensated lobbyist lobbies on behalf of a non-profit organization on a pro bono basis, is the organization required to register and report as an employer lobbyist? Should the firm list such a pro bono client on its annual compensated lobbyist registration statement?

Answers. Such a pro bono client does not meet the two part test to be considered a "lobbyist" as defined in IC 2-7-1-10 because it neither receives in compensation, nor incurs reportable lobbying expenses of, at least \$500 per year for lobbying. Since the pro bono client is not considered a lobbyist under that definition, it is not required to either register under IC 2-7-2 or report under IC 2-7-3. With respect to the firm, IC 2-7-2-3 sets forth items to be included on the registration statement of a compensated lobbyist. Subdivision (2) of that section provides that a compensated lobbyist is to list on its registration statement "the name, business address,

telephone number, and kind of business of each person (including the names of each officer or partner) **who compensates him.**" Thus, the firm should not list such a pro bono client on its annual compensated lobbyist registration statement because the client does not compensate the firm for its lobbying services. (See also IC 2-7-2-1, IC 2-7-2-4, and IC 2-7-3-1.)

Question 1.17. The following question came from a law firm that is registered as both an employer lobbyist and a compensated lobbyist.

"We have a new client that we have registered. Its owner will be working on its legislative issues this session. We are at a loss as to whether to register him. He will be working on legislation but he doesn't receive a salary from the client. If he should be registered, how do you recommend that we report his compensation as he isn't currently receiving any from the client?"

Answer. If the owner will not reach the \$500 threshold for either compensation received by him to lobby or reportable lobbying expenditures made by him, such as lobbying related entertainment, he should not register with the Commission; if he is not required to register, he is not required to file semi-annual activity reports with the Commission. Although the owner is not being compensated by your client, it is possible that he could reach the \$500 threshold by incurring reportable lobbying expenditures for gifts, entertainment, etc. From your statement of facts, it is clear that the owner will be engaging in lobbying as defined in IC 2-7-1-9. Thus, if he does reach the \$500 threshold in reportable lobbying expenditures during a particular registration year, he will be required to register with and report to the Commission for that year even if he is still not being compensated by your client. In such a case, your client would need to list the owner as one of its compensated lobbyists on its registration statement and would need to report lobbying related payments or reimbursements made to owner. [See IC 2-7-1-10 (a) (2) and IC 2-7-2-4]

Question 1.20. Is an entity that is a "state agency" as defined in IC 4-2-6-1 required to register and report as a lobbyist under IC 2-7?

Answer. IC 2-7-2-6 (a) provides that public officials as defined in IC 2-7-1-14 and public employees as defined in IC 2-7-1-13 are not subject to the registration and reporting requirements of IC 2-7 while acting within their official capacity or the scope of their employment. In addition, the General Assembly has enacted separate annual gift and entertainment reporting provisions for those state agencies and state colleges and universities that employ one or more legislative liaisons. Those separate reporting provisions are set forth in IC 5-14-7. Based on the specific exclusions for public officials and public employees and the separate reporting requirements that apply to state agencies, it would be illogical to require such a state agency to register and report as an employer lobbyist under IC 2-7.

Question 1.22. Are members of the General Assembly who belong to a special interest caucus subject to the registration and reporting requirements for legislative lobbyists set forth in IC 2-7 if they communicate with other members of the Assembly with respect to issues of interest to the caucus?

Answer. The definition of “public official” set forth in IC 2-7-1-14 includes members of the Indiana General Assembly, and IC 2-7-1-10 (b) (1) specifically excludes a public official from the definition of “lobbyist” as set forth in IC 2-7-1-10 (a). In addition, IC 2-7-2-6 (a) provides that the legislative lobbyist registration and reporting requirements of IC 2-7-2 and IC 2-7-3 do not apply to a public official acting within the scope of his or her office. Clearly all elements and stages of the development, refinement, and enactment of legislation by the Indiana General Assembly are within the scope of office for a member of the Assembly. Thus, for a member of the Assembly, advocating for or against specific legislative proposals is within the scope of the member’s office. Therefore, it is my opinion that such a member is exempt from the registration and reporting requirements that apply to those who do come under the definition of “lobbyist.”

It is worth noting that IC 2-7-5-1 prohibits a member of the General Assembly, as well as all other “legislative persons” as defined in IC 2-7-1-8, from receiving “compensation or reimbursement other than from the state for personally engaging in lobbying.” Thus, a member of the General Assembly may not be paid by a third party to engage in lobbying as defined in IC 2-7-1-9.

Whether or not the conduct of a member of the Assembly with respect to legislative action is in compliance with the code of ethics of a particular legislative body is a matter for that body to address and is not within the purview of the Indiana Lobby Registration Commission.

Question 1.25. An out-of state firm has engaged a local firm to lobby the Indiana General Assembly on behalf of a business that is a client of the out-of-state firm. The business is to pay the out-of-state firm, and the out-of –state firm is to pay the local firm for the lobbying services provided. How should the parties register with and report to the Indiana Lobby Registration Commission?

Answers. The business should register and report as an employer lobbyist listing the out-of-state firm as its compensated lobbyist. The out-of state firm should register as both an employer lobbyist listing the local firm as its compensated lobbyist and as a compensated lobbyist listing the business as its client. The out-of-state firm should report only as a compensated lobbyist of the business. The local firm should include the out-of-state firm as one of its clients on its compensated lobbyist registration statement and report as a compensated lobbyist of the out-of-state firm.

Question 1.30. What is the difference between an employer lobbyists and a compensated lobbyist?

Answer. A party that compensates someone else to perform lobbying services should register as an employer lobbyist, and the party that receives the compensation should register as a compensated lobbyist. If a party receives compensation for lobbying and also compensates others to lobby, then that party should register as both a compensated lobbyist and an employer lobbyist. For example, a firm that is compensated by clients for lobbying and pays partners or employees to lobby for the clients should register as both an employer lobbyist and a compensated lobbyist.

Questions 1.32. A firm (F) engages a consultant (C) to develop a script for a phone bank (B) to use in communications with the general public. F also asks C to select B and coordinate F's payments to B. B's employees contact members of the general public by telephone, read the prepared script, and then offer to connect the individuals contacted to their state senator or representative, or both, so they can express their support for F's position on a particular legislative matter. F's payments for the services provided by B will exceed \$500 in the applicable reporting year. In addition, the compensation paid by B to each of its employees who provide those services also will exceed \$500 in the applicable reporting year. Based on these facts, which parties are required to register with and report to the Indiana Lobby Registration Commission?

Answers. Under Final Advisory Opinion 2002-01, the services provided by B constitute "lobbying" as defined in IC 2-7-1-9. Thus, F will need to register with and report to the Commission as an employer lobbyist. With respect to its activity reports, F will need to include as compensation paid to others for lobbying the payments that F funnels through C to B. B will need to register as both an employer lobbyist and as a compensated lobbyist. However, B will file activity reports as a compensated lobbyist only. Each employee of B who is engaged in providing the services for F will need to register with and report to the Commission as a compensated lobbyist of B. While C does provide services for F that facilitate F's lobbying efforts in Indiana, C is not actually engaged in lobbying as defined in IC 2-7-1-9. Thus, C will not be required to register with nor report to the Commission.

Question 1.33. I was reviewing final advisory opinion 2002-01, and I had a follow up question. Would all of the employees of the phone bank service connecting calls need to register as lobbyists as well?

Answer. If the service provided by the phone bank constitutes "lobbying" under IC 2-7-1-9 and FAO 2002-01, then each employee of the phone bank engaged in providing that service would be required to register and report as a compensated lobbyist if the employee receives at least \$500 in compensation (wages, salary, cost of employer provided benefits, etc.) during the applicable registration/reporting year to provide those lobbying services.

If the firm operating the phone bank were to utilize a computer system rather than individuals to make calls and then provide the link to "legislative persons" as defined in IC 2-7-1-8, then only those employees who operate the system and who receive at least \$500 in compensation (wages, salary, cost of employer provided benefits, etc.) during the applicable registration/reporting year with respect to Indiana legislative lobbying would be required to register and report as compensated lobbyists.

If employees of the firm operating the phone bank are so required to register and report, then the firm will need to register as both an employer lobbyist and as a compensated lobbyist and then report as a compensated lobbyist. On its employer lobbyist registration, the firm will need to list each employee who is so required to register and report as a compensated lobbyist of the firm. As noted in FAO 2002-01, the entity that engages the firm operating the phone bank to so lobby will need to register and report as an employer lobbyist and to list the firm as one of the entity's

compensated lobbyists on its registration statement. On its compensated lobbyist registration statement, the firm will need to list the entity as one of its clients.

Question 1.35. We have a potential group of clients interested in forming a “letterhead committee” (without the benefit of incorporation, a bank account or any indicia of having any identity beyond the name on the letterhead). This committee would be lobbying the General Assembly, but the cost of our lobbying services would be split amongst all of the individual corporate entities. We would invoice each individually and be compensated by each one. How would you advise registration under this situation?

Answer. Under your fact situation, each entity that is paying your firm to lobby will need to register with and report to the Commission as an employer lobbyist. Your firm will need to list each entity as a client on its compensated lobbyist registration statement and also file separate compensated lobbyist activity reports semi-annually with respect to each client.

Question 1.40. If an individual or entity pays dues to a trade association which is a registered lobbyist, is the individual or entity required to register and report as an employer lobbyist?

Answer. The Commission addressed this question in FAO 97-07 (A), which sets forth two tests to be applied in determining whether the various members of such a trade association should register as employer lobbyists. Those tests are as follows:

- (1) Whether the trade association has a “primary purpose” of legislative lobbying in Indiana; and
- (2) Whether \$500 or more of the annual dues that each member pays the trade association is attributable to the association’s legislative lobbying in Indiana.

With respect to the first test, the following provisions of FAO 97-07 (A) are relevant:

“The determination of whether a trade association has a principal purpose of lobbying is fact specific and must be decided on a case-by-case basis. One factor to be considered is whether greater than 50% of the trade association’s total budget goes toward lobbying activities....

If more than 50% of the trade association’s total budget is expended on lobbying activities, then the principal purpose of that trade association will be presumed to be lobbying. This presumption that the principal purpose is lobbying can be overcome only with substantial factors to the contrary. Where the presumption is not overcome, then the association must register as a compensated lobbyist and those members whose dues attributable to lobbying exceed \$500 in a registration year must register as employer lobbyists.”

Question 1.41. The following request for guidance involved an association registered as an employer lobbyist and a law firm registered as both an employer lobbyist and a compensated lobbyist because both parties were involved in other activities that required them to register with and report to the Commission.

“Is the association required to amend its registration to list the law firm as one of its compensated lobbyists and is the law firm in turn required to amend its compensated lobbyist

registration to list the association as one of its clients, if the services that the law firm is to provide for the association are limited to the following:

1. Reviewing all legislation and amendments during the legislative session to identify matters that could impact the association.
2. Creating and updating a tracking list of bills of interest to the association for use by the association.
3. Consulting with the association's compensated lobbyists on legislation of interest to the association.
4. Assisting the association's compensated lobbyists in drafting amendments to bills for presentation by those compensated lobbyists.
5. Assisting the association in preparing an end of session report?

The agreement between the association and the law firm will state that the firm is not to provide services for the association that would come within the definition of lobbying, such as contacting a legislative person to advocate for the association or testifying on behalf of the association.”

Answer. Based on the facts set forth in your request for guidance, it is my opinion that the services the firm is to provide to the association will not constitute “lobbying” as defined in IC 2-7-1-9. In particular, the firm will not be communicating with legislative persons in an effort to influence legislative action on matters of interest to the association. Thus, the association is not required to amend its employer lobbyist registration to list the law firm as one of its compensated lobbyists, and law firm is not required to amend its compensated lobbyist registration to list the association as one of its clients.

Question 1.42. Are members of an organization that is exempt from federal income taxation under Section 501 (c) (4) of the Internal Revenue Code required to register with and report to the Commission if the members provide financial support to the organization and the organization engages in lobbying as defined in IC 2-7-1-9?

Answer. In FAO 97–07(A), the Commission ruled that a member of a trade association that is exempt from taxation under Section 501 (c) (6) of the Internal Revenue Code must register with the Commission as an employer lobbyists if the principal purpose of the trade association is lobbying and at least \$500 of the member's annual dues paid to the association are used for lobbying as defined in IC 2-7-1-9. The Commission also stated in the FAO that such a trade association is presumed to have lobbying as its principal purpose if “more than 50% of the trade association's total budget is expended on lobbying activities.”

After reviewing FAO 97–07(A) and the applicable sections of IC 2-7, it is my opinion that the FAO also is applicable to other tax exempt membership organizations regardless of whether the exemption is based on Section 501 (c) (4) or some other section of the Internal Revenue Code. Thus, if less than 50% of the organization's budget is spent on lobbying the Indiana General Assembly, then a member of the organization is not required to register as an employer lobbyist under IC 2-7-2 because of its membership in and contributions to the organization. In addition,

an entity that is not required to register with the Commission is not required to file semi-annual activity reports with the Commission.

The only remaining issue from your request for advice deals with a member of the organization that is required to register with and report to the Commission as an employer lobbyist because of other lobbying activities. The issue is whether such a registered employer lobbyist should be treated in a different manner than a member of the organization that will not be required to register with and report to the Commission if the organization does not have lobbying as its principal purpose.

In arriving at its decision in FAO 97-07(A), it is clear that the Commission reviewed a number of applicable sections of IC 2-7. One of those sections is IC 2-7-2-4, which reads as follows:

“Sec. 4. The registration statement of each lobbyist *who compensates a person for lobbying* shall include:

- (1) his full name, business address and telephone number, kind of business, and the full name of the individual who controls the business, the partners, if any, and officers;
- (2) the full name, and business address and telephone number of each person compensated by him as a lobbyist;
- (3) the subject matter for which he has employed or contracted with a lobbyist.”

By basing its ruling in FAO 97-07(A) at least in part on IC 2-7-2-4, it is my assumption that the Commission concluded that dues paid by a member of a trade association should not be considered as compensation paid for lobbying unless the principal purposes of the trade association is lobbying. Based on that conclusion, I can find no rational basis for treating members of other tax exempt membership organizations differently with respect to registration and reporting requirements related to their involvement with the organization. Thus, unless the organization’s principal purpose is lobbying as determined under FAO 97-07(A), it is my opinion that:

- (1) A member of such a tax exempt membership organization which is required to register with the Commission as an employer lobbyist because of other lobbying activities is not required to list the organization as a compensated lobbyist on its registration statement and will not be required to include contributions to the organization on its semi-annual activity reports.
- (2) The membership organization is not required to register with the Commission as a compensated lobbyist because of contributions it receives from those members described in item (1) above and will not be required to file compensated lobbyist activity reports with respect to those members.

Questions 1.45. If two members of a trade association pay a firm to lobby on matters of interest to the entire association, which entity or entities are required to register and report as employer lobbyists? In such a case, how should the firm register and report?

Answers. Under IC 2-7-1-10, IC 2-7-2-1, and IC 2-7-2-4, an entity is only required to register as an employer lobbyist if it pays another party at least \$500 in a registration year to lobby. In this

case, the two members of the trade association are paying the firm to lobby. Thus, the members should register and report as employer lobbyists. On their annual registration forms, each member should list the firm as one of its lobbyists. In addition, the firm should list the two members as clients on its annual compensated lobbyist registration statement and file separate compensate lobbyist activity reports for each client. The trade association should not register nor report as a lobbyist because it is not compensating the firm to lobby, and the firm should not list the trade association as a client on its annual compensated lobbyist registration form nor file compensated lobbyist activity reports with respect to the trade association. Simply put, the trade association does meet the definition of lobbyist set forth in IC 2-7-1-10 because it is not paying the firm at least \$500 per registration year to lobby.

Question 1.50. What limitations, if any, are placed on lobbying by current or former members and employees of the General Assembly?

Answer. Under IC 2-7-1-8, the term “legislative person” includes not just a member of the General Assembly but also legislative staff, candidates for election to the General Assembly, a member of the immediate family of such a person, and paid consultants to the General Assembly. IC 2-7-5-1 prohibits such a legislative person from receiving compensation or an expense reimbursement for lobbying the General Assembly unless the compensation or reimbursement is provided by his or her state government employer. In addition, IC 2-7-5-7 provides that a former member of the General Assembly may not register as a legislative lobbyist or be employed as a legislative liaison during the period of 365 days after he or she ceases being a member of the state legislature. A “legislative liaison,” as defined in IC 5-14-7-3, is one who is employed by and lobbies on behalf of an executive branch agency or a state college or university.

Questions 1.60. After I leave office as a member of the House of Representatives, can I function as a consultant to lobbyists? If so, can I establish a webpage to advertise my consulting services? Would it be permissible for me to contact a legislator to arrange a meeting with a lobbyist for whom I am providing consulting services? Would it be permissible for me to attend a meeting between the principal and the legislator if I remain silent?

Answers. It is my opinion that the 365 days lobbying prohibition set forth in IC 2-7-5-7 does not prohibit you from performing non-lobbying consulting services for clients. Thus, you are free to establish a website to promote yourself as such a consultant. That said, I would, if I were you, clearly state on such a website that pursuant to IC 2-7-5-7 you will not engage in “lobbying” as defined in IC 2-7-1-9 before November 8, 2013. With respect to your third question, I am assuming that the principal’s objective is to influence legislative action. If that is the case, it is my opinion that any communication between you, acting on behalf of the principal, and a “legislative person” as defined in IC 2-7-1-8 would constitute lobbying and thus violate the 365 days prohibition referred to above. With respect to your final question, you could argue that merely attending a meeting with a “legislative person” does not fall within the definition of “lobbying” if there is absolutely no communication between you and the legislative person. However, I strongly encourage you to evaluate how likely it is that you could avoid any form of communication while attending such a meeting.

Question 2.10. How should one registered as both an employer lobbyist and a compensated lobbyist file semi-annual activity reports?

Answer. An individual or entity registered as both an employer lobbyist and a compensated lobbyist is to file a separate compensated lobbyist activity report with respect to each employer lobbyist from which the individual or entity received compensation. In such a case, the individual or entity is *not* to file an activity report as an employer lobbyist.

Question 2.20. If a compensated lobbyist's contract with a client requires the client to pay a monthly retainer which covers more than lobbying services, how much of the retainer payments should the client include on its employer lobbyist activity report?

Answer. Only that portion of the total retainer payments that is reasonably allocated to lobbying services provided by the compensated lobbyists should be included in the client's employer lobbyist activity report.

Question 2.30. When an employer lobbyist reports compensation paid to an employee for lobbying services, is the employer to include anything for the cost of benefits provided by the employer?

Answer. The employer lobbyist is to base the amount it reports on a reasonable allocation of all compensation that the employer paid in the form of salary, wages, and benefits to an employee who performed lobbying services for the employer during the semi-annual reporting period. It is common for such an employee to perform more than lobbying services for the employer. In such a case, the employer should report only that portion of the employee's total compensation that is reasonably allocated to time that the employee devotes to lobbying as defined in IC 2-7-1-9.

Questions 2.35. If firm that is registered as an employer lobbyist brings a bus load of its employees to the State House to lobby on a particular matter how should the firm report the following expenses:

- (1) lobbying related compensation paid to the employees;
- (2) the cost of T-shirts provided to the employees, which T-shirts had a statement in support of the firm's position on the legislative matter; and
- (3) the cost of the bus transportation?

Is an employee of the firm who takes part in the lobbying effort required to register with the Commission?

Answers. An employee of the firm who came to the State House to lobby is not required to register with and report to the Indiana Lobby Registration Commission unless the employee receives at least \$500 of compensation during a reporting year related to the employee's lobbying activities. The time that such an employee spends on the bus traveling to and from the State House is not such a lobbying activity. However, the time spent at the State House wearing the T-shirt with the message in an effort to influence members of the General Assembly should be treated as time spent lobbying. With respect to each employee who participated, the firm should include in the amount that its reports on Line 1 of Section C of its activity report a reasonable allocation of the employee's compensation (wages + cost of benefits) for time spent

lobbying. An acceptable method of arriving at the amount to be reported for each employee is to take the employee's hourly rate of compensation multiplied by the number of hours that the employee spent lobbying. As we discussed, I strongly recommend that you maintain documentation in your files that indicates how the reportable compensation was determined. The documentation will prove helpful if the firm is selected for an audit. With respect to the costs of the T-shirts and the bus transportation, the firm should include those expenditures in the amount that it reports on Line 9 of Section C of its activity report.

Question 2.40. If instead of paying cash an employer lobbyist transfers property in-kind, such as shares of stock, to compensate another for performing lobbying services, how should the compensation be reported?

Answer. The employer lobbyist should base the amount it reports as compensation for lobbying on the fair market value of the in-kind property. If the compensated lobbyist performs both lobbying and non-lobbying services for the employer lobbyist, the amount of compensation to be included on the employer lobbyist's activity report should include only that portion of the total value of the property reasonably allocated to the lobbying service. The employer lobbyist should retain documentation of how it determined the reportable amount and be prepared to provide that documentation if it is audited by the Commission.

Question 2.50. If an employer lobbyist has a contract to pay a firm \$5,000 per month to lobby for the employer lobbyist and does not make the \$5,000 payment for April until after April 30, on which activity report should the employer lobbyist report the \$5,000 payment for April?

Answer. In FAO 97-03, the Commission stated that lobbyists should file activity reports on the cash basis of accounting. Thus, on their activity reports for a semi-annual reporting period, the employer lobbyist should include only those compensation payments actually made during that period.

Question 2.55. If a registered lobbyist employs the sister of a member of the General Assembly to function as an intern during a legislative session, how should the registered lobbyist report the following expenses?

1. The intern's compensation.
2. The costs of tickets to attend legislative receptions or events as part of the intern's job.
3. Meals provided to the intern as part of the intern's job.

Answer. A sibling of a member of the General Assembly is not included in the definition of "immediate family" under IC 2-7-1-5. Thus, the mere existence of that relationship does not bring the sibling within the definition of "legislative person" set forth in IC 2-7-1-8. Therefore, none of the expenditures listed in your question are reportable on the registered lobbyist's activity report, unless the intern satisfies both elements of the definition of "lobbyist" found in IC 2-7-1-10 (a), which reads as follows:

IC 2-7-1-10

"Lobbyist"

Sec. 10. (a) "Lobbyist" means any person who:

- (1) engages in lobbying; and
- (2) in any registration year, receives or expends an aggregate of at least five hundred dollars (\$500) in compensation or expenditures reportable under this article for lobbying, whether the compensation or expenditure is solely for lobbying or the lobbying is incidental to that individual's regular employment.

If the intern would satisfy both of those elements, then the intern would be required to register with and report to the Commission as a compensated lobbyist. In such a case, the intern's employer would be required to report a reasonable allocation of the intern's compensation and the costs of tickets to legislative receptions and events. Under IC 2-7-3-3 (c) (5), the employer would not be required to report the cost of meals provide to the intern.

Question 2.60. If an employer lobbyist employs the adult son of a member of the General Assembly and reimburses the employee for meal and entertainment expenses, is the employer lobbyist required to report those expenditures?

Answer. If the adult son is not a "dependent child" of the state legislator, then the adult son is not a member of the "immediate family" of the state legislator as that term is defined in IC 2-7-1-5. In such a case, the adult son is not a "legislative person" as that term is defined in IC 2-7-1-8. Thus, the employer lobbyist should not report the reimbursements paid to its employee, unless the employee is functioning as a compensated lobbyist for his employer. If the employee were functioning as a compensated lobbyist for his employer, then the employer would be required to report only that portion of a reimbursement that is considered a reportable lobbying expenditure under IC 2-7. In such a case, IC 2-7-3-3 (c) (5) provides that expenditures for lodging, meals, and other personal expenses of the lobbyist are not required to be reported.

Question 2.70. If a group of lobbyists host a reception to which they invite certain legislative persons, such as women who are members of or employed by the General Assembly, how should they report the expenses related to that function?

Answer. Under IC 2-7-3-3, the General Assembly has clearly established different reporting categories for lobbying expenses as well as different requirements for reporting expenses within those categories. For example, IC 2-7-3-3 (a) (2) (C) treats reception expenses as a separate reporting category for lobbyists' activity reports. In addition, IC 2-7-3 does not require a lobbyist to track reception expenses by legislative person. With respect to such a reception where there is no practical way to individually track food and beverage consumption, the reportable lobbying expenses for the function should be determined by calculating the percentage of reception attendees who were "legislative persons" as defined in IC 2-7-1-8 and then multiplying that percentage by the total cost of the reception. Each participating lobbyist should then report the lobbyist's share of the reportable lobbying expenses for the function on Line 3 of Section C of the lobbyist's activity report. If a participating lobbyist has more than one client, it should be understood that the lobbyist may allocate the lobbyist's reportable share among the lobbyist's clients in a manner consistent with past practice. To accurately determine the reportable portion of the total expenses for the event, a list of all persons who attend the

reception should be maintained so that the number of total attendees and the number of attendees who are legislative persons can be readily determined.

Question 2.72. A law firm that is registered as a compensated lobbyist with several employer lobbyist clients has agreed to be a sponsor for a reception for freshman legislators. The reception is being hosted by the Governmental Affairs Society of Indiana (GASI). How should the firm report its cost of sponsoring the event?

Answer. Because GASI is hosting the reception, it should maintain accurate attendance records for the event. The records should include both total attendance and attendance by legislative persons as defined in IC 2-7-1-8. GASI should then share this information with each sponsor. The firm should multiply its cost of sponsoring the reception by the percentage of legislative participation (attendance by legislative persons/total attendance) to determine the total reception expenses reportable on Line 3 of Section C. The firm can then allocate that total amount among its compensated lobbyist activity reports for its employer lobbyist clients assuming such an allocation is consistent with its understanding with its clients.

Questions 2.75. If a lobbyist invites all members and staff of the General Assembly to a tailgate party before a Colts game, how should the lobbyist report the entertainment expenses given the difficulty in ascertaining exact attendance? Should the lobbyist report the entire cost of the event or “guesstimate” a rough number of total attendees and then divide that by the number of legislative persons observed at the event?

Answer. If the lobbyist is going to host such an entertainment function, the lobbyist has a duty to make a reasonable effort to track attendance by “legislative persons” as defined in IC 2-7-1-8 and others. Since it is an “all members” function, the portion of the total expense allocable to legislators and legislative staff who participate should be reported on Line 6, Section C of the lobbyist's activity report. The portion of the total expense allocable to other legislative persons, such as spouses or dependent children of legislators, should be reported on Line 4, Section C of the lobbyist's activity report. These allocations should be based on the attendance information captured by the lobbyist during the function. For such an all members function, nothing should be reported in Section E of the lobbyist’s activity report. (*As revised 09/04/2013*)

Question 2.80. If a lobbyist entertains both a state legislator and the state legislator’s spouse, how are the expenses to be reported?

Answer. Under the definition of “legislative person” set forth in IC 2-7-1-8, the state legislator and the state legislator’s spouse are two separate legislative persons. Thus, the lobbyist should track and report the portion of the total entertainment expense allocated to each separately.

Question 2.81. I know when reporting legislative entertainment at a charitable function only the value of goods and services received by the legislator should be reported, rather than any portion of an expenditure that would be considered a charitable donation. When trying to ascertain this amount for a recent charitable golf outing at which one of our lobbyists hosted a legislator, the event organizer quoted me expenses (green fees, lunch, dinner, etc.) that actually totaled more

than the amount for an individual entry into the tournament. In this case, should I just report the entire entry fee, the amount we actually spent for the legislator to be able to participate?

Answer. Yes, you should report just the amount paid to participate in the event if it is the same amount that anyone else would be expected to pay to participate in the same charitable golf event and for which another participant would be entitled to the same goods and services. The advice that I provided previously with respect to Question 4.50 in the compilation of informal advice was for a charitable fund-raising event where there in fact is a charitable gift component to the transaction. In your situation, there is no charitable gift component.

Question 2.82. Is a registered lobbyist prohibited from paying expenses to entertain a legislative person who is traveling outside the State of Indiana, such as paying for tickets to a Reds game or a Cubs game?

Answer. Under IC 2-7-5-9, the prohibition against a lobbyist paying for or reimbursing the out-of-state travel expenses of a legislative person applies only to expenses for transportation, lodging, registration fees, and other expenses (except meals) associated with travel. Thus, the prohibition does not apply to the type of entertainment expenses referred to in your email, i.e. tickets to a Reds game or Cubs game.

Question 2.83. Lobbyist J entertains five legislators for dinner; all legislators except one partake of wine provided for the table. An itemized bill is provided by the restaurant. Is it appropriate for Lobbyist J to divide the cost of the wine by five (four legislators and the lobbyist) and add the amount to the bill of each legislator that consumed wine or must the lobbyist determine how much wine was consumed by each legislator?

Answer. The special reporting rules set forth in IC 2-7-3-3.5 (a) and (b) are relevant to your question. Under those rules, it would be inappropriate to allocate any portion of the cost of the shared bottle of wine to the legislative person who chose not to partake. However, it also would be both unreasonable and impractical to expect lobbyist J to track the amount of wine actually consumed by each of the five persons who share the bottle of wine and to allocate the cost of the wine accordingly. Therefore, it is appropriate for lobbyist J to consider 1/5 of the cost of the wine when determining the reportable entertainment expense for each of the four legislative persons who consumed some of the wine.

Questions 2.84. I have a question about the way that section 2-7-3-3.5 (b) (2) of the Indiana Code operates. As a lobbyist does not calculate a prorated expense if money is spent on several legislative persons simultaneously, how is this expense properly reported? Does the lobbyist report making the entire expense to all legislative persons as if each legislator received the full benefit of the expenditure? Or does the lobbyist report the expense generally, not allocating any portion of the expense to any legislative persons? On a related note, if a lobbyist were to spend a certain amount of money simultaneously lobbying an Indiana legislator and another state's legislator, would the lobbyist then report the total amount as having been spent lobbying the Indiana legislator, as the costs are not prorated?

Answer. To address your questions, you need to look to both subsections (a) and (b) of IC 2-7-3-3.5, which read as follows:

“Sec. 3.5. (a) If expenditure for entertainment (including meals and drink) or a gift can clearly and reasonably be attributed to a particular legislative person, the expenditure must be reported with respect to that particular legislative person.

(b) A report of expenditure with respect to a particular legislative person:

(1) must report actual amounts; and

(2) may not allocate to the particular legislative person a prorated amount derived from an expense made with respect to several legislative persons;

to the extent practicable.”

Under these subsections, a lobbyist is expected to keep accurate records about the amount expended on each "legislative person" as defined in IC 2-7-1-8 and to report accordingly. The only exception to this rule is for items that are shared by more than one legislative person, for example a shared bottle of wine or shared appetizer. With respect to such a shared item, the lobbyist is allowed to divide the cost of the item by the number of people who consumed the item and then allocate to each legislative person his or her share of the cost of the item. If the amount expended by a lobbyist in entertaining, including meal expenses, or in providing gifts to a legislative person, or both, is \$50 or more in one day or exceeds \$250 in a reporting year (Nov. 1 through Oct. 31), then the lobbyist is required to list the legislative person's name, the type of expenditure, and the amount of the expenditure (per day threshold reached) or the total of the expenditures (annual threshold reached) in Section E of the lobbyist's semi-annual activity report.

There is one significant exception to this rule. Under IC 2-7-3-3.5 (c), which is set forth below, the lobbyist is required to report the entertainment expenses allocated to all legislative persons in the aggregate, rather than reporting expenditures individually in Section E of the lobbyist's activity report, if the expenditures are related to a function or event to which all members of a "legislative body" as defined in IC 2-7-1-7.2 have been invited.

"(c) An activity report must report expenditures for a function or activity to which all the members of a legislative body are invited. Expenditures reported for a function or activity described in this subsection may not be allocated and reported with respect to a particular legislative person."

Question 2.85. If a lobbyist hosts a luncheon meeting for area civic leaders and the spouse of a member of the General Assembly attends the meeting, should the lobbyist report anything if the spouse's attendance was directly related to her own employment and independent of her husband's role as a member of the state legislature?

Answer. The spouse of a member of the General Assembly is a "legislative person" as defined in IC 2-7-1-8. Thus, one normally would assume that the lobbyist should include the meal

expenses allocable to the spouse in the lobbyist's activity report. However, IC 2-7-3-3.5 (h) provides that "An activity report may not report expenditures or gifts relating to the performance of a legislative person's official duties..." In this case, the spouse was engaged in performing official duties related to the spouse's employment. Therefore, the lobbyist should not include the meal expenses for the spouse in its activity report.

Question 2.87. If a lobbyist purchases a meal for an employee of the House of Representatives who works exclusively on constituent matters rather than legislative matters, is the expense reportable?

Answer. Under IC 2-7-1-8, all employees of legislative department of state government are included in the definition of "legislative person." Thus, an employee of the House of Representatives is a legislative person regardless of whether the employee works on constituent matters or legislative matters. Under IC 2-7-3-3 (a)(2)(D) and IC 2-7-3-3 (a)(3), a lobbyist is to report expenses related to entertaining legislative persons, including meal expenses. The lobbyist should include the expenditure in the lobbyist's activity report either on Line 4 of Section C or in Section E and on Line 7 of Section C depending on whether the expenditure is such that one of the Section E reporting thresholds is reached.

Question 2.90. Are tips and taxes to be included when determining the amount that a lobbyist is to report for meal expenses related to entertaining a legislative person?

Answer. Both tips and taxes are to be included when determining the reportable amount. The amount of taxes to be considered should be based on the actual tax rate or rates applicable to the reportable meal expense. With respect to a tip, a reasonable portion of the tip should be included in the reportable meal expense. One acceptable allocation method is to divide the amount of the tip by the number of people served. Another acceptable tip allocation method is to multiply the percentage of the total pre-tip meal expenses allocated to the legislative person by the amount of the tip.

Question 2.95. If a lobbyist takes a legislator to dinner and there is no discussion of any issue on which the lobbyist is advocating, is the cost of the dinner reportable?

Answer. Entertainment is a specific reportable expense category under IC 2-7-3-3. In particular, see IC 2-7-3-3 (a)(2)(D) and IC 2-7-3-3 (a)(3). Even if there is no specific discussion about legislative matters between a lobbyist and a legislative person at such a dinner, it is reasonable to conclude that the lobbyist is building good will for the future by paying for the legislator's dinner. Thus, it is my opinion that the lobbyist has a reportable entertainment expense. The lobbyist should include the expenditure in the lobbyist's activity report either on Line 4 of Section C or in Section E and on Line 7 of Section C depending on whether the expenditure is such that one of the Section E reporting thresholds is reached.

Question 2.97. Is an individual who has established an exploratory committee but not designated that he is seeking a House or Senate seat a "legislative person" for whom a registered lobbyist or a state college or university IS required to report gift or entertainment expenses.

Answer. The Indiana Election Commission form to establish either a "principal committee" or an "exploratory committee" is form CFA-1. Box 12 of the form specifically states that one is not required to indicate the office sought when establishing an exploratory committee. Under IC 2-7-1-1.3, the term "Candidate" refers to a candidate for election to the general assembly, and under IC 2-7-1-8, the term "Legislative person" includes a candidate as defined in IC 2-7-1-1.3. Based on these sections, it is my opinion that one who has not actually designated a particular House or Senate seat when establishing an exploratory committee should not be considered a "Candidate." In addition, such an individual would not be a "Legislative person" with respect to whom registered lobbyists and state colleges and universities are required to report gift and entertainment expenses under IC 2-7.

Question 3.10. If a compensated lobbyist with three clients pays for an entertainment expense that benefits all three clients and does not bill the expense back to the clients, how should the compensated lobbyist report the expenditure?

Answer. The compensated lobbyist should report 1/3 of the total entertainment expense on each of the compensated lobbyist's activity reports for the three clients.

Question 3.12. The following question came from a law firm that is registered as both an employer lobbyist and a compensated lobbyist.

“An attorney with our firm, who is not a registered lobbyist, had dinner with a legislator and a non-governmental affairs client last evening. No legislative issues were discussed and no registered lobbyist from our firm was present. If the attorney requests reimbursement from the firm for the client entertainment, is that a reportable event? Under Question 4.80 in your informal advice to lobbyists, I believe it would not be reportable but wanted to check with you first.”

Answer. In the statement of facts for your question, you indicated that the attorney who did the entertaining is not one who is required to register with and report to the Commission under IC 2-7-2 and IC 2-7-3 and that no "lobbying" as defined in IC 2-7-1-9 took place. With respect to your question, I believe that the informal advice provided for question 2.95 is more on point. However, for question 2.95, the entertainment was done by one who was required to register with and report to the Commission. This is an important distinction between your fact situation and the one stated for question 2.95. In your case, it is my opinion that the entertainment expenditure is not reportable.

Question 3.15. If a compensated lobbyist with several clients helps sponsor a function to which all members of the General Assembly are invited, how should the lobbyist report the lobbyist's share of the expenses for that function if the expenses are not attributable to any of the lobbyist's clients?

Answer. The General Assembly is included in the definition of "legislative body" set forth in IC 2-7-1-7.2. In addition, IC 2-7-3-3.5 (c) provides that expenditures for a function or activity to which all members of a legislative body are invited are not to be "allocated and reported with respect to a particular legislative person." Thus, assuming that the host sponsor for the function

reasonably allocates the cost of the event between participation by legislative persons and others, the lobbyist should include the lobbyist's share of the allocation for legislative persons on Line 6 of Section C of a non-client compensated lobbyist activity report.

Question 3.20. If two or more lobbyists share the expense of entertaining a legislative person and the total expenditure for the legislative person is \$50 or more, how should each lobbyist report the lobbyist's share of the expense?

Answer. Because the expenditure for the benefit of the legislative person reaches the daily threshold of \$50 or more, each lobbyist is to report the lobbyist's share of the total expenditure in Section E of the applicable activity report. The amount so reported will then be included in the aggregate amount of Section E expenditures entered on Line 7 of Section C of that activity report. The following is an illustration of how such a transaction should be entered in section E:

Name of Legislative Person	Identify the Transaction	Nov. 1 '11-April 30 '12 (1 st reporting period)	May 1 '12-Oct. 31 '12 (2 nd reporting period)
Larry Legislator	Share of \$95 dinner on Nov. 30	\$15.83	

Question 3.30. If an employee of a firm uses the employee's credit card to pay for the cost of entertaining a legislative person, the firm reimburses the employee for that expense, and both the employee and the firm are registered as compensated lobbyists, how should the transactions be reported?

Answer. The employee should report the portion of the entertainment expense allocated to the legislative person on Line 4 of Section C or in Section E and on Line 7 of Section C of the employee's activity report, depending on whether the reportable expenditure reached one of the two thresholds for Section E. The firm should report its reimbursement of the entertainment expense allocated to the legislative person on Line 2 of Section C of the firm's activity report.

Question 3.40. If an employee of a firm pays for the cost of entertaining a legislative person with a credit card provided by the firm, the firm receives and directly pays the monthly bill for the credit card, and both the employee and the firm are registered as compensated lobbyists, how should the transaction be reported?

Answer. The firm should report the portion of the entertainment expense allocated to the legislative person on Line 4 of Section C or in Section E and on Line 7 of Section C of the firm's activity report, depending on whether the reportable expenditure reached one of the two thresholds for Section E. With respect to such a transaction, the employee has nothing to report.

Question 3.50. If a lobbyist invites legislators to attend a function, is the lobbyist required to include the charge for use of the room where the function is held when determining the amount to be included on the lobbyist's activity report?

Answer. If the primary reason for the function was to entertain legislative persons, then a prorated share of the room charge should be attributed to each person, legislative and non-legislative, who attended the function. However, if all members of a legislative body as defined in IC 2-7-1-7.2 were invited to attend such a function, then under IC 2-7-3-3.5 (c), none of the expenses are to be allocated to any legislative person who is a member of or assigned to provide staff services to that body. With respect to such an all members function, the amount of reportable expenses attributable to those legislative persons affiliated with the legislative body should be included in the amount that the lobbyist reports on Line 6 of Section C of the lobbyist's activity report. If the primary reason for the function was not to entertain legislative persons, such as an awards ceremony to which legislative persons were invited along with numerous other individuals, then no part of the room charge should be reported unless the lobbyist paid more to secure a larger room to accommodate the legislative persons.

Question 3.55. If a lobbyist sponsors a table for a political fund-raising event and invites a legislative person to be the lobbyist's guest at the table, how should the lobbyist treat the expense on the lobbyist's activity report?

Answer. The lobbyist should include the fair market value of the goods and services provided to the legislative person as an entertainment expense on the lobbyist's activity report. If the party that hosts the event does not provide a good faith estimate of the goods and services provided to each participant, then the lobbyists should estimate that value based on what it would cost to purchase similar goods and services.

Question 3.58. An association that is registered as an employer lobbyist sponsored a table for the annual Indiana Leadership Prayer Breakfast and invited 8 legislators to attend. The cost of the table sponsorship was \$1,000. The Prayer Breakfast organizer invited all legislators to attend the event free of charge. How should the association report its expenses related to the event given the fact that the legislators would have been able to attend the Prayer Breakfast whether the association had invited them or not?

Answer. Based on our discussion, I am assuming that the event organizer is not registered with and reporting to the Commission as a legislative lobbyist. If the organizer were so registered, we would expect the organizer to keep track of participation by legislative persons and total participation and to report the event expenses allocated to the legislative persons who attend as an "all members" function expense on Line 6 of Section C of its applicable activity report. To avoid over reporting, we would not expect individual table sponsors to report anything in such a case.

With respect to the association's sponsorship of a table for the Indiana Leadership Prayer Breakfast, we have a different situation. If my assumption noted above is correct, the event sponsor will not be reporting any expenses related to the function. Thus, we will expect a table sponsor that is a registered legislative lobbyist, such as the association, to allocate the amount it paid to sponsor a table among those who sat at its table per its invitation. The amount so allocated to legislative persons should then be reported as an "all members" function expense on

Line 6 of Section C of the association's applicable activity report. With respect to such an "all members" function, IC 2-7-3-3.5 (c) clearly provides that the reportable expenses are "not to be allocated and reported with respect to a particular legislative person." Thus, the association should not report any portion of its table sponsorship expenditure in Section E of its applicable activity report.

Question 3.60. If a trade association that is a registered lobbyist invites all members of the general assembly to be the association's guests at the association's annual trade show and provides each legislator who attends with free admission to the show, how should the lobbyist report expenses related to the event?

Answer. In such a case, the trade show is an event to which all members of a legislative body have been invited. As such, IC 2-7-3-3.5 (c) provides that the lobbyist is not to allocated expenses related to that event to any legislative person. For reporting purposes, the lobbyists should keep track of the number of legislative persons who attend the trade show as guests of the lobbyist and multiply that number by the amount that a member of the general public would pay for admission to the trade show. The lobbyist should then include the product of that computation on Line 6 of Section C of its activity report for the applicable semi-annual reporting period.

Question 3.63. Lobbyists A, B, C and D are asked to sponsor an all member event at a set sponsorship amount. None of the lobbyists have control over the event. At the event, there are multiple entries into the venue and no one is taking attendance. In this instance would it be appropriate to report the full amount of the sponsorship on Line 6 without violating 2-7-6-3?

Answer. The special reporting rules set forth in IC 2-7-3-3.5 (c) apply when all members of a "legislative body," as defined in IC 2-7-1-7.2, are invited to attend a particular entertainment function or event. Under those rules, expenses for such a function or event are not to be allocated and reported with respect to those invited legislative persons who attend the function or event. Instead, the expenses are to be reported in the aggregate on Line 6 of Section C of the activity report. In an ideal world, the amount so reported by each lobbyist who helps sponsor such a function or event would be based on a reasonable allocation between participation by legislative persons and others, with the amount reported based only on the legislative persons allocation. However, in your question, you make it clear that it will be impossible to make such an allocation because the organizer of the event does not keep accurate attendance records. Based on the specific rules for reporting set forth in IC 2-7-3-3.5 (c) and the fact situation presented in your question, it is my opinion that it would be appropriate for lobbyists A, B, C and D to each report the lobbyist's total cost of sponsoring the event on Line 6 of Section C of the lobbyist's activity report.

In your question, you specifically referred to IC 2-7-6-3, which states that one who knowingly and intentionally makes a false report under IC 2-7 that overstates or understates the amount of

an expenditure or gift commits a Class D felony. I do not believe that it is within the scope of my authority to pontificate on whether one who reports in the manner described in my response to your question would possess the mens rea to be charged with such an offense. Under IC 2-7-6-1, it is the Attorney General and the applicable prosecuting attorney who are responsible for making such a determination.

Question 3.65. Lobbyists E, F, G and H are asked to "host" an all member event at a restaurant. None of the lobbyists have control over the event. There are multiple entries into the venue and no one is taking attendance. Food and beverages are ordered from the menu and there is no itemized receipt available from the restaurant. At the end of the evening the four lobbyists are asked to pay equal portions of the total bill. In this instance would it be appropriate to report the total amount paid by each individual lobbyist on their respective activity reports on Line 6 without violating 2-7-6-3?

Answer. The special reporting rules set forth in IC 2-7-3-3.5 (c) apply when all members of a "legislative body," as defined in IC 2-7-1-7.2, are invited to attend a particular entertainment function or event. Under those rules, expenses for such a function or event are not to be allocated and reported with respect to those invited legislative persons who attend the function or event. Instead, the expenses are to be reported in the aggregate on Line 6 of Section C of the activity report. In an ideal world, the amount so reported by each lobbyist who "hosts" the event would be based on a reasonable allocation between participation by legislative persons and others, with the amount reported based only on the legislative persons allocation. However, in your question, you make it clear that the lobbyists who "host" the event do not actually control the event and thus are not able to keep accurate attendance records. In other words, these four lobbyists are faced with the very same documentation void as the four lobbyists who sponsor the event described Question 3.63. Based on the specific rules for reporting set forth in IC 2-7-3-3.5 (c) and the fact situation presented in your question, it is my opinion that it would be appropriate for lobbyists E, F, G and H to each report the lobbyist's total cost of hosting the event on Line 6 of Section C of the lobbyist's activity report.

In your question, you specifically referred to IC 2-7-6-3, which states that one who knowingly and intentionally makes a false report under IC 2-7 that overstates or understates the amount of an expenditure or gift commits a Class D felony. I do not believe that it is within the scope of my authority to pontificate on whether one who reports in the manner described in my response to your question would possess the mens rea to be charged with such an offense. Under IC 2-7-6-1, it is the Attorney General and the applicable prosecuting attorney who are responsible for making such a determination.

Question 3.70. If a lobbyist invites all members of a House or Senate standing committee to a dinner function and if a spouse of one of the committee members also attends, how should the lobbyist report the entertainment expenses related to the dinner?

Answer. Under IC 2-7-3-3.5 (c), the entertainment expenses should not be separately reported for any legislative person, including the members of the committee and the spouse. Instead, the

total of those expenses allocated to the committee members should be included in the amount that the lobbyist reports on Line 6, Section C of the lobbyist's activity report. With respect to the reportable entertainment expense allocated to the spouse of the committee member, the lobbyist should include the expense in the amount reported on Line 4, Section C of the lobbyist's activity report. For such an all members function, nothing should be reported in Section E of the lobbyist's activity report.

Question 3.72. If all the members of a legislative committee have been invited to attend a dinner where the cost per attendee exceeds \$50, how should the lobbyist who hosts the dinner report the entertainment expenses if other legislative persons who are not members of the committee also attend the function?

Answer. With respect to your question, my response varies depending on the category into which a given legislative person falls. Thus, I am providing specific advice with respect to each of those categories as follows:

Members of the Legislative Body. The expenses allocated to those members of the legislative body should be reported in the aggregate on Line 6 of Section C of the lobbyist's activity report. With respect to these attendees nothing should be reported individually in Section E of the Activity report. Reporting in this manner is consistent with IC 2-7-3-3.5 (c).

Assigned Legislative Staff. It is reasonable to assume that legislative staff specifically assigned to the legislative body would not attend such a function if it were not for their role in serving the legislative body. In such a case, the expenses allocated to the assigned staff should be reported on Line 6 of Section C of the lobbyist's activity report. With respect to such an attendee, nothing should be reported individually in Section E of the activity report. This treatment is consistent with IC 2-7-3-3.5 (c) and the informal advice previously provided for Question 2.75.

Member's Spouse or Dependent Child. It also is reasonable to assume that a spouse or dependent child of a member of the legislative body would not attend such a function if it were not for his or her relationship to the member. In such a case, the expenses allocated to the spouse or dependent child should be reported on Line 4 of Section C of the lobbyist's activity report. With respect to such an attendee, nothing should be reported individually in Section E of the activity report. This treatment is consistent with IC 2-7-3-3.5 (c) and the informal advice previously provided for Question 3.70.

Other Attendees. If any other legislative person (member of the General Assembly, other legislative staff, etc.) attends the dinner, IC 2-7-3-3.5 (c) does not apply to such an attendee. Because the \$50 or more in one day threshold for Section E will be reached, the entertainment expenses allocated to the attendee should be reported individually in Section E of the lobbyist's activity report. As with any Section E entry, the expenses also will be included in the total amount reported on Line 7 of Section C of the lobbyist's activity report.

Question 3.73. Is each caucus whose membership consists of members of the General Assembly a “legislative body” as defined in IC 2-7-1-7.2 and for which the special reporting rules of IC 2-7-3-3.5 (c) are applicable.

Answer. Under IC 2-7-1-7.2 (6), a caucus of the House of Representatives or the Senate is included in the definition of “legislative body”. The significance of inclusion in the definition is that IC 2-7-3-3.5 (c) provides special reporting rules for expenditures related to a function or activity to which all members of a legislative body have been invited. In essence, those expenditures need only be reported in the aggregate and may not be allocated and reported with respect to a particular legislative person. Under IC 2-7, registered lobbyists are required to report and thus disclose certain lobbying related expenditures. When there is a gray area involving a disclosure statute, such as IC 2-7, courts normally interpret the statute in favor of more comprehensive disclosure rather than more restricted disclosure. Thus, it has been and continues to be the position of the Commission’s Executive Director and General Counsel that the only caucuses that are included in the definition of “legislative body” under IC 2-7-1-7.2 (6) are the House Republican Caucus, the House Democrat Caucus, the Senate Republican Caucus and the Senate Democrat Caucus. As a result, the special reporting rules of IC 2-7-3-3.5 (c) do not apply for a function or activity to which the members of any other caucus are invited to attend.

Question 3.75. If an employer lobbyist provides a holiday gift basket that contains food items to each of the four caucuses of the General Assembly, how should the lobbyist report the cost of the gift baskets?

Answer. Each of the four primary caucuses of the General Assembly (House Republican, House Democratic, Senate Republican, and Senate Democratic) is included in the definition of “legislative body” set forth in IC 2-7-1-7.2. In addition, IC 2-7-3-3.5 (c) provides that expenditures for a function or activity to which all members of a legislative body are invited are not to be “allocated and reported with respect to a particular legislative person.” In this case it is clear that all legislative persons associated with each caucus will be invited to partake of the holiday gift basket provided to that caucus. Thus, the employer lobbyist should include the amount it pays for the gift baskets in the total amount that the lobbyist reports on Line 6 of Section C of its activity report for the applicable reporting period.

Question 3.77. I’m wondering specifically about how to calculate the “value” of a gift. If goods are being provided to a legislative person, is the value reported as the value of the goods to the donator or the recipient? For example, if beer is donated to a legislative person to be consumed at a fundraising event, would the donation be valued at the cost to produce the beer or the price the legislative person would have paid for the beer if it had been purchased at retail?

Answer. The value of the gift is the price that a normal person would be required to pay to purchase the same product in the ordinary course of business. Thus, the gift should be valued at what the legislator would be required to pay to purchase the same quantity of beer at retail.

Question 3.78. If a registered lobbyist gives a raffle ticket and a calendar to a member of the General Assembly how should the lobbyist report the gift if the normal price paid by others to purchase a raffle ticket and calendar is \$60?

Answer. If the going price paid by others to purchase a raffle ticket and calendar is \$60, then the value of the ticket/calendar package is also presumed to be \$60. Thus, if a calendar and raffle ticket are given to a legislative person by a registered lobbyist, the lobbyist is required to file a gift report under IC 2-7-3-3.3 and also report the transaction on the lobbyist's semi-annual activity report under IC 2-7-3-3 (a). Since the value of the gift is \$50 or more, the lobbyist is required to include specific information about the gift in Section E of the lobbyist's activity report. In addition, IC 2-7-5-8 provides that the lobbyist must obtain the legislative person's informed prior consent for such a gift. If such a legislative person were to pay the same amount (\$60 in this case) that others pay for the raffle ticket and calendar, than under IC 2-7-3-3.5 (f) nothing is to be reported.

Question 3.80. Is a conference committee a "legislative body" as that term is defined in IC 2-7-1-7.2?

Answer. A conference committee is a committee established by the rules of the House of Representatives or the Senate. Thus, it is a "legislative body" as defined in subdivision (4) of IC 2-7-1-7.2.

Question 3.85. A business that is registered as an employer lobbyist has a contract with the state to provided services at negotiated rates to state employees who choose to participate. The business from time to time grants a waiver or reduction in its normal fee for a service to maintain good customer relations. When granting such a waiver or reduction, the business is not aware of whether the state employee is or is not a legislative person. If the business happens to grant a waiver of reduction to a legislative person, is the business required to report the waiver or reduction?

Answer. IC 2-7-3-3.5 (f) provides that "an activity report may not include expenditures or gifts received by a legislative person if the legislative person paid for the property or services the amount that would be charged to any purchaser of the property or services in the ordinary course of business." With respect to this fact situation, the appropriate universe to consider when applying the referenced subsection is those state employees who are covered under the employer lobbyist's contract with the state. It is clear that the employer lobbyist does not base its decision as to whether to grant a particular state employee a fee waiver or reduction on whether the employee is a legislative person. Therefore, the legislative person is not paying any less than the employer lobbyist would charge to anyone else in the universe given the same fact situation. As a result, the employer lobbyist should not include the amount of the waiver or reduction on its activity report for the applicable reporting period.

Question 3.90. If a lobbyist spends \$50 or more on meal expenses that benefit a legislative person, is the lobbyist required to file a gift report under IC 2-7-3-3.3?

Answer. Under IC 2-7, entertainment expenditures, including meals, and gifts are consistently treated as separate categories. For example, see IC 2-7-3-3 (a) (2) (D) and (E) and IC 2-7-3-3 (a) (3). Thus, the separate reporting requirements for gifts valued at \$50 or more, do not apply to entertainment expenses. Those expenses are reportable on the lobbyist's semi-annual activity report only.

Question 3.95. An employer lobbyist owns an amusement park that is located out of state. A member of the General Assembly has asked the employer lobbyist for free admission tickets to the park. In response to the request, the employer lobbyist provides the legislator with a sufficient number of tickets for all members of the legislator's immediate family. Each ticket has a face value of more than \$50. Employees of the employer lobbyist print the tickets and give them to the legislator at the out of state park. The employer lobbyist's compensated lobbyist does not accompany the legislator nor interact with the legislator in any way at the amusement park. Should the employer lobbyist report the value of the free admission tickets as entertainment expenses or as gifts?

Answer. Let me first respond to your question by stating that the transaction is not subject to the IC 2-7-5-9 prohibition against paying or reimbursing a legislative person's out-of-state travel expenses. IC 2-7-5-9 does not apply because the transaction does not involve expenditures for transportation, lodging, registration fees, or other expenses associated with travel. With respect to whether the value of each ticket should be treated as a gift or an entertainment expense, we have consistently said that it is appropriate to report such a transaction as an entertainment expense *if a registered lobbyist accompanies the legislative person* at the function or event. The mere fact that the legislative person interacted with some non-lobbyist employees of the employer lobbyist does not in my opinion bring the transactions within the scope of reportable entertainment expenditures. Thus, under IC 2-7-3-3 (a) (3), each ticket transaction between the employer lobbyist and a "legislative person" as defined in IC 2-7-1-8 (legislator, legislator's spouse, and legislator's dependent child) should be reported as a gift in Section E of the employer lobbyist's activity report and also included in the total amount reported on Line 7 of Section C of that report. In addition, the employer lobbyists should file a separate gift report for each legislative person who received a ticket as required by IC 2-7-3-3.3. Also, it should be noted that IC 2-7-5-8 requires the employer lobbyist to secure each legislative person's informed prior consent before a gift having a value of \$50 or more is made to the legislative person.

Question 4.10. Are "expenditures for entertainment (including meals and drink)" exempt from the 15-day reporting requirements for gifts provided for in IC 2-7-3-3.3?

Answer. As noted in the answer to question 3.90, entertainment expenditures, including meals, and gifts are treated as separate categories under IC 2-7-3-3 (a) (2) (D) and (E) and IC 2-7-3-3 (a) (3). IC 2-7-3-3.3 uses the term "gifts" to describe what must be reported under that section and does not refer to expenditures for entertainment. Thus, the 15-day reporting requirements of IC 2-7-3-3.3 apply only to gifts made to a legislative person, as defined in IC 2-7-1-8, and not to expenditures for entertainment.

Question 4.20. Under IC 2-7-5-8, must a lobbyist obtain the consent of a legislative person before incurring entertainment expenses, including meal expenses, if the value of the entertainment will be \$50 or more?

Answer. The informed prior consent provisions of IC 2-7-5-8 apply only to gifts, as defined in IC 2-7-1-4, and not to entertainment expenditures, such as food and beverage expenditures.

Question 4.30. Where a “gift” is provided jointly by several lobbyists, is the \$50 threshold contained in IC 2-7-5-8 triggered only where a lobbyist’s share of a particular gift equals or exceeds \$50.

Answer. IC 2-7-3-3.5 (d) addresses a situation where two or more lobbyists contribute to a reportable expenditure. Under subdivision (1) of that subsection, the total amount of the expenditure is to be considered when determining whether it is reportable. If it is reportable, then under subdivision (2) of that subsection, the amount to be reported by each lobbyist is the amount that the lobbyist actually contributed to the expenditure.

Under normal rules of legislative construction, the provisions of IC 2-7-3-3.5 (d) are relevant to the question at hand because both IC 2-7-3-3.5 and IC 2-7-5-8 are contained in the same article of the Indiana Code and deal with the same subject matter, i.e. registration and reporting requirements for legislative lobbyists. Thus, if two or more lobbyists intend to participate in making a gift to a legislative person with a value of \$50 or more, they should obtain the legislative person’s informed consent before making the gift. It is recommended that the lobbyists obtain the consent in writing and that each lobbyist retain a copy of the consent.

Question 4.40. If a legislative person pays a registered lobbyist the same amount for a ticket to a function or event that would be charged to any other party to purchase the ticket in the ordinary course of business, should the lobbyist include the transaction on the lobbyist’s activity report?

Answer. IC 2-7-3-3.5 (f) provides that “An activity report **may not report** expenditures or gifts relating to property or services received by a legislative person if the legislative person paid for the property or services the amount that would be charged to any purchaser of the property or services in the ordinary course of business.” The manner in which the legislative person is afforded the opportunity to make such a purchase is not relevant. Thus, IC 2-7-3-3.5 (f) is applicable even if the legislative person is given a special opportunity to purchase a ticket. Therefore, the lobbyist should not include the transaction on the lobbyist’s activity report.

Question 4.50. If a registered lobbyist makes an outright gift of a ticket to a function or event to a legislative person, how should the lobbyist report the transaction?

Answer. Unless the function or event is a charitable or political fund-raiser, the value of the gift to be reported by the lobbyist should be based on the amount that any other party would be required to pay to purchase the ticket in the ordinary course of business. If the ticket is for a charitable or political fund-raising function or event for which the sponsor has determined the portion of the ticket price that is a donation and the portion that represents the value of the goods and services provided, then the value of the gift to be reported by the lobbyist should be based only on that portion of the ticket price that represents the value of those goods and services. If the value of the gift is \$50 or

more, IC 2-7-5-8 provides that the lobbyist is required to obtain the legislative person's informed prior consent before the gift is made. In such a case, the lobbyist also is required to file a separate gift report under IC 2-7-3-3.3 within 15 business days after the gift is made. In addition, the lobbyist is required to include the gift transaction in the lobbyist's semi-annual activity report for the applicable reporting period.

Question 4.60. If a lobbyist sells a ticket to a function or event to a legislative person for a price that is less than the amount that any other party would be required to pay to purchase the ticket in the ordinary course of business, how should the lobbyist report the transaction?

Answer. Such a transaction should be treated as part purchase and part gift. IC 2-7-3-3.5 (e) provides that a lobbyist's is not to include in the lobbyist's report of an expenditure with respect to a particular legislative person any amount that the legislative person contributed to the expenditure. Thus, the lobbyist is not to report the amount that the legislative person paid for the ticket. Unless the function or event is a charitable or political fund-raiser, the value of the gift element that should be reported by the lobbyist is the difference between the amount that any other party would be required to pay to purchase the ticket in the ordinary course of business and the amount actually paid by the legislative person. If the ticket is for a charitable or political fund-raising function or event for which the sponsor has determined the portion of the ticket price that is a donation and the portion that represents the value of the goods and services provided, then the value of the gift to be reported by the lobbyist should be based only on the amount, if any, by which that portion of the ticket price that represents the value of those goods and services exceeds the amount paid by the legislative person. If the value of the gift is \$50 or more, IC 2-7-5-8 provides that the lobbyist is required to obtain the legislative person's informed prior consent before the gift is made. In such a case, the lobbyist also is required to file a separate gift report under IC 2-7-3-3.3 within 15 business days after the gift is made. In addition, the lobbyist is required to include the gift element of the transaction in the lobbyist's semi-annual activity report for the applicable reporting period.

Question 4.70. How should a registered lobbyist report a complimentary registration for a one-day program provided to a legislative person in exchange for the legislative person's participation in the program?

Answer. A very strong argument can be made that this is a quid pro quo transactions. The argument is even stronger if it is the registered lobbyist's normal policy to provide complimentary registrations to all those who participate in the program. Under IC 2-7-3-3.5 (e), a lobbyist's activity report is not to include "any amount that the particular legislative person contributed to the expenditure." Consistent with the spirit of that subsection, the lobbyist should not report the value of the complementary registration as long as it is reasonable to conclude that the value of the legislative person's participation in the program was equivalent.

Question 4.75. We hosted a legislative conference in which the entire General Assembly was invited in addition to the other invitees. A few of the legislators were presenters. It is my understanding that we do not have to file a gift report, but we report the amount on Line 6 of Section C of our activity report. Do we report the dollar amount of the registrations for the number of legislators that attended? If not, what amount is to be reported on Line 6?

Answer. From our discussion, it is my understanding that the firm provides a complimentary registration to all those who participate in the firm's annual legislative conference as a panelist, speaker, etc. If that is the case, then the presumption is that the value of participation is equivalent to the registration fee. Thus, waiving the normal registration fee for such a participant should be considered a quid pro quo transaction. With respect to a "legislative person" who so participates, it has been our position that nothing is reportable based on IC 2-7-3-3.5 (e) and the informal advice that we previously provided for Question 4.70, which is included in the compilation of informal advice posted on the Commission's website.

It also is our understanding that the firm invites all members of the General Assembly to attend the legislative conference as guests of the firms. Thus, the firm does not charge a registration fee to those members who attend even if they don't participate in the conference as a panelist, speaker, etc. For each non-participant member of the General Assembly who attends the conference as a guest of the firm, the firm should include in the amount that it reports on Line 6 of Section C (all member function expenses) the normal registration fee for the conference. Reporting the waived registration fees for those members in that manner is consistent with IC 2-7-3-3.5 (c).

Question 4.80. If a law firm that is a registered lobbyist hosts a marketing event to promote the firm and invites clients and community leaders, including area legislators, to attend the event, is the firm required to report any of the expenses related to the event if none of the firm's compensated lobbyists attended the event.

Answer. In this fact situation it appears that the firm merely will be promoting its services to a general audience and not communicating with any legislative person with the purpose of influencing any legislative action. Thus, the event will not involve "lobbying" as defined in IC 2-7-1-9. As a result, the firm will not be required to include any of its expenses associated with the event on its activity report for the applicable period.

Question 4.90. A registered employer lobbyist wants to pay for a member of the General Assembly to travel to an out-of-state destination to meet with legislators from another state. The purpose of the meeting is for the member of the General Assembly to share information about how Indiana has addressed an issue that the other state may be dealing with now or in the future. Is it permissible for the employer lobbyist to pay the out-of-state travel expenses if the Speaker of the House or the President Pro Tem of the Senate approves the payment?

Answer. Under IC 2-7-5-9, a registered lobbyist is generally prohibited from paying the out-of-state travel expenses of a "legislative person" as defined in IC 2-7-1-8. However, there are a few limited exceptions to the general prohibition. For example, the term "travel expenses" as defined in IC 2-7-5-9 (b) does not include expenditures for meals. Thus, a registered lobbyist may pay for a legislative person's meal even if the legislative person is in out-of-state travel status. In addition, IC 2-7-5-9 (a)(2) provides an exception to the general prohibition if the legislative person is attending an out-of-state public policy meeting, the legislative person's sole purpose for attending the meeting is to serve as a speaker or other key participant in the meeting, and the

Speaker of the House or the President Pro Tem of the Senate approves the payment of the travel expenses in writing. This exception may apply in your case. However, it is the policy of our office not to substitute our judgment for that of the Speaker of the House or the President Pro Tem of the Senate. Therefore, we routinely advise one who seeks an exception to the general prohibition under IC 2-7-5-9 (a)(2) to submit the request in writing to the Speaker of the House or the President Pro Tem of the Senate, which is my recommendation in your case. As noted previously, one of the elements of the exception is that the legislative person's sole purpose for attending the out-of-state public policy meeting is to be a speaker at or other key participant in the meeting. It is our understanding that House and Senate staff will examine the facts at hand before advising the Speaker of the House or the President Pro Tem of the Senate on whether approval of the payment would be appropriate under IC 2-7-5-9 (a)(2).

Question 5.00. The Indiana POWER Women's Caucus is led by female members of the General Assembly. The Caucus recently held a fundraiser. The money raised by the Caucus is used to provide scholarships to women who are trying to better themselves. A registered compensated lobbyist made a contribution of \$1,100 to the scholarship fundraiser. The contribution was not related to any effort by the lobbyist to "influence legislative action" as defined in IC 2-7-1-6 and IC 2-7-1-7 and no legislative person derived any personal benefit from the contribution. Is the compensated lobbyists required to include the contribution on the lobbyist's semi-annual activity report?

Answer. Based on the facts that you have presented, the lobbyist's contribution to the Indiana POWER Women's Caucus is not a reportable lobbying expenditure because it was not made with the intent of influencing legislative action in Indiana and no legislative person derived any personal benefit from the contribution. This advice is consistent with some Final Advisory Opinions (FAOs) previously issued by the Indiana Lobby Registration Commission. The following is a list of those FAOs:

- 1) FAO 2000-01 concerning contributions to the Host Committee of the Annual Meeting of the National Conference of State Legislators;
- 2) FAO 2000-02 dealing with contributions to the Women in Government Conference; and
- 3) FAO 2000-03 dealing with contributions to various non-profit organizations that host conferences that Indiana legislators attend.

This advice also is consistent with informal advice previously given with respect to contributions by registered lobbyists to a joint project of the Indiana General Assembly and Habitat for Humanity to build a home for a family in need.