

Legislative Ethics Board

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Discussion – Meals – For Meeting on December 3.

Background

The rule on meals, with examples, became effective on January 1, 2015. The Board indicated at that time and on later occasions that it would revisit the subject after observing how the rule was working.

The August, 2015 meeting included a lengthy discussion of the rule and concluded with directions to staff to provide materials for further discussion at the next board meeting.

Board members, and others, have questioned whether in certain circumstances it would be desirable to have more flexibility in the rule's application. Generally, there are four changes which have been proposed for discussion. They are not necessarily related to one another and the draft examples which follow are not intended or designed to be complementary – rather, they are drafts of ideas which have been proposed and for the most part may be considered as stand-alone proposals for discussion.

1. Definitions – a sampling of definitions of key words in the statutes which speak to meals.
 - a. “*Events*” – A ceremony; an event of ritual significance performed on a special occasion; a convention, a festival, an event that celebrates some unique aspect of a community; a happening, such as an artistic performance; a large social or recreational gathering.
 - b. “*Civic Organization*” – A civic organization is a type of organization whose official goal is to improve neighborhoods through volunteer work by its members. Non-profit organizations are considered civic organizations because they are formed for the purpose of servicing a public or mutual benefit other than the pursuit or accumulation of profits for its owners or investors. Examples; Cancer Society, Scouts, Rotary.
 - c. “*Charitable Organization*” – A charitable organization is a type of non-profit organization. It differs from other types of non-profits in that it centers on non-profit and philanthropic

goals as well as social well-being (e.g. charitable, educational, religious, or other activities serving the public interest or common good.

- d. *“Governmental Organization”* – A government or state agency, often an appointed commission, a permanent or semi-permanent organization in the machinery of government that is responsible for the oversight and administration of specific functions. The functions are normally executive in character.
- e. *“Community Organization”* – Covers a series of activities at the community level aimed at bringing about desired improvement in the social well-being of individuals, groups and neighborhoods. It is often used as synonymous to community work, community development and community mobilization. Community organization is a process by which a community identifies needs and takes action, and in doing so develops co-operative attitudes and practices.

2. Topics for discussion.

- (i) ***Should some complimentary meals be permitted as exempted gifts when the list of invitees is broad-based?***

For example: For reporting purposes, the PDC distinguishes between events based upon the size of the list of invitees to receptions. A reception, by PDC definition, qualifies for less reporting if the entire legislature, or all members of a chamber, or all members of any of the two largest caucuses are invited. However, further conditions are imposed: the sponsor is not a lobbyist; the event is attended by individuals other than legislators, lobbyists, and lobbyist employees; it is a social event; and it does not include a sit-down meal.

- (ii) ***Should complimentary meals with local government officials to discuss legislative business be exempt from the 12 meal limit because legislators are making an “appearance...in an official capacity (RCW 42.52.010(9)(d))”?***

Does it make a difference in the analysis if the meeting is open or closed? Informal advice to date has been that if a meeting of legislators and county officials to discuss legislative matters, at which a complimentary lunch is served, is open to the public then a strong argument may be made that the legislator was in fact making an appearance in an official capacity. If the meeting is closed, the meal counts as one of the 12 by the terms of Rule 5.

- (iii) ***Does the presumption that a meal may be accepted, found in RCW 42.52.150(2)(j), apply to various business associations who hold annual, non-public legislative meetings with area legislators over lunch?***

There is no admission charge to the lunch – does this statute require one for the presumption to be in play or does the language say that even if there is an admission charge it may be complimentary if the rest of the requirements are satisfied?

Is this an “event?”

Are the associations defined in the statute as organizations entitled to the presumption?

(iv) Should a potluck, shared by lobbyists and legislators at the residence of one or the other, be exempt from the gift laws? Does the Act contain an exemption?

The Ethics Act exempts from the definition of gift “items from family members and friends where it is clear beyond a reasonable doubt, that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee (RCW 42.52.010(9)(a).

There have been three topics of informal advice on the subject. (1) “Items” include food and beverage when the Act is read as a whole (42.52.150(2)). (2) Because of the high burden of proof, beyond a reasonable doubt, legislators should be extremely wary of relying on this exemption when lobbyists are involved. (3) The exemption is much more likely to be available if the personal friendship between lobbyist and legislator predated the legislator’s election to the Legislature.

3. For discussion – further examples to clarify law/rule on meals.

Example 10: (broad-based invitation)

Some organizations, such as the 4-H and the Farm Bureau, host an annual sit-down dinner during the legislative session and all legislators are invited on a complimentary basis. The invitation may include a guest. If so, the guest’s meal is a gift to the legislator and no exemption is applicable. The legislator’s meal does not count as one of the twelve permitted by 42.52.150(5) and may be accepted pursuant to the gift exemption for an appearance in an official capacity (42.52.010(9)(d)). The Board determines that annual, sit-down complimentary dinners to which all legislators are invited during a legislative session are not the type of dinner involvement sought to be limited by the Act or Rule 5.

Example 11: (local government)

A city council invites legislators to a meeting to discuss the city’s legislative agenda. The meeting is open to the public and is advertised as such. A complimentary lunch is available to all who attend. The city is a lobbyist-employer. The meal does not count toward the 12 permitted by 42.52.150(5) because the legislator is making a public appearance in an official capacity (42.52.010(9)(d)).

Example 12: (business associations)

Business associations who employ a lobbyist hold annual, sit-down lunches with area legislators to discuss the legislative agendas. The meetings are not open to the public. The lunches are complimentary and the invitations are issued on a regional and non-partisan basis. The meal does not count against the 12 permitted by 42.52.150(5) because it may be accepted pursuant to the presumptive exemption found in 42.52.150(2)(j) which allows for complimentary food and beverages at events sponsored by or in conjunction with a civic, charitable, governmental, or community organization.

Example 13: (pot lucks)

A legislator and a lobbyist are friends and have a social relationship which includes sharing a potluck meal on occasion. Most often their families take part and the meal is held in one residence or the other. It is not the purpose of the gathering to discuss legislative business but from time-to-time it would not be unusual if there was some legislative-related conversation. The meal does not count toward one of the 12 allowed by the Act and Rule 5 because RCW 42.52.010(9)(a) provides for a gift exemption for food and beverage when it is clear beyond a reasonable doubt that a meal is not provided to gain or maintain influence.