

Adopted
September 21, 2000

**Advisory Opinion 2000 - No. 3
Valuation of Lodging**

The Board has received an advisory opinion request from Senator George Sellar, who has waived confidentiality.

FACTS

A Washington State registered lobbyist has invited the Senator to spend a night at the lobbyist's personal residence. The residence is not a rental but in an effort to place a value on a nights lodging, the lobbyist represents he has a letter from a local realtor stating that the home would rent for \$1,500 per month on the open rental market. The Senator would be a guest in the home, with the lobbyist and his family present, and states that he would not be given the personal use of the entire home. The lobbyist has informed the Senator that he believes, under these circumstances, that the value of one nights lodging in this three bedroom home would be \$16.66. This amount is derived from dividing the amount represented as a fair monthly rental, \$1,500, by the average days in a month, 30, and then dividing the result, \$50.00, by three to represent a per-bedroom cost.

Senator Sellar asks (1) if lodging in the home of this lobbyist is a gift, and, if so, (2) how should the value of the gift be established?

OPINION

1. The lodging qualifies as a gift and no facts are offered which suggest that a statutory exemption is applicable.
2. The value of a gift is fair market value and an arms-length appraisal of a rental home by a qualified individual could establish this value. Sub-dividing the rental value of this home based on room occupancy would insert an artificial and, probably, unenforceable test into the State Ethics Act.

ANALYSIS

RCW 42.52.010 defines "gift" as anything of economic value for which no consideration is given. A number of exemptions address the following: items received from family and close friends; items related to a legislator's outside business; items exchanged between co-workers; items otherwise authorized by law to be accepted; payment of certain expenses associated with attendance in a legislative capacity; payment of certain fees and expenses associated with seminars and educational programs; returned items or items timely donated to charity; authorized campaign contributions; and broad-based discounts.

The lodging offered to Senator Sellar has value, no consideration is given, and none of the exemptions are applicable. The lodging is a gift.

RCW 42.52.150, generally limits the receipt of a permissible gift to \$50.00 in a calendar year from a single source. This statute also contains a number of items which are presumed not to influence the

vote, action, or judgment of a legislator, and which may be accepted regardless of the \$50.00 limitation. None of these exemptions are applicable to these facts. Therefore, the lodging is subject to the dollar limitation.

The issue of valuation of a gift was addressed by this Board in **AO 1997 - No. 6**. In that case, temporary memberships in a yacht club were offered to legislators for a nominal fee. We reasoned that this nominal fee did not reflect full value and, in addition, noted that RCW 42.52.150 (the gift statute) uses the term "value" rather than "cost." Therefore, when possible, we concluded that the value of a gift will be determined on the basis of fair market value. In the present case, if a qualified individual such as a realtor, familiar with rental values in the area, establishes a fair market value based upon an appraisal conducted at arms-length, the Board would have no other facts upon which to dispute that value. Here, it is alleged that the fair monthly rental value for the home is \$1,500 and the fair rental value for one night is \$50.00.

However, the Board finds no support for the proposition that the value of gift lodging in a home is properly determined by dividing value by the number of bedrooms. Any number of tests could be requested. The next case may suggest measuring the room(s), or dividing the time actually spent in the house as opposed to outside the house. None of these suggestions would support the intent of the law that reasonable limits be placed upon the receipt of gifts and that the public remain aware of gift-giving. To employ strained computations to avoid these limits or to avoid the public's awareness would be entirely inconsistent with the State Ethics Act.