



2010 Ethics Legislation – A Sign of Things Yet to Come?

By Karen Arland, *Ice Miller, LLP*

One of the more significant legislative items addressed by the General Assembly in 2010 was legislative ethics – specifically the receipt and reporting of gifts. Although HEA 1001, the legislation enacted this year, does NOT apply to local governments, many legislators expressed the belief that the new requirements imposed on legislators should be applicable to local government officials. Indeed, legislation was introduced in 2010, and will likely be introduced in 2011, to impose restrictions on local officials similar to the new restrictions on legislators.

HONORARIA

HEA 1001 prohibits legislators from receiving an honorarium for an appearance or a speech made in the legislator's capacity as a member of the General Assembly. A legislator's travel expenses may be paid or reimbursed.

LOBBYISTS

HEA 1001 exempts certain national organizations from the definition of "lobbyist". The exempt organizations are generally described as "national organizations established for the education and support of legislative leadership, legislators, legislative staff, or related government employees.

LATE FEES

HEA 1001 increases the penalties for late lobbyist registration reports and late lobbyist activity reports from \$10 per day to \$100 per day, and increases the maximum penalty from \$100 to \$4,500.

ACTIVITY REPORTS

HEA 1001 makes several changes to the information that must be included in the activity report each lobbyist files twice a year. Under prior law, lobbyists were not required to report expenditures

for entertainment or meals when the entire General Assembly was invited. HEA 1001 eliminates this exception.

HEA 1001 requires lobbyists to report each expenditure for entertainment, including meals and drink, or for gifts when that expenditure equals \$50 or more in a single day or \$250 in a calendar year, if the expenditure is made to benefit a specific "legislative person". The report of an expenditure must include the name of the lobbyist making the expenditure, a description of the expenditures, and the amount of the expenditure. HEA 1001 defines "legislative person" as a member, candidate, officer or employee of the general assembly, a member of such a person's immediate family, a paid consultant of the General Assembly, and an agency of the General Assembly. A lobbyist who is a "close relative" of a legislative person is not considered a legislative person. A "close relative" refers to an individual's: (i) spouse; (ii) parent; (iii) parent of the individual's spouse; (iv) child; (v) sibling or spouse's sibling; (vi) aunt or uncle; (vii) niece or nephew or spouse's niece or nephew; (viii) grandparent or spouse's grandparent; (ix) grandchild or spouse's grandchild; (x) great-grandparent or spouse's great-grandparent; and (xi) great-grandchild or spouse's great-grandchild. A relative by adoption, half-blood, marriage, or remarriage is considered a relative of close kinship.

GIFTS AND EXPENDITURES

One of the most significant changes HEA 1001 makes to lobbyist reporting requirements is with respect to lobbyist gifts and expenditures. Except for gifts made between "close relatives", a lobbyist must file a written report whenever a lobbyist makes a gift that must be reported in a lobbyist activity report. The report must include: (i) the lobbyist's name; (ii) a description of the gift; and (iii) the amount or value of the gift. A copy of the gift report must be filed with the lobby registration commission, the legislative person

to whom the gift was made, the principal clerk of the house or the secretary of the senate, depending upon for which body the legislative person is either a member of or a candidate.

The gift report must be filed not later than 15 business days after the gift is made. A gift report is confidential and is not available for public inspection or copying until 10 business days after the report has been filed with the lobby registration commission. Not later than January 7 of a year, the lobbyist registration commission is required to provide each legislator and legislative candidate a compilation of all gift reports relating to the member or candidate. The compilation must include a description of each gift, the amount of the gift, and the name of the lobbyist that made the gift.

With respect to expenditures, if an 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 person. An expenditure report with respect to a particular legislative person must report actual expenditure amounts and may not allocate a prorated amount derived from an expense made with respect to the several legislative persons, to the extent practicable. An activity report must report expenditures for a function or activity to which all members of the General Assembly are invited, and those expenditures may NOT be allocated and reported with respect to a particular legislative person.

If two or more lobbyists contribute to an expenditure, each lobbyist must report the actual amount the lobbyist contributed to the expenditure, even if the lobbyist would not be required to report the expenditure if only one lobbyist had made the expenditure.

Any 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 and the amount charged the legislative person is the amount that would be charge to any purchaser in the ordinary course of business. An activity report may not report expenditures or gifts made between close relatives, unless that expenditure or gift is made in connection with legislative action. A lobbyist may not make a gift with a value of \$50 or more unless the legislative person consents before the gift is made. A lobbyist must inform the legislative person of the cost of the gift at the time the lobbyist seeks the person's consent.

PURCHASES

HEA 1001 now requires lobbyists to report purchases made from legislators or candidates for legislative office. Except for purchases made by a lobbyist from a legislator's (or candidate's) business in the ordinary course of business at prices that are available to the general public, a lobbyist must file a written report with respect to a particular legislator or candidate whenever the lobbyist makes a purchase of goods or services for which the lobbyist paid more than \$100 from: (i) a legislator (or candidate); (ii) the legislator's (or

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candidate's) sole proprietorship; or (iii) the legislator's (or candidate's) family business, regardless of the manner in which the business is legally organized.

The report must include: (i) the name of the lobbyist making the purchase; (ii) a description of the purchase; and (iii) the amount of the purchase. The lobbyist is required to file a copy of the purchase report with the lobby registration commission, the legislator (or candidate) to whom the gift was made, the principal clerk of the house or the secretary of the senate, depending upon for which body the person is either a member of or a candidate.

The report must be filed not later than 15 business days after the purchase is made. A report is confidential and is not available for public inspection or copying until 10 business days after the report has been filed with the lobby registration commission. Not later than January 7 of a year, the lobbyist registration commission is required to provide each legislator and legislative candidate a compilation of all purchase reports relating to the member or candidate. The compilation must include a description of each purchase, the amount of the purchase, and the name of the lobbyist that made the purchase.

REVOLVING DOOR

HEA 1001 adds provisions to provide that an individual who was member of the General Assembly after December 31, 2011 may not be a registered lobbyist or serve as a legislative liaison for a state agency for a period of one year after the individual ceases to be a member of the General Assembly. A person who is either a member of the General Assembly or a legislative candidate for election on November 3, 2010 may not be registered as a lobbyist or serve as a legislative liaison before June 1, 2011. Such a person may be a lobbyist or legislative liaison after May 31, 2011.

CONCLUSION

As noted above, many legislators sought to extend the restrictions on gifts, expenditures, and purchases to local officials, and many indicated that such legislation would be introduced in 2011. County officials may want to review these new restrictions closely, and determine whether similar restrictions should be imposed locally. •

Ice Miller LLP serves as general counsel to the Association of Indiana Counties. For further information on the new ethics legislation, please feel free to contact Karen Arland at Karen.arland@icemiller.com.