

1 GEORGIA GOVERNMENT TRANSPARENCY AND
2 CAMPAIGN FINANCE COMMISSION
3

4 **ADVISORY OPINION**
5 **C.F.C. 2011-03**
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8 **QUESTION PRESENTED**
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10 Whether an expenditure made by a lobbyist in connection with a meeting or event involving an
11 employee or family member of a public officer is required to be disclosed on lobbyist disclosure
12 reports.
13

14 **RESPONSE**
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16 The Political Law Group has requested the above opinion from the Georgia Government
17 Transparency and Campaign Finance Commission (the “Commission”). The Political Law
18 Group suggests that the answer to the this question is “no” based on the premise that lobbyist
19 disclosure requirements do not require reporting of all lobbying expenditures, but only those
20 specifically made for the benefit of public officers. In other words, lobbying expenditures made
21 with respect to family members and employees of public officers do not need to be reported and
22 disclosed. The Commission does not believe this to be the case with respect to certain
23 expenditures that benefit the family members of public officers, but agrees with the Political Law
24 Group with respect to expenditures made on behalf of public employees.
25

26 The Georgia Government Transparency and Campaign Finance Act (the “Act”) contains two
27 sections that refer to expenditures made by lobbyists and the disclosure of those expenditures.
28 Section 21-5-70(1)(A) defines what is an “Expenditure” and Section 21-5-73 outlines the
29 disclosure requirements with respect to Expenditures. The Commission is aware, however, that
30 there appears to be a discrepancy with respect to what the Act defines to be an Expenditure and
31 what the Act requires to be reported and disclosed. In other words, the Act very specifically
32 defines those items which are considered to be Expenditures, but does not require the reporting
33 of all of those Expenditures.
34

35 Section 21-5-70(1)(A) defines an Expenditure as:
36

37 (A) a purchase, payment, distribution, loan ...or anything of value made for the purpose
38 of influencing the actions of a **public officer or public employee**; (B) Includes any other
39 form of payment when such can be reasonably construed as designed to encourage or
40 influence a public officer; (B.1) Includes reimbursement or payment of actual expenses
41 provided to a public officer for transportation, travel, lodging, registration, food,
42 beverages, and other activities related to attending a meeting or conference so as to
43 permit such public officer’s participation in such meeting or conference; (D) Includes
44 food or beverage consumed at a single meal or event by a **public officer or public**
45 **employee or a member of the family of such public officer or public employee** (§21-
46 5-70(1))¹ .
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¹The entire definition of Expenditure has not been included in this Opinion.

1 Section 21-5-73(e) outlines the disclosure requirements of lobbyists. Subsection (e) states:

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3 Reports filed by lobbyists shall be verified and shall include:

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5 (1) A description of all expenditures, as defined in Code Section 21-5-70, or the value thereof
6 made on behalf or for the benefit of a public officer by the lobbyist or employees of the
7 lobbyist or by any person on whose behalf the lobbyist is registered if the lobbyist has actual
8 knowledge of such expenditure.
9

10 As the Political Law Group correctly points out, the Act's disclosure requirements do not appear
11 to require disclosure of all lobbying expenditures outlined in §21-5-70(1)(A) . The language of
12 the section states that a description of all expenditures defined in §21-5-70 should be reported,
13 but references only those expenditures "made on behalf of or for the benefit of a public officer
14 by the lobbyist ..."

15
16 The recipients of Expenditures, however, include individuals other than public officers.
17 Specifically, the recipients as defined by §21-5-70(1)(A) also include family members and public
18 employees. One might ask why the definition of expenditure was drafted to include expenses
19 made to influence the actions of a public employee or to include food and gifts to a family
20 member if not to report and disclose such expenditures to the public. However, the Commission
21 is reluctant to read additional requirements into the statute that are not specifically stated within
22 the disclosure section. Therefore, with respect to expenditures made by lobbyists that benefit a
23 public employee, we advise that the Act does not require the lobbyist to disclose such
24 expenditures with the exception of expenditures made for employees who qualify as public
25 officers under §21-5-70(6) (such employees who qualify as public officers include individuals
26 who have discretionary authority over the selection of a vendor which supplies goods or services
27 to a state agency).
28

29 The Commission does believe that certain expenditures made by lobbyists with respect to family
30 members are required to be reported. Again, §21-5-73(e) states that expenditures made on behalf
31 of or for the benefit of public officers are required to be disclosed.
32

33 Because family members (includes only spouse and dependent children; §21-5-3(17)) are
34 commonly owed a duty of support by the public officer, the public officer benefits and/or may
35 be influenced when a lobbyist pays for the meals, travel expenses, entertainment, etc. of a family
36 member. The fact that the spouse of a public officer receives a meal paid for by the lobbyist is a
37 "benefit" to the public officer. If not for the lobbyist paying for the meal of the spouse or child,
38 the family of a public officer would be required to do so out of their own income. The public
39 officer receives the same benefit when the lobbyist pays for family members to travel with the
40 public officer on a trip.
41

42 Prepared by Stacey Kalberman
43 April 5, 2011

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February 11, 2011

Georgia Government Transparency and Campaign Finance Commission
200 Piedmont Ave.
Suite 1402 - West Tower
Atlanta, GA 30334

Re: Advisory Opinion Request - Lobbying Expenditures

Dear Members of the Commission and Ms. Kalberman:

Pursuant to O.C.G.A. § 21-5-6(b)(13), this is a request for an advisory opinion on a hypothetical set of facts and circumstances. This request seeks guidance on whether an expenditure made by a lobbyist in connection with a meeting or event involving an employee or family member of a public officer is required to be disclosed on lobbyist disclosure reports. It appears that the answer to this question is “no,” but it is requested that the Commission confirm its views on this issue.

The Georgia Government Transparency and Campaign Finance Act (the “Act”) requires lobbyists to disclose “expenditures, as defined in Code Section 21-5-70” which are “made on behalf of or for the benefit of a public officer” *Id.* § 21-5-73(e)(1) (emphasis added). The Act also requires that the description of an expenditure identify “[t]he name and title of the public officer” *Id.* § 21-5-73(e)(1)(A) (emphasis added).

The Act expressly distinguishes between a “public officer” and a “public employee.” The latter term is defined in Code Section 21-5-3(21) to mean “every person employed by the executive, legislative, or judicial branch of state government, or any department, board, bureau, agency, commission, or authority thereof.” *Id.* § 21-5-3(21). A payment made for the purpose of influencing the actions of either a public officer or a public employee is a lobbying “expenditure.” *See id.* § 21-5-70(1)(A).

Importantly, however, the Act’s disclosure requirement does not require disclosure of all lobbying expenditures - it only requires disclosure of expenditures made on behalf of or for the benefit of a “public officer.” *Id.* § 21-5-73(e)(1). The Act does not

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separately require the disclosure of expenditures made on behalf of or for the benefit of a "public employee." *Id.* If the disclosure requirement were to cover all lobbying expenditures, then the phrase "made on behalf of or for the benefit of a public officer" in Code Section 21-5-73(e)(1) would be superfluous, and the law would simply require disclosure of "all expenditures, as defined in Code Section 21-5-70." That is not what the law says. Since the phrase "made on behalf of or for the benefit of a public officer" was included as part of the reporting requirement, and since it must be given effect, it appears that the law only requires reporting of lobbying expenditures that are made on behalf of or for the benefit of a public officer, rather than a public employee.

It is also clear that a public employee is not, as a general rule, also a public officer. For purposes of the lobbying provisions, the term "public officer" means:

a member of the State Transportation Board and those public officers specified under paragraph (22) of Code Section 21-5-3, except as otherwise provided in this article and also includes any public officer or employee who has any discretionary authority over, or is a member of a public body which has any discretionary authority over, the selection of a vendor to supply any goods or services to any state agency.

Id. § 21-5-70(6).

The latter part of this definition makes it clear that an employee of a public officer does not independently qualify as a public officer unless that employee "has any discretionary authority over, or is a member of a public body which has any discretionary authority over, the selection of a vendor to supply any goods or services to any state agency." That is not true for the vast majority of public employees.

In addition, employees or family members of elected officials are not public officers under Code Section 21-5-3(22). That paragraph states that the term "public officer" means:

- (A) Every constitutional officer;
- (B) Every elected state official;
- (C) The executive head of every state department or agency, whether elected or appointed;
- (D) Each member of the General Assembly;
- (E) The executive director of each state board, commission, or authority and the members thereof;

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(F) Every elected county official and every elected member of a local board of education; and

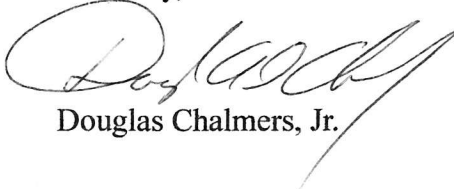
(G) Every elected municipal official.

Id. § 21-5-3(22). None of these terms except subsections (C) and (E) might apply to public employees, and none of them apply to family members of public officers.

Given that (1) the disclosure requirements of the Act only require disclosure of payments made on behalf of or for the benefit of a "public officer," (2) the law does not separately require disclosure of payments made on behalf or for the benefit of a "public employee," and (3) an employee or family member of a public officer is not, by virtue of that status alone, a "public officer," it seems that payments made by a lobbyist on behalf of or for the benefit of such employees or family members are not required to be reported.

It is respectfully requested that the Commission confirm whether that is the case. It is also requested that the Commission consider this request on an expedited basis. Thank you for your consideration of this matter.

Sincerely,



Douglas Chalmers, Jr.