

TEXAS ETHICS COMMISSION RULES

CHAPTER 34. REGULATION OF LOBBYISTS



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Chapter 34. REGULATION OF LOBBYISTS

Subchapter A. GENERAL PROVISIONS

§ 34.1. Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Communicates directly with, or any variation of that phrase--In Government Code, Chapter 305, and in this chapter includes communication by facsimile transmission.
- (2) Expenditure--In Government Code, Chapter 305, and in this chapter does not include a payment of less than \$200 that is fully reimbursed by the member of the legislative or executive branch who benefits from the expenditure if the member of the legislative or executive branch fully reimburses the person making the payment before the date the person would otherwise be required to report the payment.
- (3) Lobby activity--Direct communication with and preparation for direct communication with a member of the legislative or executive branch to influence legislation or administrative action.
- (4) Registrant--In Government Code, Chapter 305, and in this chapter means a person who is required to register as well as a person who has registered regardless of whether that person's registration was required.
- (5) Independent contractor--In Section 305.022 of the Government Code and this chapter, means a person, including a consultant, who communicates with a member of the executive branch concerning state agency purchasing decisions involving a product, service, or service provider or negotiations regarding such decisions. The term does not include an employee, as defined by Section 305.022(e) of the Government Code, of a vendor.

§ 34.3. Compensation for Preparation Time

Compensation a person receives for preparing to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action is included in calculating compensation for purposes of the registration and reporting requirements in Government Code, Chapter 305, and this chapter. Examples of preparation for lobby communications include participation in strategy sessions, review and analysis of legislation or administrative matters, research and communication with the employer/client. A person who does not directly communicate with a member of the legislative or executive branch to influence legislation or administrative action is not required to register because of compensation received for preparing to do so.

§ 34.5. Certain Compensation Excluded

Compensation received for the following activities is not included for purposes of calculating the registration threshold under Government Code § 305.003(a)(2), and this chapter and is not required to be reported on a lobby activity report filed under Government Code, Chapter 305, and this chapter:

- (1) requesting a written opinion that interprets a law, regulation, rule, policy, practice, or procedure administered by a state office or agency;
- (2) preparation or submission of an application or other written document that merely provides information required by law, statute, rule, regulation, order, or subpoena, or that responds to a document prepared by a state agency;
- (3) communicating merely for the purpose of demonstrating compliance with an audit, inspection, examination of a financial institution, or government investigation to interpret and determine compliance with existing laws, rules, policies, and procedures;
- (4) communicating for the purpose of achieving compliance with existing laws, rules, policies, and procedures, including communications to show qualification for an exception of general applicability that is available under existing laws, rules, policies, and procedures;
- (5) responding to a specific request for information from a member of the legislative or executive branch, when the request was not solicited by or on behalf of the person providing the information;
- (6) communicating to an agency's legal counsel, an administrative law judge, or a hearings examiner concerning litigation or adjudicative proceedings to which the agency is a party, or concerning adjudicative proceedings of that agency;
- (7) providing testimony, making an appearance, or any other type of communication documented as part of a public record in a proceeding of an adjudicative nature of the type authorized by or subject to the Administrative Procedure Act, Government Code, Chapter 2001, whether or not that proceeding is subject to the Open Meetings Law;
- (8) providing oral or written comments, making an appearance, or any other type of communication, if documented as part of a public record in an agency's rule-making proceeding under the Administrative Procedure Act, Government Code, Chapter 2001, or in public records kept in connection with a legislative hearing; or
- (9) providing only clerical assistance to another in connection with the other person's lobbying (for example, a person who merely types or delivers another person's letter to a member); or

§ 34.7. Reimbursement for Office Expenses

Reimbursement received for the following office expenses is not included in calculating reimbursement for purposes of the registration and reporting requirements in Government Code, Chapter 305, and this chapter.

- (1) long distance telephone charges;
- (2) delivery charges;
- (3) photocopy expenses;
- (4) facsimile expenses;
- (5) office supplies;
- (6) postage; and
- (7) dues and subscriptions.

§ 34.9. Taxes and Tips

Taxes and tips are not included in determining the amount of an expenditure for purposes of Government Code, Chapter 305, and this chapter.

§ 34.11. Attribution of Expenditure to More Than One Person; Reimbursement of Lobby Expenditure

(a) Except as provided by Government Code, § 305.0021, a lobby expenditure made on a person's behalf and with the person's consent or ratification is an expenditure by that person for purposes of registration and reporting under Government Code, Chapter 305, and this chapter.

(b) Payment of reimbursement to a registrant is not included for purposes of calculation of the registration threshold under Government Code, § 305.003(a)(1), and is not required to be reported if the registrant receiving the reimbursement reports the expenditure on a lobby activity report.

(c) A registrant is not required to report a lobby expenditure attributable to more than one person if another registrant has reported the expenditure.

§ 34.13. Incidental Expenditures for Transportation

Government Code, § 305.024(a)(3), does not prohibit an expenditure for transportation of incidental value such as transportation in the form of a ride of short duration in a personal car or taxi.

§ 34.15. Reporting Subject Matter

(a) A registrant reporting subject matter under Government Code, § 305.005(f)(4), (f)(5)(B), or § 305.006(d), of this chapter, shall report subject matter by marking the appropriate subject matter categories.

(b) A registrant reporting the subject matter of communications to influence administrative action shall also report, if known or reasonably available to the registrant, the docket number or other administrative designation of any administrative action that is the subject of the registrant's direct communication with a member of the executive branch, and the name of the agency or department at which the administrative action is pending.

§ 34.17. Satisfaction of Presence Requirement by Entity

An entity may satisfy the presence requirement in Government Code § 305.006(f), and § 305.024(a)(7), by the presence of:

- (1) an individual registrant who represents the entity; or
- (2) a person whose position, authority, or conduct on behalf of the entity could support an award of exemplary damages against the entity.

§ 34.19. Courtesy Notices by Electronic Mail

(a) A person required to register as a lobbyist may provide to the commission an electronic mail address to which courtesy notices regarding filing requirements under Chapter 305 of the Government Code may be sent.

(b) The commission is not obligated to send notices regarding filing requirements to a person required to register as a lobbyist who does not provide to the commission an electronic mail address.

(c) Failure to receive a notice regarding filing requirements does not constitute an excuse for failing to comply with any filing deadline.

Subchapter B. REGISTRATION REQUIRED

§ 34.41. Expenditure Threshold

(a) A person must register under Government Code, § 305.003(a)(1), if the person makes total expenditures of more than \$500 in a calendar quarter, not including expenditures for the person's own travel, food, lodging, or membership dues, on activities described in Government Code § 305.006(b) to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action.

(b) An expenditure made by a member of the judicial, legislative, or executive branch of state government or an officer or employee of a political subdivision of the state acting in his or her

official capacity is not included for purposes of determining whether a person is required to register under Government Code, § 305.003(a)(1).

(c) An expenditure made in connection with an event to promote the interests of a designated geographic area or political subdivision is not included for purposes of determining whether a person has crossed the registration threshold in Government Code, § 305.003(a)(1), if the expenditure is made by a group that exists for the limited purpose of sponsoring the event or by a person acting on behalf of such a group.

§ 34.43. Compensation and Reimbursement Threshold

(a) A person must register under Government Code, § 305.003(a)(2), if the person receives more than \$1000 in a calendar quarter in compensation and reimbursement, not including reimbursement for the person's own travel, food, lodging, or membership dues, from one or more other persons to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(b) For purposes of Government Code, § 305.003(a)(2), and this chapter, a person is not required to register if no more than 5.0% of the person's compensated time during a calendar quarter is time spent engaging in lobby activity.

(c) For purposes of Government Code, § 305.003(a)(2), and this chapter, a person shall make a reasonable allocation of compensation between compensation for lobby activity and compensation for other activities.

§ 34.45. Entity Registration

(a) An entity that is required to register under Government Code, § 305.003, and this chapter may nonetheless avoid registration if all activity otherwise reportable by the entity is reported by one or more individual registrants in accordance with § 34.65 and § 34.85 of this title (relating to Compensation Reported by Lobby Firm Employee and Individual Reporting Expenditure by Entity).

(b) An entity that avoids registration under subsection (a) of this section becomes subject to Government Code, § 305.024 on the earlier of the date the entity makes the expenditure that would have required the entity to register as a lobbyist or the date the entity receives, or is entitled to receive compensation or reimbursement that would have required the entity to register as a lobbyist.

(c) Registration by an entity does not relieve any individual of the requirement to register if that individual meets one of the registration thresholds in Government Code, § 305.003.

§ 34.46. Registration under Section 305.0041 of the Government Code

(a) For purposes of the \$75 registration fee set by Section 305.005(c)(2) of the Government Code, a person is required to register under Section 305.0041 of the Government Code if:

- (1) the person is an independent contractor;

(2) the person's only direct communication as a registrant is with a member of the executive branch to influence administrative action as an independent contractor;

(3) the compensation for the communication is totally or partially contingent on the outcome of a purchasing decision or negotiations regarding such decisions and the amount of the purchasing decision does not exceed \$10 million; and

(4) the person is also required to register under the compensation or reimbursement threshold in Section 305.003(a)(2) of the Government Code but does not exceed the expenditure threshold set by Section 305.003(a)(1) of the Government Code.

(b) A person required to register under Section 305.0041 of the Government Code is considered a registrant for purposes of this chapter and Chapter 305 of the Government Code.

(c) An independent contractor who is required to register as a lobbyist under Chapter 305 of the Government Code but who does not meet all the criteria in subsection (a) of this section is subject to the \$750 registration fee set by Section 305.005(c)(3) of the Government Code.

(d) An independent contractor who qualifies for the \$75 registration fee under subsection (a) of this section, but that before the end of the calendar year ceases to meet the criteria under subsection (a) of this section, becomes subject to the \$750 registration fee set by Section 305.005(c)(3) of the Government Code.

Subchapter C. COMPLETING THE REGISTRATION FORM

§ 34.61. Registration Fee

The registration fee is \$100 for a registrant who is exempt from federal income tax under Internal Revenue Code of 1986, § 501(c)(3), or § 501(c)(4).

§ 34.62. Temporary Increase in Registration Fees

(a) Notwithstanding section 34.61 of this title (relating to Registration Fee) or Section 305.005(c), Government Code, the registration fee for a registration covering any part of calendar year 2004 is increased by \$200 as authorized by Section 305.0064, Government Code, to generate additional revenue necessary to develop and implement an electronic filing system for lobbyists under that section. The temporary fees for calendar year 2004 will thus be in the following amounts:

(1) \$300 for a registrant who is exempt from federal income tax under Internal Revenue Code of 1986, Section 501(c)(3) or 501(c)(4); and

(2) \$500 for all other registrants.

(b) This section expires January 1, 2005.

§ 34.63. Assistants

(a) For purposes of Government Code, § 305.005(f)(5), a person “employed or retained by the registrant for the purpose of assisting in direct communication” includes any person who provides administrative or research assistance to the registrant but does not include a person who provides only clerical or secretarial help.

(b) An individual employed by the same employer as the registrant and who assists the registrant at the direction of the registrant is “employed or retained” by the registrant for purposes of Government Code, § 305.005(f)(5).

(c) A person listed by a registrant as an assistant under Government Code, § 305.005(f)(5), is required to register if the assistant meets one of the registration thresholds under Government Code, § 305.003, and this chapter.

§ 34.65. Compensation Reported by Lobby Firm Employee

(a) An individual registrant employed, reimbursed, or retained by a business entity that receives compensation and/or reimbursement for lobby activity is required to report all compensation and/or reimbursement paid to the entity for lobby activity by that individual.

(b) An individual registrant employed, reimbursed, or retained by a business entity that receives compensation and/or reimbursement for lobby activity may also report compensation and/or reimbursement paid to the entity for lobby activity by one or more other persons if the entity requests that the individual do so in order for the entity to avoid registration.

(c) The individual registrant shall report the compensation by the date on which the entity, if registered, would have been required to report it. The individual registrant shall indicate on a registration or amended registration, as applicable, that he has reported compensation and/or reimbursement paid to an entity for lobby activity by one or more persons other than the registrant.

§ 34.67. Paid, Earned, and Prospective Compensation

(a) For purposes of Government Code, § 305.005, and this chapter, compensation may be reported in any one of the following three ways:

(1) compensation actually paid for lobby activity during the year of registration as of the date the registration form or amended registration form is filed;

(2) compensation earned for lobby activity during the year of registration as of the date the registration form or amended registration form is filed, regardless of whether paid; or

(3) promised compensation for lobby activity during the year of registration, regardless of whether earned or paid on the date the registration form or amended registration form is filed.

(b) A registrant shall indicate on a registration form or amended registration form whether compensation is reported under subsection (a)(1), (2), or (3) of this section.

§ 34.69. Subject Matter

A registrant shall report the subject matter of lobby activity, in accordance with Government Code, § 305.005(f)(4), with respect to each person who reimburses, retains, or employs the registrant to engage in lobby activity.

§ 34.71. Amending a Registration Form

(a) A change with respect to a docket number or other administrative designation is not required to be reported on an amended registration unless the docket number or other administrative designation is related to a subject matter category not previously reported by the registrant.

(b) Except as necessary to report changed information, a registrant shall not report information about subject matter on an amended registration form that the registrant reported on the registration form or on a previous amended registration form.

(c) A registrant is not required to report on an amended registration form reimbursement received for a lobby expenditure that the registrant will report on a lobby activity report.

§ 34.73. Reporting by Independent Contractor

(a) In addition to the contents required by Section 305.005 of the Government Code and this chapter, a registration filed by an independent contractor whose compensation for the communication is totally or partially contingent on the outcome of a purchasing decision or negotiations regarding such decisions must:

- (1) disclose the vendor as a client;
- (2) indicate that the client is a vendor of a product or service on whose behalf the independent contractor communicates concerning state agency purchasing decisions or negotiations regarding such decisions;
- (3) disclose the amount of the sales commission or such fee;
- (4) disclose the amount of the purchasing decision;
- (5) if the amount of the sales commission or such fee is based on a percentage of the sale, disclose the amount of the percentage; and
- (6) describe the product or service that is the subject of the communication.

(b) If the amount of the sales commission or such fee is not known at the time of the reporting, the registration described by subsection (a) of this section must disclose a reasonable estimate of the maximum amount of the sales commission or such fee and the method under which that amount will be computed.

(c) If the amount of the purchasing decision is not known at the time of the reporting, the registration described by subsection (a) of this section must disclose a reasonable estimate of the maximum amount of the purchasing decision and the method under which that amount will be computed.

§ 34.75. Reporting of Commission or Fee Paid by State Agency

(a) In addition to the contents required by Section 305.005 of the Government Code and this chapter, a registration filed by a person who is paid a sales commission or such fee by a state agency must;

- (1) disclose the state agency as a client;
- (2) indicate that the client is a state agency;
- (3) provide a description of the subject matter for which the person is paid a sales commission or such fee; and
- (4) disclose the amount of the sales commission or such fee.

(b) If the amount of the sales commission or such fee is not known at the time of the reporting, the registration must disclose a reasonable estimate of the maximum amount of the sales commission or such fee and the method under which that amount will be computed.

Subchapter D. LOBBY ACTIVITY REPORTS

§ 34.81. Election to File Annually

A registrant who is eligible to file an annual lobby activity report under Government Code, § 305.0063, may elect to do so at any time during the registration year.

§ 34.83. Time of Expenditure

For reporting purposes, an expenditure is not made until the amount of the expenditure is readily determinable by the person making the expenditure. If the normal business practice of a vendor or service provider is to make the amount charged known by sending a bill after expenses are incurred, the date of the expenditure, for reporting purposes, is the date the person billed receives the bill.

§ 34.85. Individual Reporting Expenditure by Entity

(a) An individual registrant may report an expenditure made by a lobby entity if the entity requests that the individual do so in order for the entity to avoid registration; and

- (1) the entity makes the expenditure in order for the individual to act on the entity's behalf to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action; or

(2) the entity compensates or reimburses the individual to act on behalf of the entity or on behalf of the entity's clients to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(b) The individual registrant shall report the expenditure by the date on which the entity, if registered, would have been required to report it. The individual registrant shall indicate on a lobby activity report that he or she has reported expenditures made by an entity and indicate the specific amount reported on behalf of the entity.

(c) For purposes of Government Code, § 305.0021(b), an expenditure made by an entity under subsection (a) of this section, is not a joint expenditure for purposes of Government Code, § 305.0021(b) if the entity makes the entirety of the expenditure at issue.

(d) In this provision "lobby entity" means a corporation, association, firm, partnership, committee, club, organization, or other group of persons voluntarily acting in concert that meets one of the registration thresholds in Government Code, § 305.003.

Subchapter E. ELECTRONIC FILING

§ 34.91. Exemptions from Electronic Filing

(a) A registrant is required to file each report by using the Internet to transmit the report, by using a modem without an Internet connection to transmit the report, by delivering a diskette to the commission, or by using computer software provided by the commission, unless the registrant files with the commission an affidavit stating that:

(1) the registrant does not use computer equipment to keep current records of lobby clients/employers;

(2) no person acting as an agent or consultant of the registrant and no person with whom the registrant contracts uses computer equipment to keep current records of the registrant's lobby clients/employers;

(3) the registrant does not intend to be compensated or reimbursed more than \$10,000 for lobby activity in the calendar year covered by the registration;

(4) the registrant was not compensated more than \$10,000 for lobby activity in either of the previous two calendar years;

(5) the registrant does not intend to exceed \$1,000 on lobby expenditures during the calendar year covered by the registration; and

(6) the registrant did not exceed \$1,000 on lobby expenditures in either of the previous two calendar years.

(b) The commission has the discretion to exempt from the electronic filing requirement a registrant who is not eligible to file under subsection (a) of this section if a registrant submits an affidavit to the commission stating the basis for the inability to filing electronically.

(c) A registrant who is eligible to file under subsection (a) of this section must file an affidavit under subsection (a) of this section with a registration filed under Chapter 305 of the Government Code and this chapter.

(d) A registrant who during a calendar year becomes ineligible to file on paper based on the criteria listed in subsection (a) of this section must file electronically beginning on the date on which the next report is due under section 305.007 of the Government Code.

(e) For purposes of this section, “lobby expenditure” means expenditures required to be reported under Chapter 305 of the Government Code and this chapter.

(f) For purposes of this section, a “report” includes any document required to be filed by a registrant under Chapter 305 of the Government Code and this chapter except that it does not include notices and statements required to be filed under section 305.028 of the Government Code.

(g) For purposes of this section, a “report” includes the confidential social security information required to be filed by a lobbyist in compliance with section 231.302(c)(1) of the Family Code.