

New Jersey Law Journal

VOL. CLXXXVIII- NO2 - INDEX 147

APRIL 9, 2007

ESTABLISHED 1878

IN PRACTICE

ELECTION LAW

BY STEVEN H. SHOLK

New Travel Rules for House Members

Corporation's lobbyist must have de minimis involvement in travel plans

In a world fraught with uncertainty, one thing that is certain is that as long as the legislature is in session, no person's home and business are secure. To protect and advance their interests, corporations retain or employ registered lobbyists and engage in dialogue with legislators. Under changes to the Rules of the House of Representatives that went into effect March 1, a corporation's ability to pay reasonable travel and lodging expenses for on-site visits by House members and employees to engage in dialogue is subject to new restrictions.

The permissible expenses that a private source can pay turn on whether it retains or employs a registered lobbyist or agent of a foreign principal. The changes to the rules provide that when a private source retains or employs a lobbyist, it can pay the reasonable travel and lodging expenses only for attendance at or participation in a one-day event, exclusive of travel time and an overnight stay, as long as the involvement of the lobbyist in the planning, organization, request or arrangement of the trip is de minimis, and the member

or employee is not accompanied on any segment by a lobbyist. The long-standing requirement that the activities of the trip be related to the member's or employee's official responsibilities or matters arising from his official duties continues to apply.

De minimis involvement means only negligible or otherwise inconsequential involvement in terms of time and expense to the overall planning and purpose of the trip. The prohibition on lobbyist accompaniment does not prohibit lobbyist participation in briefings or meetings that occur at the destination. An open issue is whether a lobbyist can accompany the member or employee while traveling to the same location at the same time, but then attend a different event, such as a campaign fundraising event for the member. If the lobbyist schedules the fundraising event at the same time as the other event, there will likely be a violation of the prohibition on more than de minimis lobbyist involvement in arranging the travel. Another open issue is that if the member's campaign pays the travel and lodging expenses, do the prohibitions on lobbyist accompaniment and involvement preclude the lobbyist from attending the fundraising event?

Under the new rules, a private source can pay for up to business-class transportation on commercial air carriers or trains. A private source can pay for other transportation, including first-class air fare or train fare, charter travel or travel on private aircraft only if: (a)

the cost of such travel does not exceed the cost of available business-class transportation (or if the traveler uses his own frequent flyer or similar benefits to upgrade to first-class); (b) such travel is necessary to accommodate a disability or other special need as substantiated in writing by a competent medical authority; (c) genuine security circumstances require such travel; (d) the scheduled flight time, including stopovers and change of planes, exceeds 14 hours; or (e) the Committee on Standards of Official Conduct permits such travel based on exceptional circumstances.

For lodging expenses, reasonableness turns on cost, location of the facility and its proximity to the sites being visited, the quality of its conference facilities, any security concerns and whether the facility can accommodate the number of attendees at the event. For meal expenses, factors in the reasonableness determination include the maximum per diem rates for meals for official government travel published by the General Services Administration, and for international travel, the maximum per diem rate for meals published by the State Department. Other permissible travel expenses include transportation to and from airports and security costs, but not local transportation for recreation or entertainment. In addition, the long-standing prohibition on payment for recreational activities and entertainment, other than entertainment provided to all attendees as an integral part of the event, continues to apply.

Expenses may be paid only by an entity or entities that have a significant role in organizing and conducting the trip, and that have a clear and defined

Sholk practices campaign finance law with Gibbons of Newark.

organizational interest in the purpose of the trip or location being visited. Expenses may not be paid by a private source that has donated money or in-kind support to the trip, but does not have a significant role in organizing and conducting the trip.

The member or employee can request prior committee approval for a second night's lodging and meal expenses. In determining whether to approve the request, the committee considers: (a) the availability of transportation to and from the location of the one-day event; (b) whether the trip is outside the continental United States or involves travel across two or more time zones; (c) whether the member or employee is participating in a full-day's worth of officially connected activities (e.g., is he giving a speech, taking part in fact-finding, observing presentations, or participating in a panel discussion); or (d) any other exceptional circumstances that are described in detail by the member or employee.

The rule changes exempt institutions of higher education under Section 101 of the Higher Education Act of 1965 from the one-day trip limitation, the prohibition on lobbyist accompaniment, and the prohibition on lobbyist involvement in the planning, organization, request or

arrangement of the trip.

When a private source does not retain or employ a lobbyist, under the rules prior to the changes the source can pay the reasonable travel and lodging expenses for a trip within the continental United States that does not exceed four days, and outside the continental United States that does not exceed seven days exclusive of travel time. Prior committee approval is necessary for trips longer than four and seven days, which the committee will grant only in extraordinary circumstances. The four and seven-day limits are caps on the period for which a member or employee can accept privately paid travel, and the trip length cannot exceed the time reasonably necessary to accomplish the trip's purpose. Thus, a four-day trip will often be unnecessary, especially when the sole purpose of the trip is to give a speech. In addition, the changes require that the trip must not in any part be planned, organized, requested or arranged by a lobbyist, and that the traveler must not be accompanied on any segment by a lobbyist.

The changes also require a member or employee to obtain prior committee approval for any privately paid trip. The member or employee should submit a request for approval at least 30 days before travel is scheduled to begin. In

addition, the member or employee must obtain a written certification signed by the private source, which for a corporation is signed by a corporate officer, that: (a) the trip will not be financed in any part by a lobbyist; (b) the source does not retain or employ a lobbyist, or is an institution of higher education, or that the trip meets the requirements of the one-day event rule and details the extent of any lobbyist involvement considered to be de minimis; (c) the source will not accept from another source any funds earmarked for financing the trip; (d) the traveler will not be accompanied on any segment by a lobbyist (except when an institution of higher education pays for the trip); and (e) except as permitted by the rules, the trip will not in any part be planned, organized, requested, or arranged by a lobbyist. The private source that makes the certification is subject to the criminal penalties for false statements made to the government.

Finally, the member or employee must disclose the expenses paid by a private source to the Clerk of the House within 15 days after the trip is completed. The clerk shall make all advance authorizations, certifications and disclosures available for public inspection as soon as possible after they are received. ■