The congressional gift ban: Changing the way Washington works . . . and plays

Key words: Committee on Standards of Official Conduct, gift ban, lobbyists, reimbursement.

During the 1992 campaign, Texas billionaire Ross Perot remarked that if he should become president, Washington lobbyists would become relics of the past, presumably to be hung from the ceiling of the Smithsonian Institution. Perhaps that is what congressional lawmakers had in mind when both the House and Senate passed restrictions on gifts to members of Congress and staff, but that is rather unlikely. Instead, Congress responded to pressure from the media because the appearance of impropriety was starting to create more damage to an already tarnished congressional image.

So, after January 1, 1996, inhabitants of the "K Street Corridor"—the boulevard which houses many of the lobbying boutiques and law firms—will have to change their course of business. The House passed H. Res. 250, banning all gifts, including meals, to members of the House of Representatives and their staff. This means no more golf outings, ski vacations in Aspen, tennis tournaments, or sumptuous meals at a posh Washington restaurant may be provided to any House member or staff.

Enterprising congressional staffers have already found exceptions to the gift ban. In one recent publication, a list of 21 exemptions to H. Res. 250 were prominently listed and circulated around Capitol Hill. These include:

1. Anything for which the member, officer, or employee pays the market value, or does not use and promptly returns to the donor.

2. A contribution, as defined in section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) that is lawfully made under that Act, a lawful contribution for election to a state or local government office, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

3. A gift from a relative as described in section 109(16) of title I of the Ethics in Government Act of 1978 (Public Law 95-521).

4. Anything provided by an individual on the basis of a personal friendship unless the member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because the official position of the member, officer, or employee and not because of the personal friendship.

   (B) In determining whether a gift is provided on the basis of personal friendship, the member, officer, or employee shall consider the circumstances under which the gift was offered, such as:

   (i) The history of the relationship between the individual giving the gift and the recipient of the
gift, including any previous exchange of gifts between such individuals.

(ii) Whether to the actual knowledge of the member, officer or employee the individual who
gave the gift or sought a tax deduction or business reimbursement for the gift.

(iii) Whether to the actual knowledge of the member, officer or employee the individual who
gave the gift also at the same time gave the same or similar gifts to other members, officers, or
employees.

5. Except as provided in clause 3(c), a contribution or other payment to a legal expense fund
established for the benefit of a member, officer, or employee that is otherwise lawfully made in ac-
cordance with the restrictions and disclosure requirements of the Committee on Standards of Official
Conduct (note: clause 3(c) prohibits such contributions from registered lobbyists).

6. Any gift from another member, officer, or employee of the Senate or House of Representa-
tives.

7. Food, refreshments, lodging, transportation, and other benefits:
(A) resulting from outside business or employ-
ment activities (or other outside activities that are
not connected to the duties of the member, officer,
or employee as an officeholder) of the member,
officer, or employee, or the spouse of the member,
official or employee, if such benefits have not been
offered or enhanced because of the official position
of the member, officer, or employee and are cus-
tomarily provided to others in similar circum-
stances:
(B) customarily provided by a prospective em-
ployer in connection with bona fide employment
discussions; or
(C) provided by a political organization de-
scribed in section 527(e) of the Internal Revenue
Code of 1986 in connection with a fundraising or
campaign event sponsored by such an organization.

8. Pension and other benefits resulting from
continued participation in an employee welfare and
benefits plan maintained by a former employer.

9. Informational materials that are sent to the
office of the member, officer, or employee in the
form of books, articles, periodicals, or other written
materials, audiotapes, videocassettes, or other forms
of communication.

10. Awards, prizes which are given to competi-
tors in contests or events open to the public, includ-
ing random drawings.

11. Honorary degrees (and associated travel,
food, refreshments, and entertainment) and other
bona fide, nonmonetary awards presented in recogni-
tion of public service (and associated food, re-
freshments, and entertainment provided in the pre-
sentation of such degrees and awards).

12. Training (including food and refreshments
furnished to all attendees as an integral part of the
training) provided to a member, officer or em-
ployee, if such training is in the interest of the
House of Representatives.

13. Bequests, inheritances, and other transfers
at death.

14. Any item, the receipt of which, is author-
ized by the Foreign Gifts and Decorations Act, the
Mutual Educational and Cultural Exchange Act, or
any other statute.

15. Anything which is paid for by the federal
government, by a state or local government, or
secured by the government under a government
contract.

16. A gift of personal hospitality (as defined in
section 109(14) of the Ethics in Government Act) of
an individual other than a registered lobbyist or
agent of a foreign principal.

17. Free attendance at a widely attended event
permitted pursuant to paragraph (d).

18. Opportunities and benefits which are:
(A) available to the public or to a class consist-
ing of all federal employees, whether or not re-
stricted on the basis of geographic consideration;
(B) offered to members of a group or class in
which membership is unrelated to congressional
employment;
(C) offered to members of an organization,
such as an employee's association or congressional
credit union, in which membership is related to
congressional employment and similar opportuni-
ties are available to large segments of the public
through organizations of similar size;
(D) offered to any group of class that is not
defined in a manner that specifically discriminates
among government employees on the basis of
branch or government or type of responsibility, or
on a basis that favor those of higher rank or rate of
pay;
(E) in the form of loans from banks and other
financial institutions on terms generally available
to the public; or
(F) in the form of reduced membership or
other fees for participation in organization activi-
ties offered to all government employees by profes-
sional organizations if the only restrictions on mem-
bership relate to professional qualifications.

19. A plaque, trophy, or other item that is sub-
stantially commemorative in nature and which is
intended for presentation.

20. Anything for which, in an unusual case, a
waiver is granted by the Committee on Standards of
Official Conduct.
21. Food and refreshment of a nominal value offered other than as part of a meal.”

Some cynical souls both within and outside the Beltway may conclude that the various exceptions to the general rule against gift giving may render the new rules meaningless. Such is not the case. Most lobbyists, including the author of this article, will err on the side of caution. The entertainment of members of congress and their staff, either at restaurants or at sporting events or the theater, will come to a grinding halt, at least for the House of Representatives.

Fearing that they may unintentionally insult constituents and state or district businesses who send home-grown items to their representatives, the House voted to amend the rules in late November (H. Res. 254) so that members could continue to receive T-shirts or baseball caps or other “items of nominal value.” In addition, House members could continue to receive products from their states, so long as they are used primarily for promotional purposes.

The Senate passed less restrictive rules (S. Res. 158) in July which would permit gifts with a $50 limit on the value of a gift and an annual aggregate of $100 from each individual source. The new rule for the Senate also takes effect on January 1, 1996. Some of the exemptions are similar to those in the House rules.

Unfortunately, these reforms give most Americans a false sense of influence which lobbyists allegedly have over members of Congress, mostly due to inaccurate media reports. True, some well-heeled lobbyists do enjoy a high degree of access to key members of Congress. That influence is generally due to the fact that the corporation may have a presence in the member’s district or the association is politically well-organized and respected, if not feared, or perish the thought—because the legislator may simply happen to agree with the organization’s position or they are somehow philosophically aligned.

However, none of this will change as the result of lobbying reform. While you may not be able to give them an expensive pen with the corporate seal, you can still give them $10,000 in political action committee money ($5,000 for the primary, $5,000 for the general election). Not that a political contribution “buys” votes, it doesn’t. But for the record, it should be noted that campaign contributions will continue under the status quo, at least until Congress looks at reform, probably sometime next year.

Looking at the issue less cynically, senators and house members have often forged personal and professional relationships with lobbyists over the years for reasons which are other than nefarious. While those relationships may have been brought together as the result of raising campaign money, many were started or strengthened because the association or corporation worked with legislators on legislative issues in which there was common agreement, not because the senator received a lobster dinner at a tony Washington restaurant or a piece of Baccarat crystal.

Generally the reason the legislator got involved or voted aye or nay was because the representative thought it was the right thing to do for the people back home. The congressman may have voted in favor of a bill because he or she received stacks of mail or perhaps received a visit from constituents who requested that he or she vote a certain way. Members of Congress have to face their shareholders every election—in the House every two years and every six years in the Senate. If a congressman votes the “wrong” way or gets involved in issues in which the voters disapprove, he or she will be summarily tossed out of office by his or her constituents, but probably not because of having been treated to dinner by a lobbyist.

But for now, the lobbying community and Congress will somehow adjust to the new realities associated with the gift ban. But do not expect the new rules to make saints out of sinners. For some, it will still mean business as usual.

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