



Joint Legislative Ethics Committee

Office of the
Legislative Inspector
General

2009 – 2010 LOBBYING HANDBOOK

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I. General Information

Who is a lobbyist?

Nearly every individual in Ohio has an issue that is represented by a lobbyist. Schools, municipalities, corporations, small business entities, trade associations, professional organizations, social service coalitions and dozens of other groups who share a similar set of beliefs or goals employ lobbyists.

In Ohio, a professional lobbyist is someone who is paid to advocate on behalf of, or represent the interests of, another person or entity before the Ohio General Assembly, the Executive Branch and state agencies, or any one of Ohio's five public retirement systems.

The Office of the Legislative Inspector General is charged with administering Ohio's lobbying laws found in the Ohio Revised Code. These statutes are found in O.R.C.

- §101.70 through §101.79 (Legislative Lobbying);
- §121.60 through §121.69 (Executive Agency Lobbying); and
- §101.90 through §101.99 (Retirement System Lobbying).

The lobbying laws of the state of Ohio apply only to attempts to influence decisions at the **state** level. The law does not apply to attempts to influence the decisions of county or municipal officials. Municipalities governed by an adopted charter may have local ordinances requiring the registration and reporting of lobbyist activities at the municipal level. Individuals wishing to engage in lobbying activities at the local or municipal level should check with the jurisdiction in question for applicable regulations, as well as with the Ohio Ethics Commission on expenditure limitations for public officials at the local or municipal level.

Determining whether you are acting as a Legislative Agent, an Executive Agency Lobbyist or a Retirement System Lobbyist depends on the subject matter being discussed, not the parties involved in the discussion.

Example - If a lobbyist is communicating with the Director of a state agency regarding a piece of legislation or is talking to the Governor concerning the veto of a piece of legislation, that is considered to be **legislative lobbying**, regardless of the Governor's or Director's status as an executive agency official.

II. Lobbying Registration

Key elements of lobbying activity that triggers registration with the OLIG:

- Compensation – you must receive something of value in exchange for your efforts;
- Direct Communication – may be either written or oral and can occur in any medium;
- Amount of time for which you are paid that is spent lobbying –

- A. Legislative – 5% or more of your compensated time
- B. Executive – 25% or more of your compensated time
- C. Retirement – 25% or more of your compensated time

Legislative Lobbying:

Activity involving direct contact with any of the following:

- Member of the General Assembly,
- the Governor,
- the Director of a state agency or
- the staff of any of these public officials

to affect the outcome of:

- legislation,
- resolutions,
- a controlling board matter,
- a nomination,
- an amendment to legislation,
- the approval or veto of legislation by the Governor

Executive Agency Lobbying:

Activity involving direct contact with any of the following:

- Governor,
- Lt. Governor,
- Attorney General,
- Secretary of State,
- Auditor of State,
- Treasurer of State,
- The Director of any Department listed in ORC. §121.02, or
- the staff of any of the above public officials that would be involved in policy making decisions or the expenditure of state funds

regarding any of the following:

- a decision of an executive agency regarding the expenditure of state funds; or
- a decision of an executive agency with respect to the award of a contract, grant, lease, or other financial arrangement under which such funds are distributed or allocated; or
- any regulatory decisions of an executive agency or any board or commission of the state that are of a universal nature and will have a wide impact.

Retirement System Lobbying:

Direct contact regarding the investment or management of state retirement system funds with:

- a board member of a state retirement system,
- a state retirement system investment official, or
- an employee of a state retirement system whose position involves substantial and material exercise of discretion in the investment of retirement system funds.

Activity that does not require registration at the state level:

- Grassroots activity, (encouraging others to call or write their legislator);
- Ballot initiatives;
- Responding to a request from a public official who is trying to get information on a particular issue, without advocating on that issue;
- Pro-bono or volunteer advocacy.

III. Becoming a Lobbyist

In January of 2009, the OLIG launched the Ohio Lobbying Activity Center, (OLAC). The OLAC is an internet based electronic filing system that allows those engaged in state government lobbying activity to electronically register their lobbying engagements and file tri-annual Activity and Expenditure Reports. In order to access OLAC, go to our website www.ohiolobbying.com and click on the OLAC link located on the left hand side of our homepage.

To set up a new user account and file initial registrations in OLAC see the tutorial here: <http://www.jlec-olig.state.oh.us/PDFs/1.%20OLAC%20Initial%20Registrations%20pgs%201-6.pdf>.

All lobbyists must file Initial Registration Statements in OLAC ***within ten days of the lobbyist beginning lobbying activity***. (See <http://codes.ohio.gov/orc/101.72>; <http://codes.ohio.gov/orc/121.62>; <http://codes.ohio.gov/orc/101.92>). The date lobbying activity begins should be the date of engagement listed on the initial registration. Initial registration statements filed outside this ten-day period must include an explanation for the delay in filing. Activity and expenditure reports will be due for the period in which the date of engagement occurs and any period thereafter, so long as the engagement is active.

An engagement does not become active until the signature page and filing fee is received by the OLIG. The appropriate signature page, signed by the lobbyist and the employer, and filing fee needs to be received by the OLIG no later than 15 business days from the date that the engagement was entered in OLAC.

Unless terminated by the lobbyist or their client, lobbying registrations will remain active until they expire according to statute. Lobbying registrations must be renewed based on the following schedule:

- Legislative lobbying - Registration expires December 31 of every EVEN numbered year

- Executive Agency Lobbying - Registration expires January 31 of each year
- Retirement System lobbying - Registration expires January 31 of each year.

IV. Terminating an Engagement

Both lobbyists and their employers may terminate an engagement at any time in OLAC. The termination should be done within 30 days of lobbying activity ceasing. If your date of termination is more than 30 days previous please call the OLIG for assistance.

- Agents: Once an engagement is terminated, OLAC will allow you to file your required Activity and Expenditure Report for the current reporting period.
- Employers: If you are terminating ALL of your engagements you will also be allowed to file your final Activity and Expenditure Report for the specific reporting period. If you still have active engagements you will file your Activity and Expenditure Report at the end of the respective reporting period.

For assistance on using OLAC to terminate an engagement see the tutorial at [http://www.jlec-olig.state.oh.us/PDFs/4. OLAC Terminations pgs 45-51.pdf](http://www.jlec-olig.state.oh.us/PDFs/4.OLAC%20Terminations%20pgs%2045-51.pdf).

V. Reporting Requirements

Once registered, a lobbyist **AND** their employer or client must file Activity and Expenditure Reports three times a year using OLAC. These reports inform the public of who is advocating on various pieces of legislation, executive agency decisions or retirement system decisions, and any expenditure made for the benefit of public officials. The Activity and Expenditure Reports are due according to the following schedule:

<u>REPORTING PERIOD</u>	<u>FILING DEADLINE</u>
January – April	May 31
May – August	September 30
September – December	January 31

The OLIG will enforce the above filing deadlines by taking the following steps:

- Sending reminder emails to delinquent filers;
- Posting delinquent filer lists to the public access side of OLAC;
- Sending certified letters to delinquent filers;
- Assessing late filing fees against filers who remain delinquent after receiving certified notice;
- Referring delinquent filers to the Attorney General’s office to investigate violations of O.R.C. §101.71, §121.61 and §101.91.

For assistance on how to file Activity and Expenditure Reports in OLAC see the following tutorials:

- Filing as a lobbyist [http://www.jlec-olig.state.oh.us/PDFs/2. OLAC Agent AER pgs 7-25.pdf](http://www.jlec-olig.state.oh.us/PDFs/2.OLACAgentAERpgs7-25.pdf)
- Filing as the employer of a lobbyist [http://www.jlec-olig.state.oh.us/PDFs/3. OLAC Employer AER pgs 26-44.pdf](http://www.jlec-olig.state.oh.us/PDFs/3.OLACEmployerAERpgs26-44.pdf).

VI. Expenditure Reporting

Regardless of any reporting requirement, one must be mindful of the restrictions contained in O.R.C. §102.03(D), (E), and (F), and §2921.42 and §2921.43. These provisions prohibit the soliciting, accepting, promising, or giving of anything of value that is of such a character as to manifest a substantial and improper influence upon a public official or a public employee in relation to their official duties.

- 1. RECEIPTS OF ANY EXPENDITURE REPORTED SHOULD BE MAINTAINED BY THE LOBBYIST, OR THE EMPLOYER, UNTIL DECEMBER 31 OF THE SECOND YEAR FOLLOWING THE YEAR IN WHICH THE EXPENDITURE WAS MADE.**
2. Gifts do not include those things that have a value of \$25 or less.
3. Only Lobbyists have the < \$50 category where expenditures do not have to be itemized. If a lobbyist has spent less than \$50 on a particular member, aggregated in a calendar year, they need only disclose the amount of the expenditure, not the recipient.
 - a. Once you have spent > \$50 on that particular member in a calendar year, you should list the date of the expenditure, recipient, a description of the expenditure, any applicable legislation the expenditure is associated with and the dollar amount spent in Section B.
 - b. Employers report **all** meal and beverage expenditures with all the required information, unless the expenditure is an All-Invited function or is made during a meeting of a National Convention, (i.e. NCSL, ALEC, CSG, NCOIL, National Speakers Conference and Senate President's Forum).
4. Lobbyists are prohibited from spending more than \$75 in a calendar year on any one member, whether it is a gift, travel expense or meal and beverage. Employers have no cap on their expenditures.
5. Lobbyist vs. Employer expense
 - Expenditures should be reported as either a lobbyist expenditure or an Employer expenditure, but never as both.
 - When determining whether an expenditure should be reported as a lobbyist expense or an employer expense use the "point of sale" test whenever possible. When making a determination as to who "made" the expenditure, ask how the expenditure is perceived by the recipient at the time it is made.

Even when a corporate card is used, if the agent is conducting the transaction then the agent has "made" the expenditure. The same holds true when cash is used. Reimbursement should **not** be a factor when determining who made the expenditure.

- Employer expenditures are those expenditures, which are directly paid for or provided by the employer. For example, a luncheon hosted in the corporate dining hall is an employer expenditure regardless of who is in attendance. Football tickets provided by a representative of the employer, who is not a legislative agent, are an employer expenditure. A dinner expensed by a CEO, who is not a legislative agent, is an employer expenditure.

The type of lobbying one engages in determines which expenditures are reportable and for whom.

Legislative Lobbying

Generally, a **legislative agent** is required to disclose the name of a recipient of expenditures under two circumstances:

- (1) when the legislative agent has spent more than \$50 for meals and other food and beverages on a reportable individual during the calendar year; or
- (2) when the legislative agent has made an expenditure, excluding food and/or travel, and the value of the expenditure exceeds \$25.

An **employer of a legislative agent** is required to disclose the name of a recipient of expenditures under two circumstances:

- (1) when the employer has made an expenditure for food, **regardless of the amount spent**; or
- (2) when the employer has made an expenditure, excluding food, where the value of the expenditure exceeds \$25.

Reportable Individuals

- ◆ any Member of the General Assembly;
- ◆ the Governor; ***
- ◆ any member of the Controlling Board; ***
- ◆ the Director of any Department listed under [O.R.C. §121.02](#); *** or
- ◆ a senior level staff member of any of the above. (*Senior Level Staff means any state employee whose official duties are to formulate policy and who exercises administrative or supervisory authority or who authorizes the expenditure of state funds*).

***** The above list only depicts those who are reportable if an expenditure is made to, at the request of, for the benefit of, or on behalf of that particular individual. For purposes of whether any expenditure made to, at the request of, for the benefit of, or on behalf of the Governor, the President of the Controlling Board, or the Director of any Department listed under [O.R.C. §121.02](#) is acceptable or allowed please see the Governor's [Executive Order 2007 – 01S](#), or contact the Governor's Office for guidance.**

Anytime a lobbyist or the employer of a lobbyist discloses the name of an expenditure recipient on an Activity and Expenditure Report, the disclosed recipient must receive written notification that they are being disclosed to JLEC. See [http://codes.ohio.gov/orc/101.73\(F\)\(1\)](http://codes.ohio.gov/orc/101.73(F)(1)), [http://codes.ohio.gov/orc/121.63\(G\)\(1\)](http://codes.ohio.gov/orc/121.63(G)(1)), [http://codes.ohio.gov/orc/101.93\(G\)\(1\)](http://codes.ohio.gov/orc/101.93(G)(1)).

NOTE: Legislative Aides do not meet the definition of staff under O.R.C. §101.70, §121.60 or §101.90 and therefore are not reportable.

Legislative Agents should not report itemized expenditures for travel expenses. Travel provided to a member or staff person of the General Assembly from a legislative agent is prohibited except where such travel is associated with:

- the member or employee participating in a panel, seminar or other speaking engagement, or
- is associated with the reportable individual's attendance at a meeting of a national organization to which the General Assembly or other state agency pays dues.

Travel in an automobile that is less than 50 miles one way is not considered a reportable expenditure.

For additional assistance in expenditure reporting and to see examples of common reporting scenarios with guidance see [http://www.jlec-olig.state.oh.us/PDFs/Expenditure Scenarios Legislative.pdf](http://www.jlec-olig.state.oh.us/PDFs/Expenditure_Scenarios_Legislative.pdf).

Executive Agency Lobbying

Generally, an **executive agency lobbyist** is required to disclose the name of a recipient of expenditures under two circumstances:

- (1) when the executive agency lobbyist has spent more than \$50 for meals and other food and beverages on a reportable individual during the calendar year; or
- (2) when the executive agency lobbyist has made an expenditure, excluding food, where the value of the expenditure exceeds \$25.

An **employer of an executive agency lobbyist** is required to disclose the name of a recipient of expenditures under two circumstances:

- (1) when the employer has made an expenditure for food, **regardless of the amount spent**; or
- (2) when the employer has made an expenditure, excluding food, where the value of the expenditure exceeds \$25.

Reportable Individuals

- the Governor;
- the Lt. Governor
- Attorney General
- Auditor
- Secretary of State
- Treasurer
- the Director of any Department listed under [O.R.C. §121.02](#);
- any Executive agency official (*Executive agency official means an officer or employee of an executive agency whose principal duties are to formulate policy or to participate directly or indirectly in the preparation, review, or award of contracts, grants, leases, or other financial arrangements with an executive agency*); or

- a senior level staff member of any of the above. (*Senior Level Staff means any state employee whose official duties are to formulate policy and who exercises administrative or supervisory authority or who authorizes the expenditure of state funds*).

For purposes of whether any expenditure made to, at the request of, for the benefit of, or on behalf of any of the reportable individuals listed above is acceptable or allowed, please see the Governor’s [Executive Order 2007 – 01S](#).

For additional assistance in expenditure reporting and to see examples of common reporting scenarios with guidance see <http://www.jlec-olig.state.oh.us/PDFs/Expenditure Scenarios Executive.pdf>.

Retirement System Lobbying

Each of the five public retirement systems has ethics policies derived from Chapter 102 of the Ohio Revised code. Generally, board members, investment officers and employees of the public retirement system are prohibited from accepting anything of value from someone that is or is seeking to do business with the system. Before any expenditure is made for the benefit of or on behalf of a board member, investment officer or employee of one of the public retirement systems, the lobbyist, or their client, should inquire with the Ohio Ethics Commission as to any applicable prohibitions. If the expenditure is allowed, consult with the OLIG as to applicable reporting requirements.

VII. Amending Activity and Expenditure Reports

Once your report is filed, the document is immediately available for public viewing. If you need to make changes or omitted information you may amend the report. For assistance on amending an activity and expenditure report in OLAC see the tutorial <http://www.jlec-olig.state.oh.us/PDFs/5. OLAC Amending AERs pgs 52-57.pdf>

VIII. Financial Transactions

Any registered lobbyist, and their client(s), must disclose any financial transactions they have with public officials. ***These financial transactions are not expenditures that are reported on the Activity and Expenditure Reports.***

'Financial Transaction' means joint ownership of property, real or personal, or the joint operation of a for-profit business between any of the following

Legislative Agents, Employers of Legislative Agents or the Immediate Family of Either AND:

- Member of the General Assembly,
- any member of the Controlling Board,
- the Governor,
- the Director of a Department created under 121.02, Ohio Revised Code, or
- any member of the staff of any of the above

Executive Agency Lobbyists, Employers of Executive Agency Lobbyists or the Immediate Family of Either AND:

- an elected executive official,
- the Director of a Department created under section 121.02 of the Revised Code,
- an executive agency official, or
- any member of the staff of any of the public officers or employees listed above

Retirement System Lobbyists, Employers of Retirement System Lobbyists, or the Immediate Family of Either AND:

- a member of a board of a state retirement system,
- a state retirement system investment official, or
- an employee of a state retirement system whose position involves substantial and material exercise of discretion in the investment of retirement funds

'Financial Transaction' does not include any transaction or activity described above if it is available to the general public on the same terms, or if it is an offer or sale of securities to any person listed as a public officer or employee above that is governed by regulation D, 17 C.F.R. 2301.501 to 2301.508, adopted under the authority of the 'Securities Act of 1933,' 48 Stat. 74, 15 U.S.C.A. and following, or that is governed by a comparable provision under state law.

IV. Prohibitions

See <http://codes.ohio.gov/orc/101.99>, <http://codes.ohio.gov/orc/121.99>, and <http://codes.ohio.gov/orc/101.99>.

There are criminal penalties for non-compliance with the registration, record keeping, and updating requirements of Ohio's lobbying laws.

- Knowingly failing to file an Initial Registration Statement, keep a receipt, maintain a record, or file an activity and expenditure report is a misdemeanor of the fourth degree punishable by up to 30 days incarceration and a \$250 fine. For an organization it is a fine of \$2,000.
- Knowingly filing a false Initial Registration Statement or an activity and expenditure report is a misdemeanor of the first degree punishable by up to 6 months in jail and a \$1,000 fine. For an organization, it is a fine of \$5,000.
- No lobbyist may accept compensation, nor may anyone employ a lobbyist, where the compensation is contingent on the outcome of the lobbyist's efforts. (See <http://codes.ohio.gov/orc/101.77>, <http://codes.ohio.gov/orc/121.67>, and <http://codes.ohio.gov/orc/101.97>.)

Sales Exception: The prohibition on contingency fees does not apply to those who seek to do business with a state agency, or a retirement system board, and pay a sales

person on a commission basis so long as similarly situated employees, who are not registered as a lobbyist are also paid under the same incentive compensation plan.

- ◆ If an employer who engages an executive agency lobbyist is the recipient of a contract, grant, lease, or other financial arrangement pursuant to which funds of the state or of an executive agency are distributed or allocated, the executive agency or any aggrieved party may consider the failure of the employer or the executive agency lobbyist to comply with this section as a breach of a material condition of the contract, grant, lease, or other financial arrangement.
- ◆ Executive agency officials may require certification from any person seeking the award of a contract, grant, lease, or financial arrangement that the person and his employer are in compliance with registration and filing requirements of any applicable lobbying statute.
- ◆ Public Employee Retirement Systems may require certification from any person seeking the award of a contract, grant, lease, or other financial arrangement that the person and his employer are in compliance with registration and filing requirements of any applicable lobbying statute.

The Office of the Legislative Inspector General will refer alleged violations to the appropriate prosecuting authority. In addition to the powers of the Office of the Legislative Inspector General, the Attorney General may investigate compliance with §101.70 to 101.79, §121.60 to 121.68 and §101.90 to 101.99 of the Ohio Revised Code in connection with statements required to be filed under these sections. If the Attorney General determines there is an apparent violation he shall report his findings to the Franklin County Prosecuting Attorney who shall institute such proceedings as are appropriate.