



April 29, 2008

## **ADVISORY OPINION 08-03**

Interpretation of T.C.A. § 3-6-305 with respect to whether the Act prohibits an employer of a lobbyist from paying the expenses of a “politically active” stroke survivor who is also an official in the executive branch to travel to Washington, D.C. to participate in an annual “Lobby Day.”

Requestor: Nathan James, Tennessee Advocacy Director for the American Heart Association.

### **QUESTION**

Does it violate the Tennessee Ethics Reform Act (“Act”)<sup>1</sup> for the employer of a lobbyist (“Employer”) that customarily provides stipends to “politically active”<sup>2</sup> stroke survivors to cover the costs of attending the American Heart Association (“AHA”) annual Lobby Day event in Washington, D.C to provide such a stipend to an official in the executive branch?

### **ANSWER**

No. Under the facts presented, the exception to the gift ban provided by Tenn. Code Ann. § 3-6-305(b)(1) applies because the AHA customarily provides such stipends for politically active stroke survivors, and because the stipend is not given or enhanced by reason of the recipient’s status as an official in the executive branch.

### **FACTS**

The AHA is an Employer. Every year, the AHA takes a group of “politically active” heart disease and stroke survivors to Washington, D.C., so these persons can participate in the AHA’s annual “Lobby Day” activities. The AHA defines “politically active” heart disease and stroke survivors as persons who are active on AHA committees.<sup>3</sup>

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<sup>1</sup> Tenn. Code Ann. §§ 3-6-101-308.

<sup>2</sup> Mr. James used the term “politically active” in his request for an advisory opinion. The AHA’s designation of Ms. Wilhoite as “politically active” is due to her membership on the AHA’s advocacy committee.

<sup>3</sup> The AHA does not have members who pay membership dues. Instead, the AHA has volunteers who contribute their time to various committees and activities. Thus, to be active within the AHA, a person would need to volunteer time.

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Each year, to help defray the costs of the travel, lodging, and food associated with attending the event, the AHA grants stipends to several heart disease and stroke survivors. The AHA wishes to grant such a stipend to Ms. Vivian Wilhoite, a stroke survivor who volunteers with the AHA's Advocacy Committee. Ms. Wilhoite is also an employee of the Tennessee Regulatory Authority ("TRA").<sup>4</sup> The AHA wishes to invite Ms. Wilhoite to its Lobby Day in Washington, D.C. and grant her a stipend for two reasons. First, Ms. Wilhoite is a stroke survivor. As a stroke survivor, Ms. Wilhoite is a member of the class of persons for whom the AHA advocates. Second, Ms. Wilhoite is "politically active" within the AHA. She volunteers as a member of the AHA's Advocacy Committee. The Advocacy Committee advocates for heart and stroke prevention policies, such as the inclusion of physical education and fitness in school curriculum.

### ANALYSIS

Ms. Wilhoite is an official in the executive branch. Tenn. Code Ann. § 3-6-301(19) defines an employee in the executive branch as, in part, "any employee of a state regulatory commission." The TRA is a "state regulatory commission."

Tenn. Code Ann. § 3-6-301(8) defines an Employer as, "any person or entity that employs, retains or otherwise arranges for a lobbyist to engage in lobbying on behalf of the person or entity for compensation." The AHA employs lobbyists, and is, thus, an Employer.

Tenn. Code Ann. § 3-6-305(a)(1) provides that neither Employers nor lobbyists may, "provide a gift," to an official in the executive branch. Tenn. Code Ann. § 3-6-301(11) defines gift to include, "any payment, honorarium, subscription, loan, advance, forbearance, rendering or deposit of money or services, unless consideration of equal or greater value is received." A stipend which covers a person's travel expenses, lodging, and part of their food, would fall under the definition of "gift" as defined by the Act.

In addition, Tenn. Code Ann. § 3-6-304(h) provides that neither Employers nor lobbyists may, "pay lodging expenses of an official in the ... executive branch." This provision would seem to disallow part of the AMA's stipend insofar as the stipend paid for lodging expenses. Therefore, the stipend for the cost of travel, lodging, and food would be prohibited unless allowed under one of the exceptions within Tenn. Code Ann. § 3-6-305(b).

Tenn. Code Ann. § 3-6-305(b)(1), provides an exception for gifts that are, "benefits resulting from business, employment, or other outside activities of a candidate or official or the immediate family of a candidate or official, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the candidate or official."

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<sup>4</sup> Tenn. Code Ann. § 65-1-101(establishing the Tennessee Regulatory Authority). Ms. Wilhoite is also a Councilwoman for Metropolitan Nashville Davidson County. As T.C.A. § 3-6-105 does not grant the Tennessee Ethics Commission ("Commission") jurisdiction over gift-giving to local officials, this opinion does not address the Davidson County ethics rules. The Commission suggests Ms. Wilhoite consult with the Metropolitan Nashville Davidson County Legal Department as to whether this gift would contravene any Davidson County ethics rules.

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In construing this statute, the Commission must follow the first rule of statutory construction used by the courts: that the intention of the legislature must prevail.<sup>5</sup> “The legislative intent and purpose are to be ascertained primarily from the natural and ordinary meaning of the statutory language.”<sup>6</sup> Under the natural and ordinary meaning of the words used in subsection (b)(1), the stipend is a benefit resulting from Ms. Wilhoite’s outside activities. Ms. Wilhoite is a stroke survivor who volunteers her time with the AHA. In her volunteer capacity, Ms. Wilhoite has become “politically active” within the AHA’s state advocacy committee.<sup>7</sup>

The next question is whether the benefit is “customarily provided to others in similar circumstances.”<sup>8</sup> *Webster’s II New College Dictionary* defines “customary” as “commonly practiced; usual.”<sup>9</sup> The AHA provides a stipend to a group of “politically active” heart disease and stroke survivors each year so these persons can attend the AHA’s annual Lobby Day in Washington, D.C. Ms. Wilhoite is a “politically active” stroke survivor. As such, Ms. Wilhoite meets the criteria for the AHA’s annual stipend. The benefit is not enhanced due to Ms. Wilhoite’s status as an official in the executive branch. Her employment with the TRA is in no way related to the gift of the stipend. Therefore, under the facts set forth in this opinion, the stipend for travel, lodging, and meals meets the requirements of Tenn. Code Ann. § 3-6-305(b) (1) and receipt of the stipend does not violate the Act.

Dianne Ferrell Neal, Acting Chair  
R. Larry Brown  
Thomas J. Garland  
Linda Whitlow Knight, Esq.  
Benjamin S. Purser, Jr.,  
Commissioners

Adopted: March 25, 2008.

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<sup>5</sup> *Mercy v. Olsen*, 672 S.W.2d 196, 2000 (Tenn. 1984).

<sup>6</sup> *State v. Blackstock*, 19 S.W.3d 200, 210 (Tenn. 2000).

<sup>7</sup> The AHA did not explicitly mention Ms. Wilhoite’s membership on the AHA’s advocacy committee in their request for an advisory opinion. The request did refer to Ms. Wilhoite as an advocate, but did not specify why this term was used. Mr. Nathan James, a lobbyist for the AHA, spoke with Commission staff and clarified that the reference to Ms. Wilhoite as an advocate and the reference to her political activity were both due to her membership on the AHA’s advocacy committee. Mr. James stated that in that position, Ms. Wilhoite is a strong advocate of physical activity for youth.

<sup>8</sup> Tenn. Code Ann. § 3-6-305(b)(1).

<sup>9</sup> *Webster’s II New College Dictionary*, 285 (3<sup>rd</sup> ed. 2005).