

Notice of Rulemaking Hearing

Tennessee Ethics Commission

Chapter 0580-01-05
Rules Pertaining to Prohibited Activities

There will be a hearing before the Tennessee Ethics Commission to consider the promulgation of rules pursuant to Tennessee Code Annotated, Section 3-6-107(1). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204, and will take place in the auditorium of the State Library and Archives Building located at 403 7th Ave. North, Nashville, TN 37243, at 8:15 a.m. CDT on the 22nd day of April, 2008.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Ethics Commission, 201 4th Ave. N, Suite 1820, Nashville, TN 37248, 615-253-8634, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, by telephone, or other means, and should be made no less than ten (10) days prior to April 28, 2008 or the date such party intends to review such filings, to allow time for the Commission to determine how it may reasonably provide such aid or service. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

Written comments will be considered if received by close of business, April 22, 2008, at the office of the Tennessee Ethics Commission, 201 4th Ave. N, Suite 1820, Nashville, TN 37243; 615-253-8634.

A copy of this notice of rulemaking hearing may be downloaded from the web at <http://state.tn.us/sos/tec/index.htm>, or may be obtained by contacting Willow Fort, Tennessee Ethics Commission, 615-253-8720, 201 4th Ave. N, Suite 1820, Nashville, TN 37243.

Substance of Proposed Rules

Chapter 0580-01-05
Rules Pertaining To Prohibited Activities

New Rules

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0580-01-05-.01 Purpose and Scope.

These rules are promulgated for the purpose of prescribing prohibited conduct and exceptions to these prohibitions for lobbyists, employers of lobbyists, candidates and officials of the executive and legislative branches, and immediate family members of such candidates and officials, pursuant to T.C.A. §§ 3-6-304 through 3-6-305.

Authority: T.C.A. §§ 3-6-105 through 3-6-107, 3-6-304 through 305, 3-6-308.

0580-01-05-.02 Definitions.

(1) Commission. The Tennessee Ethics Commission.

Authority: T.C.A. § 3-6-107(1).

0580-01-05-.03 Prohibited Activities.

- (1) No lobbyist, employer of a lobbyist, official of the executive branch, official of the legislative branch, or such official's immediate family members, as those terms are defined by T.C.A. § 3-6-301, shall engage in any conduct which is prohibited by T.C.A. § 3-6-304.
- (2) No lobbyist or employer of a lobbyist shall provide, directly or indirectly, to a candidate for public office, an official in the executive or legislative branch, or the immediate family of such candidate or official, a gift as prohibited in T.C.A. § 3-6-305, nor shall the candidate, official, or immediate family thereof accept such gift, except as allowed by T.C.A. § 3-6-305 or these Rules.
- (3) The ban on campaign contributions contained in § 3-6-304(j) does not prohibit contributions by a lobbyist to an incumbent legislator or governor that are made in support of their election to a federal office.
- (4) Campaign contributions from a lobbyist to an incumbent legislator or governor who is running for a local public office are prohibited.

Authority: T.C.A. §§ 3-6-304 through 3-6-305.

0580-01-05-.04 Exceptions to the Gift Prohibition.

- (1) Gifts Motivated by Close Personal Friendship. Gifts that are given for a non-business purpose and motivated by a close personal friendship are not subject to the gift ban pursuant to T.C.A. § 3-6-305(b)(3). In determining whether a gift is motivated by a close personal friendship the following factors will be considered:
 - (a) Whether the lobbyist or employer of a lobbyist is paying for or providing the gift out of his or her own personal funds, or whether the gift is instead being charged to the lobbying firm or to the employer of the lobbyist; whether the lobbyist is reimbursed by the lobbying firm or the employer of the lobbyist; or whether the cost of the gift is taken as a business deduction by the lobbyist, lobbying firm or employer. A gift that is expensed or the cost of which is reimbursed, or for which a business deduction is taken, will tend to indicate that the gift was provided for a business purpose.
 - (b) Whether there has been a history of gift giving between the lobbyist or the employer of a lobbyist, on the one hand, and the candidate, public official, or his or her immediate family, on the other hand; and the nature of the previous gift giving. The longer the practice, the more likely the gift giving is for a non-business purpose and a result of a close personal friendship. In addition, if the gift giving began prior to the candidate's or public official's attaining his or her status as such, and the pattern of gift giving remains consistent, then there is greater likelihood that the gift was a result of a close personal friendship rather than for a business purpose.
 - (c) Whether the candidate or public official, or immediate family member, has reciprocated with a gift to the lobbyist or the employer of the lobbyist in the past, and whether the gift has been of similar value. The presence of such a reciprocal gift will tend to indicate the existence of a non-business purpose and a close personal friendship.
 - (d) Whether the lobbyist or the employer of a lobbyist provides the same or similar items to other candidates, public officials, or the immediate families of such candidates or public officials at the same time, who are not also close personal friends. If similar gifts are provided to

other candidates or public officials who are not close personal friends, it tends to negate the inference that the gift is provided based on a close personal friendship and supports the inference that it is for a business purpose.

- (e) Whether the timing and circumstances of the gift are appropriate. When a lobbyist or an employer of a lobbyist has a matter that is currently before or will shortly be before a public official, a gift to such official is more likely to be construed as being motivated by a business purpose unless there are countervailing reasons for the timing of the gift.
- (f) In the case of a gift given by an individual who works for an employer of a lobbyist, whether the individual is involved in lobbying activities on behalf of the employer of a lobbyist. If the giver is not involved in lobbying activities, the gift is more likely to be construed as being based on a close personal friendship rather than being for a business purpose.

Authority: T.C.A. § 3-6-305(b)(3).

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of February, 2008. (FS 02-27-08; DBID 828)