

## October 1, 2008 Gift Act and Participation in Charitable Events

The Honorable Ben Lujan, Speaker  
New Mexico House of Representatives  
5 Entrada Celedon y Nestora  
Santa Fe, NM 87506

**Re:** Opinion Request - Gift Act and Participation in Charitable Events

Dear Speaker Lujan:

You have requested our advice regarding the Gift Act, NMSA 1978, Sections 10-16B-1 to -4 (2007), and the appropriate calculation of the value of a gift given by a restricted donor to a public official to attend or participate in a charitable event. According to your letter, restricted donors have historically provided complimentary tickets to public officials to charitable events and “usually the price of a ticket to a charitable event includes a non tax-deductible portion that is for the actual cost of food, entertainment and other expenses of the event and a charitable tax-deductible portion that is intended to be a contribution to the charity.” Therefore, your letter concludes that “it would appear that the market value of the gift received by a public official who is given a complimentary ticket from a restricted donor would be the retail price of the food and entertainment actually enjoyed by the official since the charitable contribution portion of the ticket gives no value to the official who cannot claim a charitable deduction.” Based on our examination of the relevant New Mexico constitutional, statutory and case law authorities, and on the information available to us at this time, we conclude that the value of the gift given by a restricted donor for purposes of the Gift Act is whatever the legislator would have had otherwise paid to attend or participate in the event.

The Gift Act prohibits a state officer, such as a state legislator, from accepting a gift with a market value greater than two hundred and fifty dollars (\$250) from a restricted donor. See NMSA 1978, § 10-16B-3. A restricted donor includes a person who “is a lobbyist.” NMSA 1978, § 10-16B-2(D). “Market value” is “the retail cost a person would incur to purchase a gift.” NMSA 1978, § 10-16B-2(C) (emphasis added). A “gift” is defined as a “transfer without commensurate consideration....” NMSA 1978, § 10-16B-2(B). A transfer is not considered a gift if a legislator pays for or reimburses the lobbyist for the fair market value of the item. See NMSA 1978, § 10-16B-2(B)(8).

Absent an exchange of consideration, a transfer from a restricted donor will constitute a gift subject to the Gift Act’s restrictions, unless it falls under an applicable exception. None of the exceptions, as presently written in the statute, appears to expressly cover a legislator’s attendance at or participation in a charitable event. Therefore, under the plain meaning of the Gift Act, the market value of a ticket to a charitable event is whatever the legislator would have otherwise paid to purchase the ticket, if he had not otherwise received the gift from a restricted donor. So, if the ticket value is \$50, the value of the gift under the Gift Act is \$50.

You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Although we are providing you with our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Sincerely,

ZACHARY SHANDLER  
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General