

**Prohibited Gifts from Lobbyists**

**Interpretation**

*The Lobbyists Act s.*12

12.1(1) Subject to section (2), in the course of lobbying activities, no consultant or in-house lobbyist shall give or promise any gift or personal benefit to the public office holder being lobbied or intended to be lobbied that the public office holder is not allowed to accept or that, if given, would place the public office holder in a conflict of interest.

12.1(2) Subsection (1) does not apply to a gift or personal benefit valued at less than $200 and that is given as an incident of protocol or social obligations that normally accompany the duties or responsibilities of office of the public office holder.

12.1(3) For the purposes of this section and subsection 25(1.1), “gift or personal benefit” includes:

 (a) an amount of money, if there is no obligation to repay it;

(b) a service, hospitality or property, including the use of property, that is provided without charge or for a charge that is less than its commercial value;

 (c) any other prescribed gift or personal benefit.

**Summary:**

Lobbyists in Saskatchewan must be cautious when they are considering giving or offering any gift or personal benefit (including event or conference invitations) to public office holders. Giving or promising a gift or personal benefit to a public office holder whom you intend to lobby may invite them to breach the restrictions to which they are subject as a public office holder or place them in a conflict of interest. As a result, you could breach your obligations as a lobbyist under *The Lobbyists Act.*

The onus remains on lobbyists to ensure that the offer of any gift or personal benefit to a public office holder complies with *The Lobbyists Act* before they make the offer.

It is important to note that an offer of a gift or personal benefit to a public office holder itself can be a breach of section 12 of the Act, even if the public office holder ultimately does not accept, or does not end up receiving or keeping the gift or personal benefit.

**Directive:**

Each time before giving or offering any gift or personal benefit lobbyists must complete the 2 step inquiry by confirming that the contemplated gift or personal benefit: 1) is something that the particular public office holder is allowed to accept AND 2) would not place the particular public office holder in a conflict of interest.

Lobbyists cannot make a prohibited offer of a gift or personal benefit and state that the offer is conditional upon whether the offered gift or personal benefit is acceptable in order to evade their obligations under section 12.1 of the Act.

Lobbyists also cannot suggest that the recipient public office holder make a donation to charity in an amount equivalent to the value of the gift or personal benefit in order to avoid their obligations under section 12.1 of the Act.

A breach of section 12.1 of the Act may result in an investigation and/or the imposition of an administrative penalty in an amount determined by the Registrar. An investigation will result in a report which is submitted to the Speaker of the Legislative Assembly, laid before the Legislative Assembly, and subsequently may be made public.

This document provides general guidance to lobbyists regarding gifts and personal benefits to public office holders but it does not lessen the lobbyists’ responsibility to make the necessary inquiries and to take precautions to ensure that they comply with the Act.

This Directive provides general information only and does not constitute legal advice. This Directive should not be relied upon as an official ruling nor be considered a substitute for contacting the Office of the Registrar of Lobbyists to discuss a specific instance or request a ruling on a specific case.

**Authority:**

This Directive is issued by the Registrar of Lobbyists pursuant to section 17 of *The Lobbyists Act.*

What is a Gift or Personal Benefit?

A gift or personal benefit is defined in section 12.1(3). Some non-exhaustive examples of gifts or personal benefits which may be prohibited under section 12.1 inlcude:

* an invitation and/or ticket to a conference or to a sporting, cultural, entertainment, hospitality, charity, community, educational, speaking or other event;
* food, beverage or other hospitality;
* a gift certificate;
* money in any form (e.g. cash, cheque, bank draft, etc);
* personal property (e.g. gift basket, wine, beer, flowers, art, blanket, footwear or a book, etc);
* use of property or facilities (e.g. hotel room or other accommodation, a golf course, residence or use of a vehicle or aircraft, etc);
* membership in a club or other organization;
* a service (e.g. travel/transportation services such as private car or aircraft services, dry cleaning services, spa or beauty salon, etc);
* payment or reimbursement of travel or mileage expenses;
* donations made in the name of a public office holder where the public office holder receives the tax receipt.

Determining the Value of a Gift or Personal Benefit

To determine the value of a contemplated gift or personal benefit lobbyists must take into account the total market value (including any applicable taxes, fees or service charges) of everything that they intend to give or offer to the public office holder for free or at a discount.

For tickets to events, the total market value is the face value amount (plus any applicable taxes, fees and service charges) that *any member of the public* would pay for the ticket on the open market.

For example, even if there is a lower ticket price available only to members of the organization that is hosting the event, one must take into account the total face value (plus any applicable taxes, fees and service charges) of a ticket available to any individual in the public on the open market, not the lower price for members.

As another example, even if a portion of the ticket price is tax deductible, one must take into account the total face value ((plus any applicable taxes, fees and service charges) that any individual in the public would pay for the ticket on the open market, not only the portion of the ticket price that was not tax deductible.

For events where there is no ticket price, but food, beverage, entertainment, hospitality or other gifts or personal benefits will be provided, lobbyists must determine the total value of what is being given or offered free to an attendee at the event by taking into account the total cost of the event (e.g. venue rental costs, food/catering costs, bar/beverage costs, service costs, transportation costs, etc) and then dividing that total cost by the total number of anticipated attendees.

If a gift or personal benefit is also given or offered to a guest of the public office holder in their capacity as a guest of the public office holder, the same considerations apply as if it were given or offered to the public office holder directly and the value of the gift or personal benefit to the guest must be included in the total value of what is being given or offered to the public office holder.

**STEP 1:** Check that the Gift or Personal Benefit is something that the Public Office Holder is allowed to accept

There are a variety of documents that contain restrictions regarding public office holders’ acceptance of gifts or personal benefits. Different public office holders will be subject to different restrictions.

As the first step before offering any gift or personal benefit to a public office holder, lobbyists must consult the particular gift and event restrictions that apply to that particular public office holder in order to ensure that the contemplated gift or personal benefit is acceptable for that public office holder. The answer as to whether it is permissible to offer a particular gift or personal benefit may vary in respect of different public office holders. In this regard, lobbyists should be aware of and consult the following:

MLA’s and Members of Executive Council

*The Members’ Conflict of Interest Act*

* contains restrictions and monetary limits regarding acceptance of gifts or personal benefits for MLA’s and cabinet ministers;
* non-monetary gifts or personal benefits with a value over $200.00 from the same source in a calendar year cannot be offered to MLA’s or Ministers (section 7);

Employees of the Government of Saskatchewan

*Public Service Commission – Appendix A Conflict of Interest Guidelines*

* contains guidance on vendor-sponsored travel and acceptance of gifts

Employees of Crown Agencies

All of the Saskatchewan Crown agencies have their own policy respecting gifts and personal benefits. These can be found on their respective websites.

**STEP 2:** Consider whether the gift or personal benefit would place the public office holder in a conflict of interest

Once lobbyists have confirmed under step 1 that a gift or personal benefit is within the limits of what may be accepted under the relevant public office holders applicable gift and event restrictions, the second step before offering the contemplated gift or personal benefit to a public office holder is for lobbyists to consider whether giving such a gift or personal benefit would place the relevant public office holder in a conflict of interest.

It is possible, depending on who is offering it and the relationship and circumstances between the offerer and recipient public office holder, that a gift or personal benefit within the acceptable limits, nevertheless could put the public office holder in a conflict of interest. When considering the relationship and circumstances, lobbyists should take into account, without limitation, any past, current and anticipated official dealings with the public office holders(s) and any past, current or anticipated lobbying of the public office holders(s). For example, giving or offering a gift or personal benefit to a public office holder shortly before they make a decision that will affect your organization or industry would likely put them in a conflict of interest.

Public office holders are in a conflict of interest when their private interests influence their performance or decision-making when carrying out their public office or powers. By offering a gift or personal benefit to a public office holder, you may be putting them in a position in which their private interests in receiving or being offered the gift or personal benefit influence their performance or decision-making when carrying out their office or powers as a public office holder.

If a lobbyist is currently lobbying, or intends to lobby, a public office holder, offering any gift or personal benefit to that public office holder has the potential to place that public office holder in a conflict of interest.

Generally, giving or promising a gift or personal benefit to a public office holder would not put them in a conflict of interest if it has a reasonable cost (valued at less than $200) and is an incident of protocol or normal social obligations at an occasion that the public office holder is attending, either in a ceremonial or presentational capacity, or as a representative of the Government or a prescribed Provincial entity, as part of their duties as a public office holder. Non exhaustive examples include:

* a tangible gift of less than $200.00 given to a public office holder as a gesture of appreciation for the public office holder participating in, appearing, bringing greetings, introducing a speaker, or giving a speech at an event;
* a ticket to a conference or public event, given to the public office holder by the conference or event organizers, at which the public office holder is playing an active role or the attendance of the public office holders is reasonably expected, such as a conference at which the public office holder is speaking or a community, educational or charity event in the public office holder’s constituency or subject matter area;
* a tangible gift of less than $200.00 given to a public office holder by a cultural or social group in accordance with that cultural or social group’s tradition at an event or meeting with that cultural or social group;
* food and beverages of less than $200.00 served to a public office holder at a “show and tell” event hosted by an industry, business, trade or professional group at which public office holders are educated about the industry, business, trade or profession and its issues.

Remember that these examples, and any other examples of a circumstance that likely would not place the public office holder in a conflict of interest, would still only be allowed under section 12.1 if the total value of the gift or personal benefit is less than a value of $200.00.

Questions for Lobbyists to ask themselves before offering a gift or personal benefit to a public office holder.

 Before offering any gift or personal benefit to a public office holder, the lobbyist should ask themselves:

* is the intended recipient a public office holder?
* am I lobbying this public office holder?
* do I intend to lobby this public office holder in the future?
* have I determined that the total market value of the contemplated gift or personal benefit is $200 or less?
* have I consulted the gift and event restrictions applicable to this public office holder and confirmed that this public office holder can accept this particular gift or personal benefit under those restrictions?
* taking into account the relevant relationships and circumstances, would a reasonable person view the offering of this particular gift or personal benefit as an attempt to influence, or as having the effect of influencing, this public office holder’s decisions or performance when carrying out their office or powers as a public office holder?
* have I determined that the gift or personal benefit is given as an incident of protocol or social obligation?