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ADMINISTRATIVE MEMO #109 Revised

DATE: November 10, 1994

TO: All Administrative Unit Heads

FROM: James E. Wesner
General Counsel

RE: The New Legislative Lobbying Law and Related Ethics Law Amendments

Effective May 12, 1994, Ohio adopted amendments to its legislative lobbying law which significantly expand the registration and reporting requirements for lobbying activities by state universities. The law, as amended, requires "legislative agents" and their "employer" (1) to register with a newly formed Joint Legislative Ethics Committee (JLEC); (2) to file reports concerning (a) "expenditures" made to, at the request of, for the benefit of, or on behalf of any particular member of the general assembly, any particular member of the controlling board, the governor, the director of an administrative department, or any particular member of the staff of the foregoing public officers or employees (hereafter, a "decisionmaker") and (b) "financial transactions" with or for the benefit of a decisionmaker; and (3) to maintain records of reportable "expenditures."

The following sections discuss the registration, reporting and recordkeeping requirements as they apply to the University. A final section discusses certain recent changes in the general ethics laws of the state which significantly affect relations between legislators and legislative agents.

1. Registration. "Legislative agents" and their "employers" must each register with JLEC. An "employer" is a person who engages or employs (for compensation) a "legislative agent." The University is an "employer."

A "legislative agent" is "any individual . . . who is engaged during at least a portion of his time to actively advocate as one of his main purposes." "Actively advocate" means to promote, advocate, or oppose the passage, modification, defeat, or executive approval or veto of, any "legislation" by means of direct communication with a decisionmaker, but does not include public testimony before a board or legislative committee. "Legislation" means any matter, including a nomination, pending before the general assembly or the controlling board or awaiting executive approval or veto. (A related statute regulates lobbying by "executive agency lobbyists," who are persons engaged to influence executive agency decisions. However, officers and employees of state agencies who act as representatives of their agencies in an effort to influence executive agency decisions are excluded from this definition and thus need not register as "executive agency lobbyists.")

The Vice President for Public Affairs is registered as the University's legislative agent. Other senior University officers who engage in "active advocacy" may also be required to register if the "active advocacy" is one of the officer's "main purposes." Any officer who believes his or her activities may give rise to a registration obligation should seek advice from the Office of General Counsel.

2. Reports. Both the University (represented by the President) and its legislative agent must file separate periodic expenditure and financial transaction reports with JLEC. These are due on January 31, May 31, and September 30 in each year.

(a) Reports of Expenditures

The term "expenditure" encompasses virtually anything of value, including food and beverages, entertainment, lodging, transportation, gifts, and any promise to make an expenditure, whether or not legally enforceable. These must be reported if made to, at the request of, for the benefit of or on behalf of a decisionmaker by the employer or its legislative agent. There is no exclusion for expenditures below a minimum value; all expenditures are covered regardless of amount. Since what is reportable is the making of "expenditures" to or for designated "decisionmakers" rather than an attempt to influence legislation, expenditures made in connection with purely social contacts are also covered by the law's reporting requirements. However, personal expenditures made by employees other than a legislative agent and not reimbursed by the employer are not reportable.

Three types of information must be reported, depending on the nature of the "expenditure" and the identity of the filer:

(i) Each report filed by the University and each report filed by the legislative agent must show the total of all expenditures made to or for all decisionmakers during the reporting period.

(ii) If, during a reporting period covered by a statement, the University or the legislative agent, collectively or separately, made expenditures to or for a particular decisionmaker, other than expenditures made by a legislative agent as payment for meals and other food and beverages, the University's or legislative agent's report for the period shall also state

- the decisionmaker's name;
- the total amount of the expenditures;
- a brief description of the expenditures; and
- the specific item of legislation, if any, for which the expenditures were made.

(iii) If, during a reporting period covered by a statement, the legislative agent made expenditures to or for a particular decisionmaker as payments for meals and other food and beverages that, when added to the amount of previous payments made for meals and other food and beverages during the same calendar year, exceeded a total of \$50, the legislative agent's report shall include the same information as is specified in (ii) above for that decisionmaker. Payments for meals and other food and beverages provided to a member of the general assembly at a meeting at which the member participated in a panel, seminar or speaking engagement, or at a meeting of a national organization to which the legislature or any state agency pays membership dues, are not required to be reported. It is also not necessary to apportion to particular decisionmakers payments made for meals and other food and beverages at a party or other function sponsored by an employer or a legislative agent if all members of the legislature or all members of either house are invited, but the amount spent on the function must be included in the expenditure totals and the date, purpose and amount spent on the function must be separately stated on the relevant reports.

(b) Reports of Financial Transactions.

"Financial transaction" means activity that is conducted jointly for profit between a legislative agent, his employer, or a member of the legislative agent's immediate family and a decisionmaker. Such transactions must be reported at the same time as the expenditure reports.

3. Recordkeeping Requirements. Legislative agents and their employers are required to maintain receipts and other records relating to reportable "expenditures" until December 31 of the second calendar year following the year in which the expenditures were reported.

4. Compliance Procedures. The University, as an employer, must rely on its officers for the information it needs to complete the reports and for the receipts and other records that must be retained to substantiate the reports. Your cooperation in following the compliance procedures is essential.

Each vice president will be responsible for reporting "expenditures" made in his or her area to the Vice President for Public Affairs who, in turn, will compile the information submitted and prepare and file the University's reports. Receipts or other records relating to the reported expenditures should be attached to and submitted with the vice presidential reports. The vice presidential reports are due December 31, April 30 and August 31 of each year, and shall be submitted on the attached form. This is the same form you should have been filing under the previous version of this Administrative Memorandum. The form must be filed even if you have nothing to report. If you have not been filing this form as required, please submit any missing forms from the past periods immediately.

"Financial transactions" (as defined) violate University policies; if any such transactions occur, or may have occurred, the relevant facts should be reported to the Office of General Counsel, which will assist the Vice President for Public Affairs in determining whether the transaction is covered by the reporting requirement and, if so, what report should be made.

5. Special Ethics Rules Affecting Legislators and Others.

In addition to the registration and reporting requirements for legislative lobbying described above, certain important changes to the state's general ethics laws should also be noted.

-- Members of the legislature are prohibited from receiving gifts from legislative agents whose value exceeds \$75. However, in this context, "gift" does not include campaign contributions, meals and other food and beverages, and travel expenses incurred in connection with the legislator's official duties. Any payments for these excluded items must, of course, be reported both by the legislator and by the legislative agent.

-- Public officials and employees, including legislators but excluding state university presidents and trustees, may not accept "honoraria," which are defined as "payment(s) made in consideration for any speech, article published, or attendance at any public or private conference . . . or similar gathering." However, the prohibition does not apply to ceremonial gifts of insignificant value or to acceptance of the payment of actual travel expenses.

To avoid embarrassment, any University employee who proposes to make a gift to a legislator or to pay an honorarium to any public official or employee should consult the Vice President for Public Affairs in advance of the transaction.

REPORT OF EXPENDITURES AND
FINANCIAL TRANSACTIONS

Each vice president or his/her delegated representative(s) shall submit this report to the Office of the Vice President for Public Affairs on December 31, April 30 and August 31 of each year. For instructions, see the following page.

A. Expenditures:

During the reporting period, my area

___ made no reportable "expenditures;" or

___ made the following reportable "expenditures:"

1. Name of receiving Decisionmaker:
2. Date of each expenditure, total amount or value of the expenditure(s), and description of the expenditure(s):

<u>Date</u>	<u>Amount</u>	<u>Description</u>
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3. (If applicable), the specific item of legislation in connection with which each expenditure was made.

B. Financial Transactions.

During the reporting period

___ no "financial transactions" were entered into; or

___ a possible "financial transaction" has been reported to the Office of General Counsel.

Dated: _____

Name

Title

Instructions:

Part A deals with "expenditures" made to, at the request of, for the benefit of, or on behalf of any particular member of the general assembly, any particular member of the controlling board, the governor, the director of an administrative department, or any particular member of the staff of the foregoing public officers or employees (hereafter, a "decisionmaker"). The term "expenditure" encompasses virtually anything of value, including food, beverages, entertainment, lodging, transportation, gifts and any promise to make a gift, whether or not legally enforceable. "Expenditures" are reportable even if made in a social context without any intent of influencing legislation or other government action. However, personal (unreimbursed) expenditures made by employees are not covered.

Part B deals with "financial transactions," which are defined as activities that are conducted jointly for profit between the University and a decisionmaker. Because joint transactions of this type violate University policies, the appropriate response to the form is "none." If any such transactions occur, or may have occurred, the matter should be reported to the Office of General Counsel for further review.

If your report involves more than one decisionmaker, please file a separate report for each decisionmaker named.

For each "expenditure" reported, attach all receipts and other records (or copies thereof) relating to the expenditure.