

## **CHAPTER 16**

### **LOBBYING**

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## CHAPTER 16

### LOBBYING

**16.1 Scope of This Chapter.** Lobbying activities and expenditures by public bodies are subject to the registration and reporting requirements set forth in A.R.S. §§ 41-1231 to -1239. Any state employee involved with lobbying should consult the Secretary of State's publication titled "Lobbyists Made EZ: Handbook for Lobbying and Lobbyists in Arizona," which is published pursuant to A.R.S. § 41-1232.05 and contains the relevant statutes, written guidelines, and forms. This Chapter summarizes the key terms and provisions of the state law regulating lobbying.

#### **16.2 Definition of Selected Terms in Lobbying Act.**

**16.2.1 Authorized Public Lobbyist.** "Authorized public lobbyist" means a person, other than a designated public lobbyist, who is employed by, retained by or representing a public body, with or without compensation, for the purpose of lobbying and who is listed as an authorized public lobbyist by the public body in its registration pursuant to section 41-1232.01." A.R.S. § 41-1231(2).

**16.2.2 Designated Public Lobbyist.** "Designated public lobbyist" means the person who is designated by a public body as the single point of contact for the public body and who is listed as the designated public lobbyist by the public body in its registration pursuant to section 41-1232.01." A.R.S. § 41-1231(4).

**16.2.3 Entertainment.** "Entertainment" means the amount of any expenditure paid or incurred for admission to any sporting or cultural event or for participation in any sporting or cultural activity." A.R.S. § 41-1231(5).

**16.2.4 Expenditure.** "Expenditure" means a payment, distribution, loan, advance, deposit or gift of money or anything of value and includes a contract, promise or agreement, whether or not legally enforceable, to make an expenditure that provides a benefit to an individual state officer or state employee and that is incurred by or on behalf of one or more principals, public bodies, lobbyists, designated public lobbyists or authorized public lobbyists." A.R.S. § 41-1231(6).

**16.2.5 Single Expenditure.** "Single Expenditure" means an expenditure that provides a benefit of more than twenty dollars to an individual state officer or state employee and that is incurred by or on behalf of one or more principals, public bodies, lobbyists, designated public lobbyists or authorized public lobbyists." A.R.S. § 41-1231(20). See A.R.S. § 41-1232.03(D).

**16.2.6 Food or Beverage.** "Food or Beverage" means the amount of any expenditure paid or incurred for food or beverages for a state officer or employee provided at a location at which the principal, public body, lobbyist, designated public

lobbyist or authorized public lobbyist who made the expenditure is present.” A.R.S. § 41-1231(8).

**16.2.7 Legislation.** “‘Legislation’ means bills, resolutions, memorials, amendments, nominations and other matters that are pending or proposed in either house of the legislature of this state or for purposes of bonding lobbying for any matter pending or proposed before any school district governing board.” A.R.S. § 41-1231(10).

**16.2.8 Lobbying.** “‘Lobbying’ means attempting to influence the passage or defeat of any legislation by directly communicating with any legislator or attempting to influence any formal rulemaking proceeding pursuant to Chapter 6 of [Title 41] or rulemaking proceedings that are exempt from Chapter 6 of [Title 41] by directly communicating with any state officer or employee.” Lobbying also includes, “for a person who is otherwise required to be registered as a lobbyist for compensation pursuant to this article [Article 8.1], attempting to influence the procurement of materials, services or construction by an agency as defined in § 41-1001, including the office of the governor. Lobbying does not include:

- (a) Interagency communications between state agency employees.
- (b) Communications between a public official or employee of a public body, designated public lobbyist or authorized public lobbyist and any state officer, except for a member of the legislature, or employee of the legislature.
- (c) Oral questions or comments made by a person to a state officer or employee regarding a proposed rule made in public at a meeting or workshop that is open to the public and that is sponsored by a state agency, board, commission, council or office.
- (d) Communications between a public body and a self-employed person or person employed by a partnership or company regarding the procurement of materials, services or construction unless the self-employed person or person employed by a partnership or company is otherwise required to register pursuant to this article [Article 8.1] or is employed by, supervised by at any level or contracted with a person who is otherwise required to register pursuant to this article.

A.R.S. § 41-1231(11).

**16.2.9 Public Body.** “Public Body’ means the Arizona [B]oard of [R]egents, a university under the jurisdiction of the Arizona [B]oard of [R]egents, the judicial department, any state agency, board, commission or council, any county, any county elected officer who elects to appoint a designated public lobbyist or any city, town, district or other political subdivision of this state that receives and utilizes tax revenues and that employs, retains, engages or uses, with or without compensation, a designated public lobbyist or authorized public lobbyist.” A.R.S. § 41-1231 (18).

**16.2.10 Gift.** “Gift’ means a payment, distribution, expenditure, advance, deposit or donation of money, any intangible personal property or any kind of tangible personal or real property. This term does not include:

- (a) A gift, devise or inheritance from an individual’s spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin or the spouse of any such individual if the donor is not acting as the agent or intermediary for someone other than a person covered by this subdivision.
- (b) Expenditures which are either properly reported or exempt from reporting under this chapter for:
  - (i) A speaking engagement.
  - (ii) Food or beverages.
  - (iii) Travel and lodging.
  - (iv) Flowers.
- (c) Salary, compensation or employer-reimbursed expenses lawfully paid to a public official.
- (d) The value, cost or price of professional or consulting services that are not rendered to obtain a benefit for any registered principal, public body, lobbyist, designated public lobbyist or authorized public lobbyist or the clients of a principal or lobbyist.
- (e) Expenses relating to a special event or function to which all members of the legislature, either house of the legislature or any committee of the legislature are invited.
- (f) A plaque or other form of recognition similar to a plaque to a state officer or state employee to signify

the honorary recognition of a service or other notable accomplishment.

- (g) Informational material such as books, reports, pamphlets, calendars or periodicals.
- (h) An item that is not used and that is returned within fifteen days of receipt to the donor or that is delivered within fifteen days of receipt to a charitable organization and that is not claimed as a charitable contribution for state or federal income tax purposes.
- (i) A campaign contribution that is properly received and reported as required by law.
- (j) An item that is given to a state officer or employee if the state officer or employee gives an item of approximately the same value to the giver of the item at the same time that the item is given or on a similar occasion as the one that prompted the original item to be given.
- (k) Gifts of a personal nature that were customarily received by an individual from the donor before the individual became a state officer or employee.
- (l) An item that is given to the general public at an event.

A.R.S. § 41-1231(9). See *also* Ariz. Att’y Gen. Op. I13-009 (opining that anonymous contributions to a legislator’s legal defense fund may be excluded under § 41-1231(9)(d) to the extent they constitute the value, cost or price of professional services).

**16.2.11 Speaking Engagement.** “‘Speaking Engagement’ means the amount of any expense paid or incurred for entrance fees, lodging, food and beverage, entertainment, travel and other expenses for the state officer’s or employee’s attendance at any event, committee, meeting, conference or seminar, including meetings of state, regional or national organizations or their committees concerned with legislative or governmental activities if the state officer or employee participates in the event as a speaker or panel participant by presenting information relating to the state officer’s or employee’s legislative or official duties or by performing a ceremonial function appropriate to the state officer’s or employee’s position, . . . [but] [d]oes not include expenditures for an honorarium or any other similar fee paid to a speaker. A.R.S. § 41-1231(21).

**16.2.12 State Officer.** “‘State officer’ means a person who is duly elected, appointed or retained through election to any state office, or a member of any state

board, commission or council, and includes a member of the legislature.” A.R.S. § 41-1231(212).

**16.2.13 Technical Expert.** A technical expert is “a person who answers technical questions or provides technical information at the request of a lobbyist, designated public lobbyist, authorized public lobbyist or legislator and who makes no expenditure required to be reported by this article [Article 8.1, Registration and Regulation of Lobbyists].” A.R.S. § 41-1232.04(4). Registration requirements do not apply to persons who act as technical experts. *Id.*

**16.2.14 Procurement.** “‘Procurement’ has the same meaning prescribed in section 41-2503.” Thus, “‘Procurement’:

- (a) Means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services.
- (b) Includes all functions that pertain to obtaining any materials, services, construction or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

A.R.S. § 41-2503(31).

**16.3 Registration of Public Body.** “[B]efore any public body causes any lobbying to occur on its behalf, the public body shall register with the [S]ecretary of [S]tate by filing a written statement . . . [disclosing] [t]he name and business address of the public body; [t]he name and address of a person who is the designated public lobbyist for the public body . . . ; [t]he name and business address of each authorized public lobbyist employed by, retained by or representing the public body; . . . [and a] description of the expenses for which each designated public lobbyist and authorized public lobbyist is to be reimbursed by the public body.” A.R.S. § 41-1232.01(A). This public body registration is accomplished on forms provided by the Secretary of State and available in the Secretary of State’s handbook entitled “Lobbyists Made EZ: Handbook for Lobbying and Lobbyists in Arizona,” and must be filed, along with a \$25 fee, after December 1 in each even numbered year and no later than 5:00 pm on the second Monday in January of the following odd numbered year. A.R.S. § 41-1232.01(C), (E). In addition to this public body registration, all individual lobbyists must be registered with the Secretary of State. A.R.S. § 41-1232.05. See Section 16.4, Registration of Lobbyists. “If a registration . . . cannot be accomplished or is not practicable in advance of the first attempt or occasion to lobby, registration must occur within five business days after the day on which the first lobbying attempt, occasion or activity occurs.” A.R.S. § 41-1232.01(B).

In addition to registration, a public body has the obligation to give a special notice to its designated public lobbyist and all authorized public lobbyists. A.R.S. § 41-1232.01(D). “The notice shall state that the public body has listed the designated public

lobbyist or authorized public lobbyist on the public body's registration or reregistration statement and that this listing obligates the designated public lobbyist to register and file all reports required by this article." *Id.* Further, the notice "shall be accompanied by a summary of the lobbyist laws published by the [S]ecretary of [S]tate, the first page of the public body's registration and the page of the schedule on which the designated or authorized public lobbyist's name appears." *Id.*

**16.4 Registration of Lobbyists.** In addition to registration by public bodies which cause lobbying to occur on their behalf, every designated public lobbyist "shall file a lobbyist registration form with the [S]ecretary of [S]tate in a format prescribed by the [S]ecretary of [S]tate . . . any time beginning December 1 in the odd numbered year until 5:00 p.m. on the second Monday in January in the even numbered year," "and shall read a handbook containing statutes and rules governing lobbyists for compensation, designated lobbyists and designated public lobbyists, written guidelines and forms and samples for completing the lobbyist disclosure forms." A.R.S. § 41-1232.05(A). Authorized public lobbyists are not required to register personally, A.R.S. § 41-1232.05, but the public body must register the name of each authorized public lobbyist *prior* to that individual engaging in any lobbying activity, or within five business days after the first lobbying attempt, occasion or activity occurs, A.R.S. § 41-1232.01; *but see* Ariz. Att'y Gen. Op. 187-152 (discussing private employees "not retained for the express purpose of lobbying"). Technical experts do not have to register with the Secretary of State in any fashion as long as the technical expert provides information at the request of a lobbyist or legislator and as long as the technical expert makes no expenditure required to be reported by Article 8.1.

**16.5 Annual Report of Expenditures.** Each public body must file an annual report setting forth all expenditures benefitting a member of the legislature. The designated public lobbyist files the report and it must be filed by March 1 of each year for the preceding calendar year. A.R.S. § 41-1232.03(A). The report must list all single expenditures (more than \$20) made by the public body "received by or benefitting a member of the legislature whether or not the expenditures were made in the course of lobbying." A.R.S. § 41-1232.03(A). Each expenditure must be itemized separately, showing "the date of the expenditure, the amount of the expenditure, the name of each member of the legislature receiving or benefitting from the expenditure, the category of the expenditure, and the name of the designated public lobbyist or authorized public lobbyist who made the expenditure." *Id.*

"In addition each public body shall report annually the aggregate of all expenditures of twenty dollars or less received by or benefiting a member of the legislature, whether or not the expenditures were made in the course of lobbying." *Id.*

The report also must "list all expenditures by the public body made in the course of lobbying for the personal sustenance, filing fees, legal fees, employees' compensation, meals, lodging and travel of the designated public lobbyist and all authorized public lobbyists employed or retained by, and representing, the public body." *Id.* Employee compensation may be reported by establishing a time allocation schedule



for apportioning lobbying activity based on actual experience. “The public body shall apportion expenditures that are attributable both to lobbying and to other activities of the public body and report only the portion attributable to lobbying.” *Id.*

The reports must identify each “single expenditure,” A.R.S. § 41-1231(20), by categories: food or beverages; speaking engagement; travel and lodging; flowers; other expenditures. A.R.S. § 41-1232.02(D).

The Annual Report of Expenditures, as well as all other lobbying reports, are filed on forms supplied by the Secretary of State and may be copied from the Secretary of State’s handbook, “Lobbyists Made EZ: Handbook for Lobbying and Lobbyists in Arizona.”

Also included in the Annual Report are expenditures incurred by a public body, designated public lobbyist or authorized public lobbyist for special events for legislators. Special events include parties, dinners, athletic events and entertainment to which all members of the legislature, either house of the legislature, or any committee are invited. Expenditures are not allocated to individual legislators, but the description of the event, date, location, name of group invited and total expenditures must be reported. A.R.S. § 41-1232.03(F).

**16.6 Expenditures Not Required to be Included in Annual Report.** “Expenditures by a public body, designated public lobbyist or authorized public lobbyist for personal sustenance, family gifts [or] personal hospitality . . . are not required to be reported.” A.R.S. § 41-1232.03(E). In addition, expenditures for those items excluded from the definition of a gift such as gifts and inheritances, salary lawfully paid to a public official, the value of professional or consulting services not paid to obtain a benefit, recognition awards, informational materials, lawful campaign contributions, gifts exchanged for approximately the same value, gifts customarily given and received prior to when the recipient became a state officer, and items given to the general public at an event, are *not* required to be reported. A.R.S. §§ 41-1232.03(E) and 41-1231(9)(a), (c), (d), (f), (g), (h), (i), (j), (k) and (l); Section 16.2.10. The exclusions apply to quarterly reports also. See Section 16.7.

**16.7 Quarterly Reports of Expenditures.** No later than the last day of the month following the end of a calendar quarter, each designated public lobbyist must file a quarterly report of all single expenditures (more than \$20), see Section 16.2.5, and of the aggregate of all expenditures of twenty dollars or less that were received by or benefited a member of the legislature, and which were incurred in the preceding calendar quarter by the designated public lobbyist, irrespective of whether the expenditures were made in the course of lobbying. A.R.S. §§ 41-1232.03(B) and (C). Each designated public lobbyist’s report also shall include all single expenditures and the aggregate of all expenditures of twenty dollars or less incurred during the quarter by each registered authorized public lobbyist for the same public body. *Id.* An expenditure received by or benefiting an employee of a public body who is not a member or employee of the legislature or a member of the household of a member or employee of

the Legislature is not required to be reported. *Id.* The reports must itemize the expenditures setting forth separately:

- a) Aggregate of all expenditures, \$20 or less, not made on behalf of a public body;
- b) Single expenditures, more than \$20, not made on behalf of a public body;
- c) Aggregate of all expenditures, \$20 or less, made on behalf of a public body;
- d) Single expenditures, more than \$20, made on behalf of a public body.

A.R.S. §§ 41-1232.03(B) and (C). The Secretary of State provides schedules for this itemized reporting. Excluded from the quarterly reports are the same items that are excluded from the annual reports. A.R.S. § 41-1232.03(E); Section 16.6. Special events are reported in quarterly reports pursuant to the categories itemized above. A.R.S. § 41-1232.03(F).

**16.8 Prohibited Gifts to and Expenditures to State Officers and Employees.** No one may “make a gift to or an expenditure on behalf of a member or employee of the legislature through another person or organization for the purpose of disguising the identity of the person making the gift or expenditure.” A.R.S. § 41-1232.03(I).

Public bodies, principals, lobbyists and public lobbyists are limited in gift-giving to \$10 per year per legislator. “A public body, designated public lobbyist or authorized public lobbyist or any other person acting on behalf of a public body, designated public lobbyist or authorized public lobbyist shall not give to any member of the legislature and a member of the legislature shall not accept from a public body, designated public lobbyist or authorized public lobbyist either of the following:

- 1. Gifts with a total value of more than ten dollars during any calendar year.
- 2. Gifts that are designed to influence the member's or employee's official conduct.

A.R.S. § 41-1232.03(J); *accord* 41-1232.02(J).

This gift prohibition has numerous exceptions permitting expenditures for speaking engagements, food or beverages, travel and lodging, and flowers properly reported and exempts specific events to which all members are invited, and gifts of a personal nature received before the person became a legislator. A.R.S. § 41-1231(9).

Finally, the gift prohibition in A.R.S. § 41-1232.03(J) “does not apply to gifts given by a public body, [or] . . . public lobbyist to an employee of a public body, . . . [who] is not a public official or a member of the household of a public official or if the gift is accepted on behalf of the public body and remains the property of the public body.” A.R.S. § 41-1232.03(K). A “[p]ublic official” means a person who is duly elected, appointed, or retained through election to an elected state, county or local office.” A.R.S. § 41-1231(19).

**16.9 Exemptions From Registration and Reporting Requirements of A.R.S. § 41-1232.01 of Concern to State Officers and Employees.** The registration and reporting requirements of A.R.S. § 41-1232.01 do not apply to:

1. A natural person who appears for himself or herself before a committee of the legislature to lobby in support of or in opposition to legislation. A.R.S. § 41-1232.04(1).
2. A natural person who, acting in his or her own behalf, sends a letter to, converses on the telephone with, or has a personal conversation with a state officer or employee for the purpose of supporting or opposing any legislation. *Id.* § (2).
3. An “elected or retained public official, judge or justice, a person duly appointed to an elective public office, or an appointed member of a state . . . board, advisory committee, commission or council acting in [an] official capacity on matters pertaining to [the] office.” *Id.* § (3).
4. “A person who answers technical questions or provides technical information at the request of a lobbyist, designated public lobbyist, authorized public lobbyist or legislator and who makes no expenditures required to be reported by [Article 8.1].” *Id.* § (4).
5. “A person who performs professional services in drafting bills or in advising and rendering opinions to clients as to the construction and effect of proposed or pending legislation.” *Id.* § (5).
6. “An attorney who represents clients before any court or before any quasi-judicial body.” *Id.* § (6).
7. “A person who contacts a state officer or state employee solely for the purpose of acquiring information.” *Id.* § (7).
8. “A natural person who is a member of an association, and who is not [required to register as a lobbyist] for the association and who does not make any expenditures that would otherwise be required to be reported by this article.” *Id.* § (8).

**16.10 Exemption for Uncompensated Members of State Agencies, Boards and Commissions.** This Article [Article 8.1, A.R.S. §§ 41-1231 to -1239] does not apply to expenditures made for or gifts to members of any state agency, board, commission, committee or council who are not publicly elected and who serve without compensation provided that the expenditure or gift is not made in the course of lobbying that member.” A.R.S. § 41-1232.06.

**16.11 Prohibited Contributions During Regular Session of Legislature.** While registered under the lobbying laws [Article 8.1], “a principal, public body, lobbyist, designated public lobbyist or authorized public lobbyist shall not make or promise to make a campaign contribution to or solicit or promise to solicit campaign contributions for . . . a member of the legislature when the legislature is in regular session” or “[t]he governor when the legislature is in regular session or when regular session legislation is pending executive approval or veto.” A.R.S. § 41-1234.01(A).

**16.12 Prohibited Acts.** No person may retain another person to lobby legislation for a contingent fee; no person may lobby the legislature for compensation within one year of leaving the legislature as a member, and no person may in any manner “improperly seek to influence the vote of any member of the legislature through communication with that member’s employer.” A.R.S. § 41-1233.

No person shall “[l]obby a public body that employed the person in a capacity having a significant procurement role as defined in § 41-741 in the procurement of materials, services or construction within one year after the person ceases to be employed by the public body.” A.R.S. § 41-1233(4). See Chapter 5 for a thorough discussion of Arizona’s procurement laws.

**16.13 Entertainment Ban.** In 2000, the Legislature enacted a broad ban on entertainment expenditures. A.R.S. § 41-1232.08. The ban prohibits any lobbyist of any type, principal, public body, or any other person acting for these persons, from making an expenditure for entertainment which benefits any State officer, elected official, state employee, corporation commissioner, county supervisor, city or town council member, school district governing board member, or person involved in the procurement of materials, services or construction. A.R.S. § 41-1232.08. Entertainment means any expenditure for admission to, or participation in, any sporting or cultural event or activity. A.R.S. § 41-1231(5). Expenditures for special events defined in A.R.S. § 41-1232.03(F) and for speaking engagements defined in A.R.S. § 41-1231(20) are still lawful, but must be reported on lobbyists annual and quarterly reports. State employees and all elected officials are reminded that it is unlawful for them to accept entertainment from any lobbyist or principal. This is true “if the State officer subsequently reimburses the lobbyist for the expenditure; . . . however, a lobbyist paid for entertainment that, at the time of the payment, was not for a particular State officer or employee, a State officer or employee may purchase the entertainment from the lobbyist, at full cost, before receiving the ticket.” Ariz. Att’y Gen. Op. I00-031.

**16.14 Enforcement.** The lobbying law is enforceable by criminal and civil proceedings pursuant to A.R.S. §§ 41-1237 to -1237.01.

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