



Department of  
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Submission on the Proposed Changes to the Lobbyist Code  
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The prohibition of friendship between lobbyist and public office holder in ss. 7 and 8 of the new rules of Conduct for Lobbyists (Office of Commissioner, 2014) produces an unworkable standard and one that is disproportionate to the end sought. The spirit of the new rules is to prevent situations where conflicts of interest might arise, and where private interests might undermine the public good. These are worthwhile goals for the rules but prohibiting friendship is both impractical and disproportionate to the goal to be achieved.

The prohibition of friendship between lobbyists and public office holders is impractical because friendship is probably too difficult to define for purposes of these rules and because other provisions that aim to prevent conflict of interest, and a conflict of private interest and public good, serve that end more effectively. Provisions for transparency and rules preventing lobbyists from lobbying office holders for whom they have a special sense of obligation on account of previous political work, achieve what the prohibition against friendship is meant (but fails) to achieve.

Further, friendship is difficult to define, especially for purposes of legislation – although attempts have been made to create a legal category for it (Leib, 2011). The new rules seem to equate friendship with the “sense of obligation” between lobbyist and office holder. Here “friend” is identical to “patron” and “client.” If that is the case, then mention of friendship in ss. 7 and 8 is redundant because other provisions in the proposed changes already cover such patrons and client relationships.

Trying to define friendship any further would be difficult and unnecessary for the Code. The meaning of friend and friendship is elastic. On one extreme, the terms can mean a long-standing, life-long bond between individuals whose bond defies categorization and definition (Heyking, 2008). This is what philosophers refer to as virtue-friendships, as when the French philosopher Montaigne explains why he cannot offer reasons for his friendship with Etienne De La Boethie: “If you press me to tell why I loved him, I feel that this cannot be expressed, except by answering: Because it was he, because it was I” (Pakaluk, 1991).

On the other extreme, friend and friendship can mean simply people for whom we have a vague sense of goodwill that one extends to fellow citizens, as in Brutus' speech in Shakespeare's Julius Caesar: "Friends, Romans, countrymen, lend me your ears." For people involved in politics in particular, the language of friendship is central to their vocabulary and rhetoric (Heyking, 2013). Friends are their "countrymen," their fellow partisans, and those whose votes they court.

Whether a sublime and indefinite love like Montaigne's virtue-friendship, or the vague goodwill of political "friends," the meanings of friend and friendship are elastic and elusive and best left for moral philosophy instead of lobbyist legislation. The degree to which friends and friendships are corrosive to the public good depends on the moral character of the individuals involved. Bad people will generally practice corrupt forms of friendships, if they can practice friendship at all. Thus the best way to promote friendships that sustain instead of undermine the public good is to promote a culture of moral integrity and responsibility.

The prohibition of friendship between lobbyist and public office holder is also disproportionate to its end. As my reference to Brutus suggests, friendship is of the essence of politics (Heyking, 2012). Prohibiting lobbyists and public office holders from practicing friendship is like prohibiting participants of the market from exchanging goods and services. Both are of the essence of their respective realms of life. Prohibiting friendships in politics is like throwing the baby out with the proverbial bathwater. It destroys politics and leaves in its place an illusory hope that politics can be conducted by disembodied and abstract selves with no connection to concrete relations. It is a lawyer's dream whereby abstract process replaces concrete persons, instead of a practical solution to concrete political problems.

Politics, like other human endeavors, is an activity conducted by persons (Heyking, 2013). Networking, building trust, and friendship characterize the bonds that build and sustain political life. The decision to form a relationship with a lobbyist or public official is predicated on the expected benefits one can derive from that person, but also from the trust one places in him. If one lacks trust in someone else to keep promises or to provide reliable benefit, then one cannot sustain a relationship with that other person.

Friendships are the most common and reliable means by which those political relationships are sustained, including those among lobbyists and public officials (Carpenter et al., 2004). We trust the judgments of friends the best. In determining the competence of someone, we ask a mutual friend for her judgment. The questions, "can I work with this person?", "is he reliable?", and "does she produce good work?" get asked most frequently to friends because their judgment is usually the most trustworthy.

Friendship as a political phenomenon is commonly perceived as one of inherent conflict of interest and undermining the public good (See Leibovitch, 2013).

However, it would be rash to dismiss friendship in toto because that deprives persons from establishing and sustaining the most trustworthy relationships available in public life. Indeed, public office holders find that, once in office, everyone seeking benefits from them portrays themselves as their “friend.” Office holders desperately need genuine friends (virtue-friendships from before their days in office) to help them form judgments about those pretend “friends” who simply seek benefits. Depriving office holders of the resources of genuine friends, even those also seeking benefits as lobbyists, would be detrimental to their task in upholding the public good.

Prohibiting it in the Lobbyist Code is an impractical, unrealistic, and disproportionate method of achieving important ends that can be achieved more proportionately by other means, including rules of transparency.

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