

**TESTIMONY OF COMMON CAUSE/PENNSYLVANIA
URGING ENACTMENT OF A
GIFT BAN
FOR PENNSYLVANIA PUBLIC OFFICIALS AND EMPLOYEES**

**Senate State Government Committee
April 28, 2014 – Harrisburg, PA**

Good morning Chairman Smucker, Chairman Smith, and distinguished members of the Senate State Government Committee. I am Barry Kauffman, Executive Director of Common Cause/PA. With over 5,000 members and affiliates, Common Cause/PA is the state's leading citizens' advocacy organization that focuses on government integrity issues. For four decades, Common Cause/PA has been at the forefront of efforts to enact legislation to establish high ethical standards for Pennsylvania's public officials. We thank you for this opportunity to address the important issue before you today.

As Ronald Reagan might have said "There they go again." It's another year, and another hit parade of scandals for Pennsylvania state government. In the past year, we have seen legal action taken against officials at the Turnpike Commission, the Liquor Control Board, and the legislature. But reports regarding improper activities related to gifts and campaign contributions permeate all branches and all levels of government. The incestuous linkage between gifts, campaign contributions and public policy outcomes must end. Citizens of Pennsylvania are fed up and want reform now! The good news is that the latest series of scandals has created the momentum you need to elevate the integrity of our government and restore some citizen confidence. Do not squander this opportunity.

Today's hearing focuses on the need to ban or restrict gifts that lobbyists, lobbyists' principals, government contractors and others seeking favors or special treatment bestow on public officials (so I will not venture into other areas in which Pennsylvania's ethics law requires strengthening). Gift giving practices, coupled with related campaign contributions, have been intertwined parts of the on-going litany of scandals in Pennsylvania government. Therefore, the time has come for the General Assembly to draw a bright line to end, or severely restrict, public officials and public employees receiving, or the above mentioned individuals offering, any form of gift, hospitality, entertainment or travel benefits to public officials in the Keystone State.

Fortunately, you have strong public support for such reforms. In a poll conducted by Terry Madonna for Democracy Rising in December of 2011 (just 2 ½ years ago) "By 93% to 6%, voters want to prohibit public officials from accepting anything of value from those who are seeking to influence them." (Democracy Rising press release, January 19, 2012.) An unscientific

readers poll, conducted by PennLive last month, showed similar results, with 71% of respondents favoring banning all gifts, while 23% would permit minor ceremonial gifts but ban all gifts from lobbyists (PennLive, March 25, 2014).

This problem has been recognized for a long time. But while many other states have come to grips with the problem, Pennsylvania has not. Reasonable solutions are known and remedies have been implemented elsewhere. Yet, like in many other areas of government reform, the Pennsylvania General Assembly keeps our state at the tail end of the ethics parade.

At the turn of the last century, famed government reform advocate, Wisconsin Senator Robert LaFollette, renown for fighting the Robber Barons of his time said:

Every legal argument which any lobbyist has to offer, and which any legislator ought to hear, can be presented before committees, before the legislature as a body, through the press, from the public platform, and through printed briefs and arguments placed in the hands of all members and accessible to the public.

That really says it all. There is no justification for those seeking action or favors from the government to provide anything other than information to public officials.

Yet in the culture of corruption that has taken hold in Pennsylvania there continues to be an expectation that supplicants will continue to pay tribute to those from whom they seek action or favored treatment.

So why do these practices persist? Simple – because they work. Most lobbyists, and those who hire them, are pretty bright people, and if the practice of providing gifts, hospitality, entertainment and travel junkets did not work, it would stop quickly because they would be a waste of money. Lobbyists understand basic human psychology. We all know that people who treat us nicely, give us gifts, invite us to memorable events, and spend time discussing important matters with us have far better opportunities to influence our thinking. Lobbyists understand that if they establish special relationships with public officials by doing nice things for them and visiting them on a regular basis those officials are more likely to not take a purely analytical approach to a problem at hand. Instead of thoroughly evaluating a problem, an official likely will take a mental short-cut biasing his or her judgment due to the special relationship that has evolved. If an official has spent four hours on a sunny day with a lobbyist at a country club golf course, or at a posh restaurant, or received scarce concert or sporting event tickets, he or she is much more likely to be more receptive to the lobbyist's point of view than that of those pesky rascally citizens who write nasty letters, send letters to editors, flood officials' email accounts, or picket district offices.

Oddly enough, lobbyists may not be the bad guys in this scenario. They are simply engaging in the pay-to-play game that seems ubiquitous in Pennsylvania government. In fact, many of the lobbyists with whom I have talked indicate they would love to see a gift ban so that they would not have to regularly seek additional funds from employers and clients to wine and dine officials or take them on junkets. Instead, they could spend more session nights at home with their families. And lawmakers would not have to spend time with lobbyists they find boring just to

get a free meal and entertainment. Instead they could spend more time analyzing problems, developing solutions and doing the people's business.

So what are the remedies to these problems?

According to data on the National Conference of State Legislatures' website, it appears that Pennsylvania is one of only ten states with no monetary limits on gifts. Ten states appear to have full gift bans (although some do have a range of exceptions). More than thirty states have restrictions on providing public officials gifts, hospitality, entertainment or travel benefits.

The simplest remedy would be a flat out gift ban. That would eliminate the need to keep records and do regular disclosure reports because any provision of gifts, hospitality, entertainment or travel would be illegal. Those seeking to influence a public official's judgments would simply set up an appointment with the official, make a persuasive argument, and supply supportive documentation. That's it. A public official could still meet with anyone, have dinner with anyone, or travel with anyone he or she wants. But, it could not be paid for by those seeking to influence that official. If such out of office activities occurred, they would be paid from the budgeted expense accounts of the official, and the official would have to be willing to justify the expense. If the activity were not official government business, then it would be considered personal business, which the official would have to pay for himself or herself. According to our research, states such as Kentucky, Connecticut (permits \$10 per year per recipient official), Iowa, Massachusetts, Minnesota, South Carolina, Tennessee, Wisconsin, and Arkansas have gift bans or near gift bans.

Some of these states have reasonable exceptions such as permitting an official to speak at a meeting of an organization and have the same meal that all other participants have. Another exemption would permit officials to continue exchanging gifts with people who had been friends prior to the recipient becoming a government official – as long as the gift giver is not a lobbyist or seeking government contracts.

A second option would be to set a relatively low limit on the amount and types of gifts that could be provided. This of course would require record-keeping by gift givers. For instance, state law could be amended to prohibit any lobbyist, contractor or other person seeking to influence government decisions from giving a public official any gifts, hospitality, entertainment or travel benefits with monthly aggregate values exceeding ten dollars or annual aggregate value exceeding one hundred dollars. Any gift that would be provided would have to be recorded and reported by the giver, providing a description of the gift, the value of the gift, the date it was provided, the circumstances under which it was provided, and identify any public policy or contract that was discussed during the occasion. States such as Alabama, Alaska, Arizona, California (\$10 per month per public official with a limit of \$340 per year in the aggregate for the provider), Kansas, Maryland, Michigan, Ohio, Oklahoma, Oregon, and West Virginia (permits \$50 per year) have established variations of this option.

With the vast majority of states already having implemented gift ban or strong gift restriction laws, it's time for Pennsylvania also to protect its citizens and taxpayers in a like manner. Pennsylvania's total lack of limits on gift giving to public officials, coupled with extremely high

disclosure limits (\$250 for tangible gifts, and \$650 for hospitality, entertainment and lodging) fails to protect Pennsylvanians' interests in honest and accountable government.

A variety of bills have been introduced that begin to address this problem, and a trans-partisan group of lawmakers led by Senator Teplitz and Rep. Dunbar has been meeting in an attempt to develop comprehensive legislation to deal with this issue.

The bottom line is, Pennsylvania's current ethics and lobbying laws are seriously flawed on the subject of gifts, and must be dramatically strengthened. As long as a public official can take any amount of gifts, from any person, at any time, as long as the gift is reported, scandals will continue to erupt with predictable regularity. And currently, tangible gifts under \$250 in annual aggregate value from any one source, or hospitality, entertainment and lodging under \$650 in annual aggregate value don't even have to be reported (although the providers are required to keep records).

Pennsylvanians deserve better. Simply passing House and Senate rules that apply only to the respective chamber of the legislature, and which can be easily changed, or suspended at any time, is not good enough. Pennsylvanians deserve enforceable statutory gift restrictions, with meaningful penalties, that apply to all branches and all levels of government. Simply banning cash gifts or cash-like gifts is not good enough either. After all, what really is the difference between giving an official an envelope with \$10,000 in \$50 bills, or an envelope with two airline tickets and the keys to a vacation resort home with a value of \$10,000. The only difference is the delivery system and possibly some traceability.

Pennsylvanians want and deserve a government in which they know their officials' loyalty is devoted to the voters and taxpayers rather than special interests bestowing gifts. They want and deserve a government in which their officials' judgments are not biased by special relationships reinforced by gift-giving. They want and deserve a government they can trust to make sound decisions on their behalf, a government that doesn't constantly erupt with corrupt activities that further elevate their cynicism about representative democracy.

When the lobbying disclosure laws were enacted in 1998 and 2006 gift bans and strict limits were left out because they were perceived to be "too heavy of a lift" at that time and could have caused support for the rest of a good quality disclosure bill to crumble. We were told that in Pennsylvania we do things in increments. There now has been a long gap in time for addressing the gift ban increment.

Protecting the integrity of Pennsylvania government and citizens' confidence in our governing institutions always must be one of your top priorities. If it is not, the other work you produce will always be suspect. Pennsylvanians are watching and expecting action. You cannot allow this opportunity to elevate the integrity of government slip through your fingers again. Common Cause/PA stands ready to assist you with securing this important achievement for Pennsylvania.

Thank you.