

January 30, 1998  
Re: IO -98-01

You inquired whether certain builders and other companies that do business with your agency (PAC), and are subject to the authority of your agency, could provide lunch for the entire staff of PAC, approximately 45 employees. You stated lunch would be delivered to the PAC office. In one case, lunch would involve the catering of hot food and service to your office. You also said that these lunches are offered as a "thank you" to the staff for a year of service.

The Public Ethics Law prohibits county employees from receiving gifts from "controlled donors." The donors that you listed are considered "controlled donors". As builders or permit runners, they are "engaged in activities regulated or controlled by the County," with "financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally by the performance or nonperformance of any official duty of the employee." Section 3-106(b)(2) and (3).

There are pertinent exceptions to this blanket prohibition against accepting gifts. The law permits accepting "occasional meals and beverages of *modest value*," where the gift: (a) would not tend to impair the impartiality and independence of judgment of the recipient employee, (b) is not so regular, frequent, or valuable that it would impair the impartiality or independent judgment, or; (c) is not designed or intended to impair the impartiality and independent judgment of the recipient employee.

The Ethics Commission has previously found that attending an annual holiday lunch given by a controlled donor for a wide variety of people, for under \$20 per person, is permissible under certain circumstances as an exception to the gift prohibition. The Commission does not believe that the gift of an annual luncheon would impair the impartial or independent judgment of a county employee except under certain circumstances. For example, where the donor is currently involved in a dispute or other controversial issue, or is negotiating a contract with the county, or is lobbying for legislative or executive action that will have an impact on the donor's financial situation, a gift would appear to be designed to influence the county employee's judgment.

In cases where the gift of a meal or beverage has been permitted, the costs have been modest and the occasion infrequent. In this situation however, even allowing for a cost of \$5.00 per person, the controlled donor would be spending \$225.00 on the staff of the county department involved. A "modest" meal costing \$5.00 for one person, ceases to be of modest value when it is given to 45 people, and depending on the caterer and the type of meal involved, the cost of the gift to the donor could easily exceed \$500.00.

Even though the cost for each county employee may be modest, the overall cost to the donor of providing lunches to 45 county employees can hardly be considered a modest form of "thank you". It is more of a business expense to the donor than it is a gift to the recipient. And while it may be easily affordable by the larger entities doing business with the county, it can be a

daunting prospect to smaller enterprises. It would appear to give an unfair advantage to the larger business entities in the conduct of their business with an agency that deals with them on a daily basis.

Therefore, the Commission concludes that the gift of a catered lunch provided to the entire staff of your agency is not an "occasional meal of *modest value*". The Commission also concludes that because of its value, the gift is designed to and would appear to impair the impartial and independent judgment of its intended recipients. Pursuant to §3-106 of the Public Ethics Law, the Commission advises you that these proffered lunches may not be accepted.

Thank you for your inquiry and if you have any additional questions, please call our office any time.

Sincerely,

Betsy K. Dawson  
Executive Director