

April 14, 1998
Re: IO - 98 - 38

You inquired whether you could accept lunches from the design consultants who have contracts with the Bureau of Engineering that involve the facility that you supervise. You said that although you do not participate in the awarding of the contracts, you do make recommendations based on the performance of these contractors.

You also stated that to date, you have paid for your own lunches and that you have felt that there would be an appearance problem if you were to accept free lunches from these contractors. You asked whether your opinion is overcautious and whether and under what circumstances you could accept a free lunch from one of these contractors.

The Public Ethics Law, §3-106 prohibits county employees from accepting gifts from "controlled donors." A contractor, such as a design consultant, would be a controlled donor. There are certain exceptions to this prohibition, one of which includes "occasional meals and beverages of modest value." However, even the exceptions are limited to insure that the gift would not:

1. impair the impartiality and independent judgment of the recipient;
2. *appear* to impair the impartiality or independent judgment because of its regularity, frequency, or value; or
3. in the opinion of the recipient, be designed to impair the employee's judgment.

As you stated, free lunches offered by contractors, especially on a frequent basis, would appear to create a conflict of interest. You also believe that these contractors want your approval in recommendations to the contracting authority.

While one free lunch of a modest value, offered by a contractor and accepted by you would probably not appear to affect your recommendations on the contract, frequent free lunches would clearly violate the appearance prohibition of §3-106.

Based on our phone conversation of yesterday, there is nothing in this letter that you don't already know. By paying for your own lunches you are setting a good example for your coworkers, and reinforcing the notion that ethical government is not only an important goal, but a realistic and manageable goal as well.

If you have any further questions, please call any time.

Sincerely,

Betsy K. Dawson
Executive Director