

September 2, 1999  
Re: IO-99-161

You inquired whether you could accept a cell phone as a gift from a developer whose work you are responsible to inspect. The purpose for the gift would be to assist the developer in reaching you more quickly than he currently can reach you through your county office or pager. You indicated that the phone would be used solely for inspections work.

The Public Ethics Law prohibits an employee from accepting a gift from a person who is engaged in activities that are regulated by the county, or who has 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 proposed recipient. See Article 9, §3-106(b)(2) and (b)(3). Both of these prohibitions would apply to your situation. As an inspector, you have regulatory authority over this developer, and your decisions with respect to the developer's project may significantly and materially affect the developer's financial interests. Therefore, unless the gift of the cell phone is an expressly permitted exception to the prohibition on receipt of gifts from "controlled donors," it cannot be accepted.

It is curious that the developer cannot reach you quickly by pager -- are the messages not getting through, or are you not responding as promptly as the developer would wish? If you accept the cell phone, are you required to answer it regardless of the circumstances? Must you answer it if you are driving, in the middle of a meeting, at lunch, in the shower, in bed? Even with a cell phone, there will still be times when the developer cannot reach you instantly, or on command. Other questions could be raised about the future of this cell phone when you are finished with your duties involving this developer. For example, who will ensure that the phone is used solely for your inspection duties? Will you be required to show your monthly bills to your supervisors? Or, will the phone be transferred to another inspector whom the same developer wants to contact quickly? These questions suggest that the developer's true intentions in offering you this phone are to impair your impartial and independent judgment. And, if you feel obligated to be available at the whim of the developer, you are not using independent or impartial judgment.

The commission concludes that the gift of a cell phone does not fall within any permitted exception. It is not a gift of "nominal value." In fact, to the developer, it may have enormous value. Accepting the phone would tend to impair your independent and impartial judgment. For these reasons, you may not accept the cell phone from the developer.

Thank you for your inquiry. If you have other questions, call any time.

Sincerely,

Betsy K. Dawson  
Executive Director

BKD:vlj