

July 8, 2003
Re: IO-03-65

You inquired whether the staff and/or the advisory board of one of the county's senior centers may accept a gift of lunch and a tour of the commercial facilities of a controlled donor who would like to start a regular recreational program for seniors at the facility. The answer is that a tour would be acceptable but a lunch would not be acceptable.

The donor is an entity who "is seeking to do business with the county". §3-106(b)(1). The donor also "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 employee. . ." §3-106(b)(3). For these reasons, the donor is a controlled donor from whom gifts are generally prohibited.

As an exception to this prohibition, "meals or beverages of modest value" may be accepted from a controlled donor under some circumstances. §3-106(c)(1). In determining whether the meal is of "modest value", the commission considers the overall value of the gift as well as its value to the intended recipient. See, 10-98-01, IO-02-19. Although a particular donor may consider the value of the meal for a large group of people to be well worth its cost, other entities with similar interests may find such a gift to be out of reach. Access to that group of employees may consequently be diminished because of lack of resources. For this reason, the commission considers the true "value" of a meal instead of simply its cost. Consequently, a meal purchased for a sizeable group of people may be of significant "value" in accomplishing that donor's goals.¹

However, even if the meal will be of modest value, it may not be accepted if the intended recipient- employee believes, or has reason to believe, that the gift is designed to impair that employee's impartiality. In situations where a meal is offered during contract negotiations, or while the donor is trying to acquire a benefit of some kind, an employee would certainly have reason to believe that the gift is offered to positively affect that contract or benefit. See, 10-9801, 10-00-182.

In this case, the donor is hoping to acquire a financial benefit with the assistance of the county employees who are the intended recipients of the gift. While these types of gifts are standard and acceptable practice in the private sector, they are neither standard nor acceptable in the public sector where government employees must serve the public interest.

The tour of the facilities is not a gift, but is intended to provide *information without* which the employees may not be fully able to make a decision. In this case, the tour is a necessary part of the decision- making process and confers no personal benefit to any of the employees.

Thank you for your inquiry. If you have other questions, please give me a call.

Sincerely,

Betsy K. Dawson
Executive Director

¹ The ethics law provides that a lobbyist who spends \$50 or more on an employee or group of employees during a six- month period, for " meals, beverages, special events, or gifts in connection with or with the purpose of influencing executive or legislative action" is required to register and to file regular activity reports. §1-101(q), §5-102, and §5-105. One may reasonably infer from this provision that if a gift of \$50 or more given to a group of employees is significant enough to trigger the registration requirements, it is unlikely to be considered inherently "modest" in value.

