

April 5, 2005

By Electronic & Interoffice Mail

Re: IO-05-19

You inquired whether an employee in your division may accept travel expenses from a vendor to visit the factory that produces a product for which a purchase order has already been issued. You said that the vendor is interested in showing the employee how the product was manufactured and also to show the employee some of the new products under development. The answer is that the employee may not accept travel expenses from the vendor under these circumstances.

The ethics commission has reviewed similar issues on a number of occasions, considering this to be a gift issue. Section 5-106 prohibits an employee from accepting a gift from a controlled donor. In IO-99-139, the ethics commission advised that fire department personnel could not accept travel expenses from a safety equipment manufacturer to visit the factory to consider possible upgrades to the equipment. Specifically, the ethics commission said,

. . . reimbursement for travel expenses is considered a gift under §1-101(l) of the Public Ethics Law. A gift of travel expenses, given by an entity that is doing business or seeking to do business with your agency, is a non-permissible gift under §3-106. A county employee can only accept reasonable travel expenses that are paid in conjunction with a legitimate speaking engagement at a conference, meeting, or other function.

The trip constitutes legitimate county business, and there is nothing in the ethics law that would prohibit the county from paying these expenses.

More recently, in IO-03-63, the ethics commission advised that police officers could accept travel expenses from a controlled donor, the manufacturer of a new police helicopter, to attend a conference, under the circumstances described as follows:

. . . [T]he lodging and meal expenses are more reasonably seen as part of a contractual arrangement where there is valuable consideration offered by both parties. On the one hand, the seller retains title, and the right to exhibit its state of the art equipment to potential customers. On the other hand, the county has the opportunity to have the helicopter tested and evaluated by the manufacturer, and receive flight time for its pilots without incurring additional expense or liability. As a contractual arrangement, payment for the pilots' meals and lodging is not offered as a gift, but as part of a mutually beneficial contract - a supplement to the already existing contract.

The first opinion, IO-99-139, is factually more similar to the subject of your inquiry. In neither case is a conference involved, and in both cases, the donor is clearly seeking to do business with the county. In your situation, although the purchase order for the product was signed prior to the invitation to travel, the donor is hoping to interest the county in future purchases.

In the second opinion cited, IO-03-63, the commission found that the travel expenses were less like a gift and more like a supplemental contract, in that the manufacturer and the county were exchanging consideration for a mutual benefit.

It would violate the spirit of the gift prohibition, as well as the law itself, to permit acceptance of travel expenses, in excess of nominal value, for a trip where no conference is involved. The law prohibits acceptance of non-conference related travel expenses in order to prevent the possibility that competing vendors could wine and dine county employees on trips, in the hopes of acquiring a contract. While one could argue that travel expenses are a gift to the county and not to an individual employee, or that the employee would be accepting this gift in the normal course of employment, the potential for impairing the judgment of the employee is the underlying purpose for this prohibition on accepting travel expenses from a controlled donor. As the commission said in IO-99-139, if the county thinks that the trip is of significant value, it can pay the expenses.

For these reasons, the ethics commission advises that the employee may not accept travel expenses in excess of nominal value (\$25) from the vendor. Thank you for your inquiry. Please call me if you have any questions.

Sincerely,

Betsy K. Dawson
Executive Director