

April 17, 2006

By Electronic and Interoffice Mail

Re: IO-06-26

You inquired whether employees of your department may accept travel and related expenses from a vendor (also called a “controlled donor”) to visit the vendor’s facilities in Arizona. The visit would include opportunities to network with the vendor’s personnel and to learn more about the vendor’s infrastructure and the products purchased by your department under the contract. The ethics commission advises that the payment of these expenses would constitute an impermissible gift.

The gift provisions of the ethics law, §7-5-106, permit acceptance of gifts from county vendors and contractors in limited situations. Section 7-5-106(c)(2) specifically permits acceptance of travel expenses from contractors, but only in exchange “for participation on a panel or a speaking engagement at a meeting.” The ethics commission has issued a number of opinions advising against the acceptance of travel expenses paid by vendors, contractors, or other persons doing business with the county. *See, e.g.*, AO-00-56, AO-97-132, and AO-97-132. In AO-97-132, the commission discussed the reasons for restricting this type of gift, stating that,

The fact is that gifts of this nature and magnitude, because of their value, would create an appearance of impairing the impartiality and independence of judgment of the county employees who receive them. The argument could reasonably be made that a county employees who visits a potential vendor at the latter's expense would have a harder time rejecting products or services offered by that potential vendor. Moreover, the recipient county employees would have every reason to believe that the trip to the vendor's plant is designed to positively influence the decision of the employees, thereby impairing their impartial and independent judgment. The State Ethics Commission has also found this type of gift to be prohibited. In Opinion 81-46, the Commission ruled that “. . . such trips could affect an employee’s personal attitude toward a contractor or a potential contractor, thus breaking down the arms length bargaining relationship that should exist between the State and entities with which it does business.” Volume 19A, COMAR.

In one opinion pertaining directly to your department, IO-03-63, the commission advised that employees could accept travel expenses as part of a supplement to the existing contract between the department and the vendor. In most cases, travel to the contractor’s facilities, if it is advisable, should be included in the original contract, and not proposed after the fact. If travel expenses are not included in the contract, the ethics commission concludes that they are a gift. As a gift, they may not be accepted.

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

Sincerely,

Betsy K. Dawson
Executive Director