



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 92-18

Ethical Restrictions On Acceptance Of Benefits By State
Employee From Various Vendors And Prospective Vendors

Malcolm Toedt, Executive Director of the Computer Center at the University of Connecticut, has asked how the Codes of Ethics apply to a number of scenarios involving the receipt of various benefits from entities doing business with the State or attempting to do business with the State.

Mr. Toedt's letter contains thirty-four questions. In general, the first set of questions focuses on the receipt of lodging, meals, airfare, free entrance passes, hospitality rooms, pens, notebooks, bookmarks, magnets and/or other such benefits from product vendors in connection with functions variously described as an "Executive Forum," "non-disclosure presentation," "product demonstration," and/or "general trade show."

"Necessary expenses" are defined by the Code as "a public official's or state employee's expenses for an article, appearance or speech or for participation at an event, in his official capacity, which shall be limited to necessary travel expenses, lodging for the nights before, of and after the appearance, speech or event, meals and any related conference or seminar registration fees." Conn. Gen. Stat. §1-79(1). Necessary expenses payments are limited to the state employee or public official and do not include expenses of a spouse or other guest. A state employee's or public official's attendance at a trade show or other product demonstration event falls under this definition. Therefore, acceptance of the types of benefits listed in §1-79(1) is legal and is not considered acceptance of a gift for purposes of the Codes' yearly gift limits.

If the vendor is also a registered lobbyist, then it must report any necessary expense payment or reimbursement of ten dollars or more for a state employee or public official within thirty days to the Ethics Commission. See Conn. Gen. Stat. §1-96e, as amended by Public Act No. 92-149, Section 5. The recipient is only required to report to the Ethics Commission (also within thirty days) if he or she receives necessary expenses which include lodging or out-of-state travel. See Conn. Gen. Stat. §1-84(k), as amended by Public Act No. 92-149, Section 2.

The items which are not necessary expenses, i.e., the hospitality rooms, pens, notebooks, etc., are subject to the

Codes' gift limitations. Executive branch and quasi-public agency public officials and state employees shall not knowingly accept any gift or gifts known to amount to fifty dollars or more in value in any calendar year from a registered lobbyist or from any person the official or employee has reason to know: (1) is doing business with or seeking to do business with the department or agency in which the official or employee is employed; (2) is engaged in activities which are directly regulated by such department or agency; or (3) has financial interests which may be substantially affected by the performance or nonperformance of official duties by the official or employee. Conversely, none of the persons described above may knowingly give such gifts. See Conn. Gen. Stat. §§1-84(m) (as amended by Public Act No. 92-149, Section 1), and 1-97(a).

Meal(s) costing less than one hundred fifty dollars in the aggregate per recipient in a calendar year, and consumed on an occasion or occasions at which the person paying, or his representative, is in attendance are exceptions to the gift law. Conn. Gen. Stat. §1-79(g)(9).

Included among the other exceptions to the Codes' gift definition are gifts to the State. Gifts to the State are defined as "goods or services which are provided to the state and facilitate state action or functions." See Conn. Gen. Stat. §1-79(g)(5). Gifts to the State which incidentally benefit a state employee (e.g., which include meals and lodging) are legal and exempt from the Codes' annual gift and food and drink limits, provided that the state servant's superior certifies to the Ethics Commission that acceptance of the gift will further state business. Of course, certification should not be granted pro forma. If an employee's superior determines that the employee's working relationship with a prospective sponsor is a close one, and that the potential benefit to the State resulting from acceptance of the proposed gift to the State might be outweighed by the harm to the State in the form of a sense of obligation or quid pro quo on the part of the state employee to the sponsor, certification should properly be denied. See Ethics Commission Advisory Opinion No. 89-35, 51 Conn. L.J. No. 28, p. 1C (1/9/90). See also Advisory Opinion No. 90-19, 52 Conn. L.J. No. 2, p. 3C (7/10/90), for details on the certification process.

In short then, absent a necessary expense situation or the application of one of the other exceptions to the Codes' gift definition, a state employee or public official in the executive branch may take up to \$150 in food and drink and up to \$50 in gifts annually from each of the vendors and prospective vendors with whom he deals. Of course, a state agency may issue stricter rules, and state servants need not take advantage of everything that is offered.

With regard to the determination of the value of

benefits, if the value of a necessary expense payment is unknown, the recipient need only report the type of benefit received and the name of the payor, e.g., three-night stay at a hotel in Chicago, paid for by United Widget Corp. If the benefit is not a necessary expense (or does not fall under one of the other exceptions to the gift law), then the recipient must ascertain its actual value, in order to be sure not to exceed either the \$150 meal or the \$50 gift aggregate yearly limit.

A benefit costing less than \$10 does not count towards the aggregate limits. See Public Act No. 92-149, Section 6. Therefore, if the cost per person of the food, drink and/or entertainment at the hospitality room is \$9.95, or the free notebook has a value of \$1.25, then both benefits may be accepted and need not be kept track of. Similarly, if the item is a promotional item available to the general public, it is not considered a gift. Conn. Gen. Stat. §1-79(g)(7). If, however, the free notebook is made of embossed leather, for example, and is worth \$10 or more, it must be counted as a gift and added to the yearly total of gifts received from that particular vendor.

Mr. Toedt has asked whether there is a difference between one-on-one and group activities. The definition of "necessary expenses" requires that the state employee attend an "event" in order for the benefits bestowed by the payor to qualify as a necessary expense payment. Therefore, in general, the benefits incidental to a one-on-one product demonstration would not be considered necessary expense payments and will count towards the yearly gift and meal totals. On the other hand, depending on the particular fact situation, such a demonstration could constitute a gift to the State. For example, paying for a public official to travel to New Jersey to inspect an artificial turf field which the State is considering purchasing would be an acceptable gift to the State. Sending the official to Europe to view the same product available in New Jersey would not qualify as a permissible gift to the State, however.

In one of the hypothetical situations presented in the letter, Apple Computer agrees to provide lodging and meals to have a state "executive" attend its Executive Forum in Florida. From the facts given, it appears that the State would be giving its approval for the trip by paying for the state employee's airfare. If a gift to the State incidentally benefits a state employee, and that employee is involved in the regulation of the payor or does business for the State with that payor, however, then that employee's superior must exercise particular caution in making his or her determination that acceptance of the gift facilitates the execution of state business. See Advisory Opinion No. 89-35, supra.

The letter also asks whether a vendor may offer to place a new piece of equipment at a state employee's disposal for an

indefinite period of time, provided that the state employee will meet with developers over lunch during the next six months to discuss the pros and cons of the device. Assuming that the device is at the State's disposal rather than at the disposal of the individual employee, the loan of a piece of equipment is a fairly common gift to the State. Of course, it is within the University's discretion to decide whether the temporary loan of the machine is worth the time that the state employee must spend in helping the vendor evaluate the product. The lunches are not part of the gift to the State, nor are they necessary expense payments, and so must count towards the \$150 yearly food and drink aggregate limit for that vendor.

With regard to many of the scenarios presented, Mr. Toedt has asked whether acceptance of a particular benefit is "business-related." The drafters of the Codes of Ethics could have allowed state personnel to accept any "business-related" benefit from a vendor. In fact, however, the passage of Public Act No. 92-149 (with its extension of the gift law to include, among others, vendors and prospective vendors) demonstrates an intent to regulate strictly the payment of "non-necessary" expenses to entertain and thereby influence a state employee who will be deciding whether to use state money to buy a particular product. From the vendor's perspective, every dollar spent on such an employee is "business-related." But, in the context of public service, the relevant question to be answered by a state employee or official is whether acceptance of a benefit is legal rather than whether it is business-related.

The letter indicates that, typically, product demonstration events include either lunch or dinner, depending on whether one attends a morning session or an afternoon session. As the Ethics Commission has previously held, if the demonstration is not local (*i.e.*, the state employee must stay overnight, or will not be "home for dinner"), then the provision of a meal by the vendor after the event may be considered part of a necessary expense payment. If, however, the event is a local one, then the cost of a meal provided after its conclusion must count towards the \$150 yearly meal limit. See Advisory Opinion No. 89-35, supra.

In another situation presented in the letter, a vendor provides an afternoon golf outing on the second day of a three-day seminar. "Key product designers" will be golfing as well. Such an activity would not be considered a necessary expense: therefore, the cost per person of the outing (*e.g.*, guest fee and cart rental) must be included in the yearly gift total.

Mr. Toedt has also asked whether a vendor can provide airfare, accommodations, meals and entertainment in order to have a state employee meet senior corporate executives. At some point, a line must be drawn between necessary expense payments

or a gift to the State on the one hand, and individual get-togethers which are in the vendor's interest on the other. The visit certainly cannot be treated as a necessary expense payment, since such an individualized occasion was not intended to be covered by that exception to the gift law. Nor does such an activity fall within the intended scope of the gift to the State exception.

Similarly, a cocktail party given by a successful vendor for the purpose of having senior members of the University meet the vendor's staff is not an "event" as that term is used in the definition of necessary expense, and the per person cost of the food and drink counts towards the \$150 limit.

In two of the scenarios described, the state employee is presented with a plaque. A certificate, plaque or other ceremonial award costing less than \$100 is excluded from the definition of gift and is therefore legal. In one of these scenarios, the state employee may also be given pens, coffee cups and other tokens of appreciation for serving on the vendor's advisory board. Food served in the course of the advisory board meetings qualifies as a legitimate necessary expense. As stated above, the state employee must ask the vendor for the value of the other items if he or she has any doubt whether the item is worth \$10 or more.

The letter also describes an afternoon softball game suggested by an on-site vendor to "help build the team approach to the partnership relation." The vendor provides meats and drinks, and participants bring the rest. Since this is clearly not a necessary expense situation, the vendor's per person share must count towards each state employee's \$150 food and drink limit, again unless the pro-rated share is less than \$10.

Finally, Mr. Toedt has asked how to determine if an event is "business" or "social." If a state employee who represents the State in its dealings with vendors or prospective vendors is taken to dinner by a corporate vice president, who is reimbursed by the corporation or who provides the meal at the corporation's behest, then it is irrelevant whether business is discussed over the meal: the Code of Ethics applies. The Code does recognize one specific exception for certain major life events. See Conn. Gen. Stat. §1-79(g)(11). Absent the application of that very limited exception, the only "social" (*i.e.*, unregulated) events are those paid for by people whose actions are not restricted by the ethics laws.

The raison d'être for the Codes of Ethics is to avoid the formation of the very types of relationships which many of the events discussed in this opinion would foster. Throughout Mr. Toedt's letter, phrases like "business partnership," "team approach" and "partnership relation" are used. A state employee can hardly be expected to consider the bid of a new vendor

objectively once he or she has established "team spirit" with the existing vendor. Good working relationships are of course vital to any enterprise, whether private or public, but public servants are accountable to all citizens of the State and must therefore maintain a professional distance in the exercise of their public duties. Decisions made by state employees or officials are made in the public interest, and should be influenced as little as possible by the individual state servant's acceptance of myriad small or large benefits that make one vendor more appealing than another.

If a state servant performs his or her duties with the underlying premise of the Code of Ethics in mind -- that public office is a public trust -- then the Code's application becomes much simpler. Acceptance of excessive benefits received as a result of state position is not legal. And when a situation arises which brings into question the legality of a particular benefit, the Ethics Commission and its staff can and will provide the necessary assistance in interpreting the sometimes complex provisions of the Codes of Ethics.

By order of the Commission,



Christopher T. Donohue
Chairperson

Dated 9-14-92