



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

Draft Advisory Opinion No. 2024-2

June 25, 2024

Question Presented:

Whether, if appointed to the Investment Advisory Council (“IAC”), the Chief Investment Officer for Michigan State University (“MSU”) may, under a recently enacted gift exception, receive certain benefits from asset managers, which may be restricted donors, in order to attend their meetings or events as part of his MSU duties.

Brief Answer:

Based on the facts presented and in light of the new gift exception, we conclude as follows: At meetings or events that are unrelated to lobbying and in which he is expected to participate by virtue of his MSU job responsibilities, the MSU Chief Investment Officer, if appointed as a public member of the IAC, may accept, without monetary limit, items that are usually and regularly made available by asset managers at such meetings or events, including travel expenses, lodging, food, beverage, and other items that facilitate his participation in the employment-related events at issue.

At its June 20, 2024 meeting, the Citizen’s Ethics Advisory Board granted the petition for an advisory opinion submitted by the Office of the Governor (specifically, Jennifer P. Bennett, Deputy General Counsel) on behalf of Philip Zecher, the MSU Chief Investment Officer, and it now issues this advisory opinion under General Statutes § 1-81 (a) (3) of the Code of Ethics for Public Officials (“Code”).

Background

The petition provides, in relevant part, as follows:

Mr. Zecher is a potential governor's appointment to the Connecticut Investment Advisory Council. Members of the CIAC are subject to the code of ethics for public officials.

Mr. Zecher is the Chief Investment Officer of Michigan State University's \$4 billion endowment. The university's investment office is in Stamford, CT, which is where he lives. As CIO, he has full discretion over investments, hiring and removing managers, subject to the condition of the Board of Trustee's Investment Policy.

The investment office has relationships with many of the biggest asset managers in the industry, many of which overlap with investment by CT's Common Investment Pool, such as with BlackRock, Blackstone, Goldman Sachs, to name a few of the largest. The university's rules around accommodations "does not prohibit an Administrator from accepting meals and entertainment provided without charge to all those at meetings the administrator attends as part of his/her University duties" and "does not prohibit an Administrator from attending, in connection with his/her University duties, a reception that is sponsored by an ... entity that does business or intends to do business with the University and at which food and entertainment typical to business receptions are provided without charge."

Before the passage of Public Act 24-81, the CT ethics codes for State Officials would have prevented Mr. Zecher from attending many meetings or events that he would otherwise attend as part of his duties to MSU. One recent case was attending the dinner provided by BlackRock the night before their big institutional investor meeting, where the cost of the meal was in excess of the states limit of \$50 annually. These sort of events not only allow Mr. Zecher to interact with many of the experts at BlackRock, but also are good for talking with peers at other institutions who attend. These sorts of meetings, of which there are many, are very efficient means of collecting valuable market perspectives and intelligence.

Given the passage of Public Act 24-81, is it now permissible for Mr. Zecher, were he appointed to the CIAC, to attend events and receive travel expenses, lodging, food, beverage and other benefits customarily provided in the course of employment?

Analysis

Created under General Statutes § 3-13b, the IAC, by law, includes 12 members: two ex-officio members (the Treasurer and the Secretary of the Office of Policy and Management), three representatives of “the teachers’ unions,” two representatives of “the state employees’ unions,” and five “public members,” who must be experienced in investment-related matters. Among its various roles, the IAC

- reviews and approves the Treasurer’s investment policy statement, which “set[s] forth the standards governing investment of trust funds by the Treasurer”; General Statutes § 3-13b (c) (1);
- provides “advice and consent” to the Treasurer concerning the latter’s “appointment of a chief investment officer”; General Statutes § 3-13a;
- reviews the Treasurer’s recommendation of “contracts for services related to the investment of . . . [trust] funds”; General Statutes § 3-13i; and
- reviews “trust funds investments by the Treasurer” and “notif[ies] the Auditors of Public Accounts and the Comptroller of any unauthorized, illegal, irregular or unsafe handling or expenditure of trust funds” General Statutes § 3-13b (c) (2).

If appointed to the IAC, Mr. Zecher will be a “Public official,” as defined in General Statutes § 1-79 (11),¹ and will thus be subject to the Code, including the gift prohibitions housed in subsections (j) and (m) of General Statutes § 1-84. Under § 1-84 (j), he will be barred from knowingly accepting any “gift” (to be defined shortly) from a person known to be a “registrant” (i.e., a person required to register as a lobbyist with the Office of State Ethics²) or known to be acting on a registrant’s behalf. And under § 1-84 (m), he will be barred from knowingly

¹Section 1-79 (11) defines “Public official” to include, among many others, “any public member or representative of the teachers’ unions or state employees’ unions appointed to the Investment Advisory Council pursuant to subsection (a) of section 3-13b”

²General Statutes §§ 1-79 (18) and 1-91 (17).

accepting, directly or indirectly, any “gift” from a person he knows or has reason to know fits in any of these categories:

- (1) is doing business with or seeking to do business with *the department or agency in which . . . [he] is employed;*
- (2) is engaged in activities which are directly regulated by . . . *[his] department or agency;* or
- (3) is prequalified [as a contractor or substantial subcontractor] under section 4a-100.

(Emphasis added.)

For purposes of the gift prohibition in § 1-84 (m), “the department or agency in which . . . [Mr. Zecher] is employed” will be the Office of the Treasurer in its entirety—including the IAC. Indeed, even though the IAC is “within the office of the Treasurer for administrative purposes only”; General Statutes § 3-13b (d); the former is so integrally linked³ to the latter that, based on precedent, they will be considered the same agency for purposes of § 1-84 (m).⁴ Which means this: that any person regulated by, doing business with, or seeking to do business with the Office of the Treasurer will be deemed a restricted donor under § 1-84 (m), not just as to employees of the Office of the Treasurer, but as to IAC members as well.

Based on the facts presented, such restricted donors would appear to include asset managers like BlackRock, Blackstone, and Goldman Sachs, and Mr.

³For example: the IAC is staffed by employees of the Office of the Treasurer; the Treasurer is an ex officio member of the IAC and, under law, recommends an investment policy statement to the IAC setting forth the standards governing investment of trust funds by the Treasurer; the IAC is listed in the 2024 State Register and Manual as a board within the Office of the Treasurer; all statutory provisions concerning the IAC are contained within Title 3, Chapter 32, of the General Statutes, which is titled “Treasurer”; and the two entities have significant interaction on substantive matters.

⁴Compare Advisory Opinion No. 96-17 (concluding that, for purposes of one of the Code’s post-state employment provisions, the Underground Storage Tank Petroleum Clean-up Account Review Board (“Review Board”) was part of the Department of Environmental Protection (“DEP”), in part because the staff of the Review Board were employees of DEP, the DEP commissioner was a member of the Review Board, and the Review Board was listed in the 1995 State Register and Manual as a board within the DEP), with Advisory Opinion No. 91-21 (concluding that, for purposes of one of the Code’s post-state employment provisions, the Commission on Hospitals and Health Care was not part of the Department of Health Services, given that the former “essentially operates independently since there is no interaction between the two entities on any substantive issues”).

Zecher will thus be barred from knowingly accepting from those entities any “gift,” a term the Code defines as follows: “anything of value, which is directly and personally received, unless consideration of equal or greater value is given in return. . . .” General Statutes § 1-79 (5).

Despite that broad definition, § 1-79 (5) contains numerous gift exceptions, namely, a “list of items which are not considered ‘gifts’ for the purpose of calculating the gift limit” Advisory Opinion No. 97-23. That is, the items on that list are things Mr. Zecher may accept from restricted donors, without running afoul of the gift prohibitions mentioned above. The list includes, by way of brief example, the following:

- *Food/beverage exception:* “Food or beverage or both, costing less than fifty dollars in the aggregate per recipient in a calendar year, and consumed on an occasion or occasions at which the person paying, directly or indirectly, for the food or beverage, or his representative, is in attendance” General Statutes § 1-79 (5) (I).
- *Employer exception:* “Anything of value provided by an employer of (i) a public official, (ii) a state employee, or (iii) a spouse of a public official or state employee, to such official, employee or spouse, provided such benefits are customarily and ordinarily provided to others in similar circumstances” General Statutes § 1-79 (5) (O).
- *Token-item exception:* “Anything having a value of not more than ten dollars, provided the aggregate value of all things provided by a donor to a recipient under this subdivision in any calendar year does not exceed fifty dollars” General Statutes § 1-79 (5) (P).

According to the petitioner, the list of gift exceptions that *pre-existed* Public Act 24-81 (“P.A. 24-81”) was not broad enough to cover the items that asset managers may offer Mr. Zecher, in his capacity as Chief Investment Officer of MSU, to attend “meetings or events that he would otherwise attend as part of his duties to MSU.” For example, the food/beverage at such events may exceed the \$49.99 cap in the food/beverage exception, and the entertainment provided there may exceed the \$10 cap under the token-item exception. And while the employer exception allows a public official to accept items—that are customarily and ordinarily given to others under similar circumstances—from his employer and, in certain instances, its clients, the asset managers here are neither Mr. Zecher’s employer nor clients of his employer, meaning that the employer exception (outlined above) would not apply.

With the passage of P.A. 24-81, however, comes an entirely new gift exception. Under this new exception—which will be housed in subdivision (I) and effective as of July 1, 2024—the term “gift” will no longer capture the following:

Travel expenses, lodging, food, beverage and other benefits customarily provided in the course of employment, when provided to a public member of the Investment Advisory Council established under section 3-13b.

P.A. 24-81, § 86. Given this new exception (hereinafter, “IAC exception”), the question before us is whether—in relation to restricted donors⁵ (such as the asset managers mentioned above)—Mr. Zecher may, if appointed as a public member of the IAC, “attend events and receive travel expenses, lodging, food, beverage and other benefits customarily provided in the course of employment[.]”

To answer that question, we must dissect the exception into its component parts, starting with this: *Who may use the IAC exception?*

The exception applies not just to members of a single state entity, the IAC, but to a limited group of such members: namely, the IAC’s “public members.” P.A. 24-81, § 86. The term “Public member,” though not defined in the Code, finds definition in the State Personnel Act as “a member of a board or commission who does not hold any office or position in the state service.” General Statutes § 5-196 (22). Thus, if Mr. Zecher becomes one of the IAC’s “public members” (i.e., members who do not hold any other office or position in state service), then he may use the exception.

Next: *Under what circumstances may the IAC exception be used?*

The IAC exception may be used when the listed items (to be discussed later) are “customarily provided in the course of employment . . .” P.A. 24-81, § 86. Neither the Code nor its regulations define any of those terms, so “[w]e may presume . . . that the legislature intended [the terms] to have [their] ordinary meaning[s] in the English language, as gleaned from the context of [their] use. .

⁵If an asset manager is a *non-restricted donor*, i.e., is not a registered lobbyist or a person regulated by, doing business with, or seeking to do business with the Office of the Treasurer (including the IAC), then Mr. Zecher may accept gifts, without limit, from the asset manager, provided that the asset manager is providing the gifts by virtue of his MSU (rather than his IAC) position. See Advisory Opinion No. 98-9 (limiting benefits from non-restricted donors only when the benefits are provided by virtue of one’s state office or position).

. . . Under such circumstances, it is appropriate to look to the common understanding of the term[s] as expressed in a dictionary.” (Internal quotation marks omitted.) *Meriden v. Freedom of Information Commission*, 338 Conn. 310, 322 (2021).

Starting with the words “customarily” and “provided,” the former means “usually, habitually, according to the customs; general practice or usual order of things; regularly.” Black’s Law Dictionary (6th ed. 1990) p. 385; see also, e.g., Merriam-Webster Online Dictionary, available at <https://www.merriam-webster.com/customarily> (last visited June 25, 2024) (defining “customarily” as “in accordance with what is customary or usual”). And the verb “provide” means “to make available; furnish” Dictionary.com, available at <https://www.dictionary.com/browse/provide> (last visited June 25, 2024); see also, e.g., Merriam-Webster Online Dictionary, *supra* (defining “provide” as “to supply or make available”). Viewed together, then, “customarily provided” means “usually” or “regularly” “made available.”

To that, we must tack on the phrase “in the *course of employment*,” the italicized words being defined as follows: “[e]vents that occur or circumstances that exist as part of one’s employment” Black’s Law Dictionary (Deluxe 7th Ed. 1999) p. 356. To flesh out that definition a bit more, we look to the employer exception in § 1-79 (5) (O), particularly given that it uses language similar to that in the IAC exception. See General Statutes § 1-2z (directing us first to consider the text of the statute itself *and its relationship to other statutes*).

The employer exception, recall, provides as follows: “Anything of value provided by an employer of (i) a public official, (ii) a state employee, or (iii) a spouse of a public official or state employee, to such official, employee or spouse, provided such benefits are customarily and ordinarily provided to others in similar circumstances” General Statutes § 1-79 (5) (O). Given, then, that there is already an exception covering “anything of value” customarily provided by a public official’s employer, the IAC exception must have been intended to cover items provided “in the course of employment” *by a person other than one’s employer* (such as the asset managers in this instance, as opposed to MSU, Mr. Zecher’s employer, from which he may already accept “anything of value” under the employer exception, subject, of course, to the “customarily and ordinarily provided” requirement).

Further, soon after the employer exception was added to the Code, the former State Ethics Commission (“Commission”) gave it some context, stating:

The original purpose of the exception in question, as reflected in

discussions between Legislative Leaders and attorneys for the State Ethics Commission, conducted at the time of the provision's enactment, was to allow a public official to attend events (e.g., annual holiday party) to which he or she was invited by reason of his or her spouse's employment, even if the employer was a registered lobbyist (e.g., insurance company, union, law firm, etc.) *In essence, the General Assembly determined that it was unnecessary, and unfair, to apply the Codes' extremely restrictive gift and entertainment provisions to occasions which were unrelated to lobbying [i.e., the employer was not lobbying the public official in his or her state capacity]; and which, in fact, the public official was expected to attend by virtue of the spouse's employment.*

This *business purpose rationale* is reflected in both the language of the provision and in the legislative history. Specifically, the Senate Chairperson of the Government Administration and Elections Committee, Gary LeBeau, in explaining this provision, stated: "...that's kind of a practical interpretation of what I see here, so that the reasonable and regular and customary types of things that people do in the real world would be allowed..." Senate Debate on Bill No. 8005 at p. ____ (June 23, 1997).

(Emphasis added.) Advisory Opinion No. 98-5. Thus, for the employer exception to apply, there must be a legitimate "business purpose," meaning "the activity is unrelated to lobbying and the [public official] is expected to participate by virtue of his or her job responsibilities with the [employer]." *Id.*

The same "business purpose" rationale, we believe, underlies the IAC exception, both in its language (i.e., "course of employment") and in its legislative history. Indeed, the IAC exception's legislative history, though sparse, is similar to that of the employer exception, with Senator Cathy Osten, in explaining the exception's justification, stating:

I believe that this was the treasurer's request to increase the talent of those people that are on the Investment Board and that's why they have looked at this *because in their regular day job, this happens on a more than frequent basis* and many people just would not take the job and we need that talent on the Investment Board. Through you, Madam President.

(Emphasis added.) __ S. Proc., Pt. __ 2024 Sess., p. 269.

Putting the foregoing together and applying it to Mr. Zecher, he may, if appointed as a public member of the IAC, accept the items listed in the IAC exception if they

- are usually and regularly made available
- by a person other than his employer, such as asset managers,
- at meetings or events that
 - are unrelated to lobbying and
 - in which he is expected to participate by virtue of his MSU job responsibilities.

Finally: *What items may be accepted under the IAC exception?*

The easy answer: “[t]ravel expenses, lodging, food, beverage and other benefits” P.A. 24-81, § 86. Just as easy is pointing out the conspicuous absence from the IAC exception of any monetary limit on those items. That is, unlike other exceptions (such as the food/beverage and token-item exceptions mentioned above), the items listed in the IAC exception have no dollar limit, meaning that the exception would not (as do a few other Code provisions) limit travel expenses to coach class, lodging to a standard room (rather than a suite), and food/beverage to what has been described as “non-lavish.” And to add such a limit would require us to import words into the exception that do not exist in its original form, which is neither a function nor a privilege of this Board. See *Doe v. Manson*, 183 Conn. 183, 188 (1981) (“[i]t . . . is not our function to attempt to improve upon the actions of the legislature by reading into a statute what is clearly not there” [internal quotation marks omitted]).

The more difficult question is what the legislature meant by “other benefits.” As for the word “benefit,” we previously noted that “Black’s Law Dictionary (6th Ed. 1990) defines the word ‘benefit’ as an ‘[a]dvantage; profit; fruit; privilege; gain; interest. . . .’” (Citation omitted; internal quotation marks omitted.) Advisory Opinion No. 2020-1. Read broadly, the phrase “other benefits” could thus cover virtually anything, but we do not think it was intended to be so all-inclusive. Indeed, if the legislature had intended such a result, it could have borrowed the “anything of value” language in the employer exception, but it did not do so. And its “use of the different terms . . . within the same statute suggests that the legislature acted with complete awareness of their different meanings . . . and that it intended the terms to have different

meanings.” (Internal quotation marks omitted.) *Felician Sisters of St. Francis of Connecticut, Inc. v. Historic District Commission*, 284 Conn. 838, 850 (2008).

As to that different meaning,

[t]he canon of construction known as *eiusdem generis* (“of the same kind”) is useful in this context because it teaches that, when “a particular enumeration [i.e., listing of things] is followed by general descriptive words, the latter will be understood as limited in their scope to . . . things of the same general kind or character as those specified in the particular enumeration, unless there is something to show a contrary intent.”

Wind Colebrook South, LLC v. Colebrook, 344 Conn. 150, 184 (2022) (*Ecker, J.*, concurring). Put a bit differently, *eiusdem generis* is the canon of construction “holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed.” *Black’s Law Dictionary* (9th ed. 2009). By way of example: “[I]n the phrase *horses, cattle, sheep, pigs, goats, or any other farm animals*, the general language *or any other farm animals*—despite its seeming breadth—would probably be held to include only four-legged, hooved mammals typically found on farms, and thus would exclude chickens.” (Emphasis in original.) *Id.*

Here, then, to avoid giving the IAC exception unintended breadth, we must construe the general phrase “other benefits” in light of the immediately preceding list, which includes “[t]ravel expenses, lodging, food, [and] beverage . . .” More specifically, the general phrase “other benefits” must be construed to embrace only items of the same class as “[t]ravel expenses, lodging, food, [and] beverage . . .” Which raises the question: what is the class to which the items on that list belong? To answer that question, we look to a couple of other Code provisions that contain similar lists.

The first is another of the Code’s gift exceptions, the student exception, which excludes from the term “gift” the very same list of items that are in the IAC exception:

Travel expenses, lodging, food, beverage and other benefits customarily provided by a prospective employer, when provided to a student at a public institution of higher education whose employment is derived from such student’s status as a student at such institution, in connection with bona fide employment discussion
. . . .

(Emphasis added.) General Statutes § 1-79 (5) (R). According to the Office of Legislative Research, this exception “exempts student employees from . . . restrictions on expense-paid travel by allowing them to receive travel expenses, lodging, food, beverage, and other benefits customarily provided by a prospective employer in connection with bona fide employment discussions” Office of Legislative Research, Connecticut General Assembly, Summary of Public Act 10-101. In other words, the items on the list are limited to those intended to facilitate a student’s participation in legitimate employment discussions with prospective employers.

The other provision is the Code’s “necessary expenses” provision, which provides that, when a public official or state employee actively “participat[es] at an event” (e.g., gives a speech, participates on a panel) in his or her “official capacity,” the official or employee may receive, from the event’s sponsor, “payment or reimbursement for necessary expenses” General Statutes § 1-84 (k). The Code defines “Necessary expenses,” in relevant part, as follows:

“Necessary expenses” means a public official’s or state employee’s expenses . . . *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.

(Emphasis added.) General Statutes § 1-79 (17). Like the IAC and student exceptions, the “Necessary expenses” definition includes “travel expenses,” “lodging,” food, and beverage (the latter two items captured under “meals”). And the express purpose for allowing the acceptance of those items is to facilitate the public official’s or state employee’s “participation at an event”

Returning to the question at hand—to what class belong the items on a list that includes travel expenses, lodging, food, and beverage?—the answer, we believe, is this: items that facilitate one’s participation in some activity, be it participating in employment discussions under the student exception, participating on a panel at an event under the “necessary expenses” provision, or, as relevant here, participating in employment-related events under the IAC exception. Accordingly, under the canon of *eiusdem generis*—which counsels that the term “other benefits,” as used in the IAC exception, “must be understood by the company it keeps”⁶—we construe it as being limited to items that facilitate an IAC public member’s participation in employment-related

⁶*Wind Colebrook South, LLC v. Colebrook*, supra, 344 Conn. 185.

events.

To sum up and apply here, if Mr. Zecher is appointed as a public member of the IAC, the IAC exception will allow him to accept—subject to the “customarily provided in the course of employment” requirement discussed above—the following items, without monetary limit: travel expenses, lodging, food, beverage and other items that facilitate his participation in the employment-related events at issue.

The facts presented in the petition say little about the items that are customarily made available at meetings and events of asset managers, and we will not speculate as to what they may be. Nevertheless, the petition provides a few examples, one being: “One recent case was attending the dinner provided by BlackRock the night before their big institutional investor meeting, where the cost of the meal was in excess of the states limit of \$50 annually.” Because the IAC exception allows for the acceptance of food and beverage, regardless of its value, a meal valued more than \$50 would be permissible (provided, of course, that the “customarily provided in the course of employment” requirement is satisfied).

The petition also mentions “entertainment”:

The university’s [i.e., MSU’s] rules around accommodations “does not prohibit an Administrator from accepting meals and *entertainment* provided without charge to all those at meetings the administrator attends as part of his/her University duties” and “does not prohibit an Administrator from attending, in connection with his/her University duties, a reception that is sponsored by an ... entity that does business or intends to do business with the University and at which food and *entertainment* typical to business receptions are provided without charge.”

(Emphasis added.) Because entertainment is not one of the items expressly listed in the IAC exception, Mr. Zecher may accept it (subject, again, to the “customarily provided in the course of employment” requirement) only if it constitutes an appropriate “other benefit,” meaning that it must facilitate his participation in the employment-related events. To do so, the entertainment must be an “integral part” of the event. Advisory Opinion No. 99-2.⁷

⁷In Advisory Opinion No. 99-2, the Commission concluded, under the “gift to the state” exception in § 1-79 (5) (E), that, “as long as [a registered lobbyist’s] event is educational in nature and relevant to the official/employee’s state duties, the Commission will sanction

By “integral part” of the event, we mean that the entertainment is provided in the context of the event—rather than being separate and apart from it—and Mr. Zecher could not participate in the event without partaking of the entertainment. A few examples may help clarify:

- If an asset manager hosts a reception and hires an entertainer (e.g., comedian, magician, or band) to perform during the reception, the entertainment would be deemed an “integral part” of the event.
- If, during the Travelers Championship, an asset manager reserves the Greenside Club at the 18th hole for a networking event, the entertainment would be deemed an “integral part” of the event.
- If, as part of an event, an asset manager gives attendees tickets to a concert, theater performance, sporting event, etc., *with the understanding that they would attend on their own*, the entertainment would not be deemed an “integral part” of the event.

Because we cannot possibly undertake to list each and every item that would be permissible to accept under the IAC exception, we recommend that, if Mr. Zecher has any hesitation as to a specific item, he contact the Legal Division of the Office of State Ethics for further advice.

Before closing, we stress that this opinion interprets the Code only, and that it does not address appearance issues, which are beyond the Code’s scope. See Advisory Opinion No. 2009-7 (“[t]he Code . . . does not speak of appearances of conflict, only actualities,” so in “interpreting and enforcing the Code . . . [we are] limited, by statute, from addressing appearances or perceptions of conflict of interest” [internal quotation marks omitted]).

Conclusion

Based on the facts presented and in light of the new IAC exception, we conclude as follows: At meetings or events that are unrelated to lobbying and in which he is expected to participate by virtue of his MSU job responsibilities, Mr. Zecher, if appointed as a public member of the IAC, may accept, without monetary limit, items that are usually and regularly made available by asset managers at such meetings or events, including travel expenses, lodging, food,

receipt of free conference registration, *including any meal held as an integral part of the proceedings.*” (Emphasis added.)

beverage, and other items that facilitate his participation in the employment-related events at issue.

By order of the Board,

Dated _____

Chairperson

DRAFT