

ADVISORY OPINION

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REFERENCES: RCW 42.52.010, RCW 42.52.140, RCW 42.52.150

SUMMARY OF CHANGES: Non-substantive scrivener's errors.

Hosted Reception-Acceptance of Food and Beverages

QUESTIONS

1. Can officers and employees of a state regulatory agency accept food and beverage from persons when they do not participate in regulatory or contractual matters with those persons?
2. What is the definition of hosted reception under RCW 42.52.150(4)(e)?
3. Does the limitation on the acceptance of food and beverage in RCW 42.52.150(4) apply to food and beverage provided by an association which is composed of members who are regulated by the agency or who seek to provide goods or services to the agency?
4. Can a state officer or employee accept food and beverage which they receive as part of training paid for by the state?

ANSWERS

1. Officers and employees of a regulatory agency may accept food and beverage from persons if they don't participate in regulatory or contractual matters with those persons. RCW 42.52.150(5) provides that such officers and employees may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance is related to the performance of official duties. RCW 42.52.150(2)(f) also allows officers and employees to accept food and beverage at a hosted reception.
2. A hosted reception is a social event involving a diverse group of people, some of whom are regulated by the agency and others who are not, and some who provide goods or services to the agency and some who do not. It does not involve a sit-down meal.
3. In general, the limitation on the acceptance of food and beverage by officers of a regulatory agency in RCW 42.52.150(4) applies if the food and beverage is provided by an

association which is composed of members who are regulated by the agency or who seek to provide goods and services to the agency. However, this limitation will not apply if the persons regulated by the agency or who seek to provide goods or services to the agency comprise less than 10 percent of the association and contribute less than 10 percent of the association's membership funds.

4. Officers and employees may accept food and beverage as part of training that is paid for by the state. In this situation the food and beverage is not a gift to the officer or employee. Rather, it is a meal that has been paid for by the state.

ANALYSIS

These questions all concern acceptance of gifts of food and beverage. RCW 42.52.010(9) defines “gift” as “anything of economic value for which no consideration is given”. Under the definition, the term “gift” excludes a number of items. RCW 42.52.140 prohibits a state officer or state employee from seeking or receiving a gift “if it could be reasonably expected that the gift . . . would influence the . . . judgment of the officer or employee, or be considered as part of a reward for action or inaction”. RCW 42.52.150(1) provides that a state officer or state employee may not accept gifts with a value in excess of fifty dollars from any person in a calendar year. RCW 42.52.150(2) sets forth some exceptions to this fifty dollar limit including (f):

Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties[.]

Another exception to the fifty dollar limitation is set forth in RCW 42.52.150(5) which provides:

A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties.

RCW 42.52.150(4) sets forth stricter limitations on the receipt of gifts by officers and employees of a “regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters”. The Board has used the term “Section 4 employees” to refer to officers and employees subject to the more stringent limitations in RCW 42.52.150(4).

Under RCW 42.52.150(4)(e), a Section 4 employee may accept food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties. On the other hand, Section 4 employees may not accept gifts in the form of food and beverages on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties.

The first question asks whether officers and employees of a regulatory agency may accept gifts of food and beverage from persons if they do not participate in regulatory or contractual matters with those persons. The answer is yes. RCW 42.52.150(2)(f) authorizes acceptance of food and beverage at a hosted reception and RCW 42.52.150(5) authorizes acceptance of food and beverage in the ordinary course of meals. The more strict limitations on the acceptance of gifts in RCW 42.52.150(4) only apply if the officers or employees participate in regulatory or contractual matters.

In general, an officer or employee participates in regulatory matters if his or her job includes the authority to participate in such matters—even if there is no actual regulatory transaction taking place. *See* Advisory Opinion 96-05.

Question 2 asks about the definition of the term “hosted reception” in RCW 42.52.150(2)(f) and (4)(e). The term is important because Section 4 employees may accept food and beverages consumed at hosted receptions where attendance is related to their official duties. The term “hosted reception” is not defined in the statute. The Board has adopted a two-part analysis to determine the meaning of this term. The first part looks to the plain meaning of these terms. The dictionary defines “host[ed]” as “[t]o serve as host for or at”. Webster's II New Riverside University Dictionary 593 (1988). “Reception” is defined as “[a] social function”. *Id.* at 982. Based on the plain meaning of the term hosted reception, the Board concludes that a hosted reception is a social event.

As a social event, a hosted reception is not a function involving solely officers and employees who participate in regulatory and contractual matters and those persons who are requested by the agency to provide goods or services to the agency. Instead, a hosted reception involves a diverse group of people, some of whom are regulated by the agency and others who are not—some who provide goods or services to the agency and some who do not.

The second aid in defining hosted reception is to compare the provision of RCW 42.52.150(2)(f) and (4)(e) with the other provision in the statute governing gifts of food and beverage. RCW 42.52.150(5) provides that an officer or employee may accept gifts “in the form of food and beverages on infrequent occasions in the ordinary course of meals”. Based on the reference to “meals” in RCW 42.52.150(5) the Board concludes that a hosted reception involves food and beverage that is not a meal. For the purpose of this opinion, the Board considers a meal to be a sit-down meal where the guests are expected to sit down to eat.

To summarize, a hosted reception is a social function involving a diverse group of people that does not involve a sit-down meal. The following examples illustrate how this definition should be applied:

Example 1:

The XYZ Corporation, a person regulated by a state agency, has opened a new facility. The XYZ Corporation invites a number of people to view the facility including state officers and employees who participate in regulatory matters, customers, and officials from other governmental entities. In the evening, at the conclusion of the tour, the XYZ Corporation provides food and beverages, including substantial hors d'oeuvres. There are some tables where guests may be seated but most people stand. This event is a hosted reception. It is a social event that involves a diverse group of people and does not involve a sit-down meal. Even though some tables and chairs are provided, it is not a regular meal where people sit down and eat.

Example 2:

The XYZ Corporation is negotiating a contract with a state agency. The negotiations are expected to last several days. The evening before negotiations are to begin, the XYZ Corporation invites the officers and employees who will participate in the negotiations to an event to meet the XYZ employees who will be participating in the negotiations. The XYZ Corporation serves food and beverages, including substantial hors d'oeuvres. Although there are some tables and chairs, most people stand. This event is not a hosted reception. Even though it is not a sit-down meal, it does not involve a diverse group of people. The only ones attending are state officers and employees who participate in contractual matters and members of XYZ Corporation involved in negotiating the contract.

Example 3:

The XYZ Corporation, a person regulated by a state agency, has opened a new facility. The XYZ Corporation invites a number of people to view the facility including state officers and employees who participate in regulatory matters, customers, and officials from other governmental entities. In the evening at the conclusion of the tour, XYZ serves food and beverages. Guests line up and fill up their plates and then are seated at various tables. There are enough tables and chairs so that everyone is expected to eat sitting down. This event is not a hosted reception. Even though it is a social event involving a diverse group of people, the XYZ Corporation is providing a sit down meal to the guests.

Question 3 has to do with the application of the limitation on gifts as applied to associations. At the outset, it is clear that the law applies to associations. RCW 42.52.010(14) defines person to mean “any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit” (emphasis added).

RCW 42.52.150(4) prohibits officers and employees of a regulatory agency who participate in regulatory or contractual matters from accepting a gift from persons regulated by the agency or seek to provide goods or services to the agency. For ease of reference, the Board will refer to persons who are regulated by an agency or who seek to provide goods or services to an agency as Section 4 donors. If an association is a Section 4 donor, a Section 4 employee may not accept food and beverages from the association (except at a hosted reception).

A more difficult question arises when the association is not a Section 4 donor but is composed of members who are Section 4 donors. The question is whether the limitation on the acceptance of food and beverage in RCW 42.52.150(4) applies to food and beverages provided by an association which is composed of members who are regulated by the agency or who seek to provide goods or services to the agency.

The strict limit on gifts to Section 4 employees provides that they may receive “directly or indirectly only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency”. RCW 42.52.150(4). An association is funded by its

members. If the association is composed of Section 4 donors, these members are at least indirectly providing food and beverages to Section 4 employees. Accordingly, the Board concludes that a Section 4 employee may not accept food and beverages under RCW 42.52.150(5) from an association composed of Section 4 donors.

There is a limited exception to this prohibition. If the Section 4 donors comprise only a small part of the association both in terms of membership and financial support, then their participation is too indirect to trigger the restrictions in RCW 42.52.150(4). To qualify for the exception, Section 4 donors must comprise less than 10 percent of the membership of an association and contribute less than 10 percent of the association's funds.

Moreover, this exception only applies if it is clear from the context of the event that it involves the association and not just the members who are Section 4 donors. For example, if Section 4 donors comprise less than 10 percent of an association's membership and financial support, it still would not be acceptable for only those members to host a meal for Section 4 employees—even if it was paid for by the whole association.

Question 4 concerns food and beverage received by the state as part of a state contract. This can happen in several ways. For example, the state buys a piece of equipment. As part of the contract, the vendor agrees to train state officers and employees how to use the equipment. The training takes place over several days and the vendor provides food and beverages to state officers and employees during the training.

Although state officers and employees receive the food and beverage in this example, it does not constitute a gift to them. RCW 42.52.010(9) defines gift to mean “anything of economic value for which no consideration is given”. (Emphasis added) Thus, there is not gift if the food and beverage is provided as part of a state contract because the state has paid for it. In other words, consideration has been given.