

ADVISORY OPINION

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REFERENCES: RCW 42.52.010, RCW 42.52.150

SUMMARY OF CHANGES: Updated statutory references.

Receipt of Gifts by State Officers, Repayment at Face Value of Gifts from Agency Vendors

QUESTION

Is there a gift subject to the limitations in RCW 42.52.150 when a person gives a state officer or employee a ticket to a sporting event, concert or other performance and the officer or employee pays the person for the face value of the ticket?

ANSWER

Yes. There is a gift if the event is sold out or the ticket entitles the officer or employee to special accommodations, such as seating in a private suite that is not reflected in the price of the ticket.

ANALYSIS

With some statutory exceptions, RCW 42.52.010(9) defines a gift as "anything of economic value for which no consideration is given." Under this definition, it is clear that there is a gift when a person(s) gives a state officer or employee tickets to a sporting event, concert or other performance. This opinion addresses a different situation. The person provides the tickets to the officer or employee who then pays the person for the face value of the tickets. For example, a vendor provides an employee with two tickets to a football game. The face value of the tickets is \$25 and the employee gives the vendor \$50 to cover the cost of the tickets. In this situation it might be argued that there is no gift because the employee paid consideration for the tickets.

However, the fact that the employee paid something for the tickets does not always mean that there is no gift. The Board reaches this conclusion for two reasons. First, the definition states that unless "no consideration" is given, it is a gift. In this situation there is consideration. However, the Board interprets the reference to "consideration" in the definition of gift as requiring that the full value must be paid, or else there is a gift. If any consideration was sufficient to remove an item from the definition of gift, a person could give a state employee a new car and there would be no gift if the employee paid \$10 in consideration. This would create a large loophole that is inconsistent with the purpose of the ethics law. The requirement for reimbursement of the full

value of an item is also supported by one of the exceptions to the definition of gift. RCW 42.52.010(9)(i) excludes from the definition of gift: "Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group[.]" If full consideration were not required, there would be no need to exclude discounts from the definition of gift. Moreover, only certain discounts are excluded from the definition—those available to "an individual as a member of an employee group, occupation, or similar broad-based group". Thus, there is no gift if a car dealer offers a state employee the same discount that is available to the general public.

The second reason that there may be a gift is that the value of the ticket may be greater than the amount paid. There are two situations when the tickets may have a greater value than the ticket price. The first is if the event is sold out. In this instance the employee could not attend the event but for the fact that someone has provided the ticket. The opportunity to attend the event means that the value of the ticket exceeds the face value of the ticket. The second situation is when the ticket entitles the employee to special accommodations, such as seating in a private suite that is not reflected in the price of the ticket.

Some private companies, non-profit entities, or governmental organizations hold or lease private suites at sports and performing arts venues. These private suites entitle the holder to a set number of event tickets and exclusive use of suite facilities and related amenities during the event. These amenities may include better seating or food and beverages that are not available without cost to regular ticket holders. While provided at no charge to the suite holder, the event tickets normally have a face value that is tied to the price of a publicly available seat located adjacent to the private suite. In this case, the value of a seat in the private suite is greater than the face value of the ticket. This is true not only because of the special amenities, but also because of the opportunity to sit in the suite which is not available to the general public.

Thus, there is a gift if an officer or employee receives a ticket to a sold out event or is entitled to special accommodations—even though the officer or employee pays the face value of the ticket. For this reason, RCW 42.52.150 applies. RCW 42.52.150 imposes limits on the gifts state officers and employees may accept. In addition, RCW 42.52.150(4) imposes stricter limitations on officers and employees who participate in regulatory and contractual matters—so called "section 4" employees.

With regard to section 4 employees, RCW 42.52.150(4) prohibits the receipt of any gifts except those listed in the statute. Indeed, section 4 employees are prohibited from accepting some items that normally fall outside the definition of gift in RCW 42.52.010(9). RCW 42.52.150(4)(g). Applying these provisions, there are only two instances in which section 4 employees may accept tickets for which full value has not been paid.

First, a section 4 employee may accept: "Items from *family members or friends* where it is clear beyond a reasonable doubt that the *gift was not made as part of any design to gain or maintain influence* in the agency of which the recipient is an officer or employee[.]" RCW 42.52.010(19)(a)(emphasis added); RCW 42.52.150(4)(g). It is important to note that this exception is limited to gifts from family and friends and the Board will be skeptical of a claim that a vendor is a friend of the state employee responsible for the vendor's contracts. Moreover,

even gifts from family and friends are improper if they are designed to influence the performance of the employee's official duties.

Section 4 employees may also take advantage of "discounts available to an individual as a member of an employee group, occupation, or similar broad-based group[.]" RCW 42.52.010(9)(i). Thus, if a sports team offers discount tickets for a state employees' day, a section 4 employee could buy the tickets even though full value was not paid.

State officers and employees, who are not section 4 employees, may accept a broader range of gifts. Like section 4 employees, they may accept gifts from family and friends and discounts available to groups. In addition, these officers and employees may accept gifts with an aggregate value of fifty dollars, or less, from a single source. RCW 42.52.150(1). Thus, an employee who pays less than full value for a ticket may still be able to accept it, if the value of the ticket above and beyond the face value is \$50 or less.

This raises the question of how to value a ticket to a sold out event or that entitles the holder to special accommodations. The value of a ticket to a sold out event depends on the nature of the event. Nevertheless, the Board presumes that the value of a ticket to a sold out event exceeds the face price of the ticket by \$50. The Board further advises that this value shall hold, unless a state officer or employee can provide specific evidence that shows otherwise.

The value of a ticket entitling the holder to special accommodations also depends on the facts and circumstances involved. However, the Board presumes that the value of a ticket to a private suite exceeds the face price of the ticket by \$50. The Board further advises that this value shall hold, unless a state officer or employee can provide specific evidence that shows otherwise.

The Board's advisory opinion is based on the general facts as stated above. The Board does not investigate the facts. Please be aware that modification of the facts, or knowledge of more specific facts or circumstances, might cause the Board to reach a different conclusion. In addition, Board advisory opinions are narrowly drawn to interpret the Ethics in Public Service Act. They do not address whether the proposed action is prudent, good public policy or effective management practice.