



IN THE KNOW: 'TIS THE SEASON... GIFTS AND PUBLIC OFFICIALS

Is it okay to invite the mayor to your company's holiday party? Take your favorite Council member to lunch? Give a homemade pie to a city employee who has helped you through the maze of city permits?

Good questions – and the answers aren't as simple or clear as you might think.

Gifts to people who work for city government don't just happen during the holiday season. And while many are offered in the spirit of friendship, others may come with strings attached. Or at least the public could perceive it that way.

So the Committee of Seventy thought we'd offer a basic guide on gifts to public officials and city employees just so everyone knows what crosses the line.

A word of caution: There are several different city rules depending on which part of government you work for. There are rules that apply to people who *give* gifts, not just people who *get* them. There are also state rules. So it can be confusing.

Since Seventy's mission includes fighting for clean government, we strongly support the tightest possible gifts policy. The Mayor's Task Force on Ethics and Campaign Finance Reform agreed with us in its December 2009 report. We'd love to know what you think too.

- December 21, 2010

It's the holidays. Why shouldn't city employees get gifts like everyone else?

People in city government aren't just "everyone else." They work for, and are paid by, the taxpayers. When government employees solicit or accept gifts, it can create the appearance of improper influence – even if the gifts don't affect how they perform their jobs. This perception can undermine the public's trust in their government.

But there's a big difference between a box of cookies or dinner at the Four Seasons.

That's true if you are thinking only in terms of actual value – which is why some city governments set a dollar limit on acceptable gifts, such as New York City (\$50). This relieves employees from having to refuse a cup of coffee or that box of cookies. But some think it's improper to give a gift of *any* amount to a public employee.



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How do city employees know which ethics rules apply to them?

All employees should attend ethics trainings given by the independent Philadelphia Board of Ethics and consult the city's website – <http://www.phila.gov/INTEGRITYWORKS/everyone.html> – that lays out all applicable rules. When in doubt, the mayor's Chief Integrity Officer, Joan Markman, recommends the "six o'clock news" test: if you don't want to hear about yourself on the evening news, **don't do it.**

If I'm a city employee and still unsure about what gifts I can accept, what should I do?

- E-mail integrity@phila.gov and ask the office of the Chief Integrity Officer for guidance if you are an executive branch employee.
- Or, if you work for any branch of government, you can submit an "Ask for Advice" request to the Board of Ethics at: <http://www.phila.gov/ethicsboard/advice.html>.

So what gifts can be accepted by government employees?

Let's start with the Philadelphia Home Rule Charter – the city's governing document. The Charter forbids city officials, employees and members of certain boards and commissions from soliciting or accepting any compensation or gratuity (including gifts, meals or invitations) to take (or not take) any action that they would not otherwise take (or not take) in the normal course of their jobs.

What can happen if an employee takes a gratuity prohibited under the City Charter?

Depending on the severity of the offense, the punishment can range from a \$300 fine to removal from office or immediate dismissal.

You said there are other rules.

In addition to the City Charter, officials and employees in executive branch departments and agencies are covered by an Executive Order that forbids them from soliciting or accepting "anything of value" from virtually anyone who interacts with the city. You can read the Executive Order, and also get advice on how to decline improper gifts, at: <http://www.phila.gov/INTEGRITYWORKS/rules.html#MayorsExecutiveOrder>.

Does that mean my mom can't buy me a gift if she owns a restaurant inspected by the city?

No. The Executive Order makes a few exceptions for gifts from family members and close friends or from colleagues for special occasions (retirement, birthday) or for food and drink during a work meeting (as long as they are offered to others at the meeting).

Do executive branch employees have any other rules to think about?

Yes, the city's Ethics Code, which prohibits soliciting, accepting or receiving gifts, loans, gratuities, favors or services of "substantial economic value" that "might reasonably be expected to influence" them in performing their jobs. Non-executive branch employees – such



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as members of City Council, the City Controller, the Sheriff, City Commissioners and their staffs – are not covered by the mayor’s Executive Order, but do have to comply with the Ethics Code.

What does “substantial economic value” mean?

If someone seeking a Council contract offers a Jaguar to a member of Council, it would be hard to argue that the gift isn’t of “substantial economic value.” But that’s rare. Most gifts fall into the “gray area,” such as invitations to dinner at a restaurant or tickets to a sports event. With no dollar limit specified in the Ethics Code, the phrase may be subject to interpretation (although the Ethics Board will provide guidance if you submit an “Ask for Advice” request).

How would someone know if a gift is given in order to “influence” them?

The Ethics Board uses a “what-would-the-average-person-expect” test to determine whether a gift was given to tempt someone to act favorably towards the donor. But the language in the Ethics Code is vague. And, in real life situations, the donor’s intent can be hard to figure out. Sometimes it’s very clear (the gift card says “Please vote for Bill No. 1234”), but sometimes it’s murky (a lobbyist with no pending legislation knows the Council member loves white roses).

What can happen if someone accepts an improper gift under the city’s Ethics Code?

A violation of the gifts policy can lead to civil penalty ranging from \$2,000 (maximum) to \$250 (minimum). The Philadelphia Board of Ethics, which enforces the Ethics Code, can lower the penalty by considering mitigating factors (e.g., the violator reported the error immediately) or raise it because of aggravating factors (e.g., the violator knew he was acting improperly).

Didn’t a high ranking city official go to jail for taking improper gifts?

You’re probably thinking about former city Treasurer Corey Kemp. Yes, he certainly violated the city’s gift rules by accepting Super Bowl tickets, a free deck for his house, cash, trips, and much more in exchange for steering city contracts to a lawyer and his allies. But that was the least of his problems. Convictions on numerous public corruption charges landed him in federal prison.

Wouldn’t it be less confusing to prohibit gift-giving to government employees altogether?

Drawing a clear line is always the best way to understand what is allowed and what isn’t. And some cities do this for certain categories of givers, such as New York City, which bans gifts from lobbyists or from officers or employees of any organization that engages in lobbying.

And wouldn’t it also be less confusing to have just one gifts policy for all city employees?

We think so. Seventy supports a gifts policy that applies equally to every city employee, elected or appointed, salaried or volunteer. In its December 2009 report, the Task Force of Ethics and Campaign Finance Reform – whose nine members included one mayoral appointee and one City Council appointee – agreed. (By the way, there is a state Ethics Act that public officials and some city employees have to comply with too. But let’s stick with the city rules for now.)



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How can the public find out whether a city employee has received a gift?

Certain employees have to disclose gifts – which can include loans, entertainment, tickets, services, meals or honorary payments for receiving an award – on annual financial disclosure statements. There are three forms, each of which has a different dollar limit for reportable gifts: (1) state (required by the State Ethics Act), (2) city (required by Philadelphia’s Ethics Code), and (3) mayor’s (required by the mayor’s Executive Order). You can learn more about these forms at: <http://www.phila.gov/ethicsboard/financialdisclosure.html>.

Are the forms available to the public?

Only paper copies. And only if you go to the city Records Department, which is in Room 156, City Hall. Financial disclosure statements are not available electronically.

Is disclosure enough?

Pennsylvania Supreme Court Justice Ron Castille seems to think so. He accepted hotel stays, golf outings, dinners and plane rides as gifts from people who had, or potentially could have, business before his court. The gifts weren’t improper under state rules, so long as he put them on his disclosure forms, but they create a bad impression. Transparency is good, but many believe banning gifts to all judges would be even better.

Why is the burden on city employees to refuse gifts? What about the person giving the gift?

The city’s Ethics Code also prohibits people, firms, corporations or other businesses or professional organizations from offering, making or rendering gifts, loans, gratuities, favors or services of “substantial economic value” to any member of City Council or other city officer or employee which “might reasonably be expected to influence” them in performing their jobs.

How can gift-givers find out what to do – before they get a city employee in trouble?

The city’s website – <http://www.phila.gov/INTEGRITYWORKS/vendors.html> – contains special features that inform those who do business with the city about the ethics rules that apply to them. The stakes for making a mistake can be high: for example, a contractor who violates policies on gift-giving can be barred from future city contracts.

As you can see, the rules on accepting gifts aren’t clear-cut. As in all of our **IN THE KNOWs**, the Committee of Seventy has tried to make them easier to understand – and point you to city offices that can help you figure them out.

Please let us know how we did. Email us about this or any IN THE KNOW at Info@seventy.org.