

BERNALILLO COUNTY CODE OF CONDUCT REVIEW BOARD

Alan Packman, Chair
Michael Flynn, Member



Peter Vredenburg, Vice Chair
Sarita Nair, Member

Advisory Opinion 2016-001

Question:

May County Elected Officials and Employees accept complimentary tickets the value of which exceeds the \$100 gift limit in the Code of Conduct (the “Code”) from the Albuquerque Hispano Chamber of Commerce (the “Chamber”) for an event held by the Chamber?

Code Provisions:

This question requires the Code of Conduct Review Board (the “Board”) to analyze certain definitions and restrictions contained within the Code. Initially, the Code defines a “gift” as:

“ . . .any money, property, real property, personal property, service, license, permit, contract, authorization, loan, travel, entertainment, food, hospitality, gratuity, or any promise of these, or anything of value that is received or given without equivalent consideration or compensation.”

This definition then goes on to list ten exceptions to this definition, none of which would seem to apply in this particular case.

The Code also defines the term “restricted donor” as any person or entity who:

- (1) Is seeking official action (i) by an elected official or volunteer, or (ii) in the case of an employee by the employee or by an elected official, a county department or an employee's supervisor. Such official actions shall include, but are not limited to, the decisions regarding legislation, employment decisions, contract approval, approval of permits or development plans or any other action or decision that is discretionary with an elected official or employee;
- (2) Does business with or seeks to do business (i) with the board of county commissioners, the county, an elected official or volunteer, or (ii) in the case of an employee, with an employee or his/her department, elected office or an employee's supervisor;
- (3) Conducts activities regulated (i) by an elected official or volunteer, or (ii) in the case of an employee, with the employee or his/her department or the employee's supervisor.

Finally, the Code in Section 2-131 (d) imposes the following limitations on the acceptance of gifts from restricted donors:

Restrictions. No candidate, or public servant shall intentionally solicit or accept a gift or gifts with a market value greater than \$100.00 from any restricted donor within a calendar year. No candidate or public servant shall intentionally solicit or accept a gift or gifts in violation of any federal or state statute or regulation, or any county ordinance, rule or regulation. This ban applies to and includes family members of the candidate, elected official, employee or volunteer. No restricted donor shall intentionally offer or make a gift that violates this restriction. Any candidate or public servant who accepts a gift subject to the conditions of this section shall not allow receipt of the gift to influence in any way the execution or integrity of their official actions or decisions.

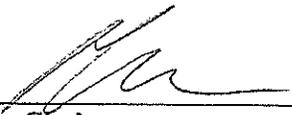
Analysis:

In order to properly address this question, the Board must first determine whether or not the Chamber is considered a restricted donor. Prior to 2016 the Chamber had a contractual relationship with the County and thus appeared to be a restricted donor pursuant to the second category of that definition noted above. However, the contract between the County and the Chamber expired in late 2015 and has not been renewed. In consultation with the County Procurement and Business Services Department, there are no anticipated future contracts with the Chamber nor are there any pending procurements that might involve the Chamber. As such, based on these facts, it would appear that the Chamber is no longer considered a restricted donor for purposes of this question assuming that they are not going to pursue any new contractual or financial relationship with the County in the near future.

The Code restriction on gifts contained in Section 2-131 (d) only refers to gifts given to elected officials or County employees (public servants) by a restricted donor. The Code does not address gifts given to public servants by any other source. Therefore, if the source of a gift does not fit into one of the three categories of restricted donors named in the Code, there is no restriction on the amount of gifts that a public servant may receive from those other sources. Additionally, it should be noted that the last line of Section 2-131 (d) indicates the spirit behind the general rule which is to discourage the acceptance of gifts as a means to influence the decision making of any public servant.

Conclusion:

Elected officials and County employees may accept complimentary tickets to the Chamber's 2016 annual event and not be in violation of the Code's restrictions on acceptance of gifts so long as the Chamber does not intend to seek a contractual or financial relationship with the County in the near future.



Alan Packman, Chair
Bernalillo County Code of Conduct Review Board

Date

1/23/16