

ADVISORY OPINION 2007-13

Government Discounts

INTRODUCTION

The Citizen's Ethics Advisory Board ("Board") issues this advisory opinion in response to several requests made by ethics liaisons from a number of state agencies. The liaisons asked whether it is a violation of the Code of Ethics for Public Officials, chapter 10, part 1, of the General Statutes ("Code of Ethics"), for public officials and state employees to accept "government discounts" on personal time.

RELEVANT FACTS

Over the past several months, ethics liaisons from a number of agencies have asked whether it is permissible, under the Code of Ethics, for public officials and state employees to accept, while traveling on personal time, a "government discount." It is not uncommon for large corporate entities, including hotels, rental car companies, and wireless phone services to offer discounts to government employees. In some cases, these discounts are available only to employees on government business, but many are open to employees exclusively on personal time. For example, a service called "Government Employee Travel Opportunities" offers discounts on timeshare rentals, rental cars, and hotels.¹ The discounts are occasionally offered to other large groups of people, such as employees of corporate account holders and organizations like the American Association of Retired People ("AARP"), but some discounts are available only to government employees. These discounts, generally offered by non-restricted donors,² may exceed \$100 dollars; for example, a hotel might offer a discount of \$20 per night, and the employee may stay for 6 nights, resulting in an overall discount of \$120. In addition, several national organizations or associations offer a special "government rate" for employees of federal, state, or municipal governments. For example, an organization called "The Knowledge Foundation," which hosts yearly international conferences on fuel cell issues, offers a commercial rate of \$1,199 to members of the private sector, but offers a lower rate of \$799 to government employees.³

QUESTION

Whether the Code of Ethics prohibits public officials and state employees from receiving a government employee discount from a non-restricted donor valued at more than \$100, when

¹ http://www.gettravelop.com/html/ge_index2.asp

² Restricted donors include registered lobbyists, pre-qualified state contractors, and persons regulated by, doing business with, or seeking to do business with an individual's state agency. General Statutes § 1-84 (j) and (m).

³ <http://www.knowledgefoundation.com/>

such discount is not offered to the general public or other large group on an equal basis, and when the official or employee will utilize the discount on personal time.

ANALYSIS

The Code of Ethics, at General Statutes § 1-84 (c), prohibits state employees and public officials from using their office for personal financial gain. The former State Ethics Commission (“former Commission”) stated that “it constitutes an inappropriate use of one’s official position for personal financial gain, in violation of Conn. Gen. Stat. § 1-84 (c), when a public official or state employee receives excessive gifts or other benefits from a non-restricted donor, if the gift or benefit is bestowed solely by virtue of the individual’s state position.” Advisory Opinion No. 98-9 (“AO No. 98-9”). To shed clarity on the question of what would be considered “excessive,” the former Commission adopted a de minimus monetary threshold. As such, it concluded that “benefits with a cumulative value of less than one hundred dollars per person per year provided to a public official or immediate family member, by virtue of the official’s position, by a [non-restricted donor] will be permitted.” *Id.* The former Commission later clarified that in addition to the \$100 per person per year, non-restricted donors may also make use of all the gift exceptions in the Code of Ethics in the same manner that restricted donors do. Advisory Opinion No. 2003-13. It arrived at that conclusion because it believed that “an outcome which places a [non-restricted donor] under greater restrictions than a [restricted donor such as a] registered lobbyist or entity doing business with the State is illogical and should be avoided if possible.” *Id.*

When the discount is offered to the public generally or a large segment of the public (e.g., the “government discount” that is the exact same discount offered to AARP members and members of other large entities), such discounts fall under the exception in General Statutes § 1-79 (e) (7): “[a] rebate, discount or promotional item available to the general public” In such a case, the discount to the public official or state employee would be permitted from both restricted and non-restricted donors. This is not the situation at issue here. Here, we are addressing the issue concerning when the public official/state employee receives a discount that is available only to government employees and receives a benefit valued at over \$100 per calendar year. For the reasons stated below, we conclude that the acceptance of such a discount is not a violation of the Code of Ethics.

In AO No. 98-9, the former Commission dealt with a situation in which the non-restricted donor providing the benefit clearly had something to gain from the donees when acting in their official capacities. Although the former Commission did not specify the criteria for determining when a gift is given “by virtue of the official’s position,” in Advisory Opinion No. 2004-2 the Commission enumerated some examples of donors who would be likely to give gifts to public officials by virtue of the official’s position, such as “subordinates, political appointees and constituents” These kinds of donors have an interest in influencing the actions of the public official or state employee.

The logic of AO No. 98-9 was to permit a gift of no more than \$100 from a non-restricted donor even in the situation where the non-restricted donor had an interest in influencing the actions of the public official or state employee. In this case, because it is clear

that the non-restricted donor has no interest in influencing the actions of the public official or state employee, there should be no similar restriction to limit the gift to \$100.

Broad-based discounts offered to public officials and state employees are not offered to them “by virtue of public position.” The discounts at issue are not directly targeted at individual employees or a class of government employees. The businesses offer the discounts solely to promote their product or service, rather than to influence the official action of a given agency or individual. In other instances, the discounts are provided to government employees because of the disparity between their income level and that of individuals in the private sector. Those offering the discounts do not create a quid pro quo with the employee or agency, nor do they seek to, or actually impair, the judgment of the donee.

In addition, as stated by the former Commission in Declaratory Ruling 93-B and reaffirmed by this Board in Advisory Opinion No. 2007-5, “a principal purpose underlying the Code of Ethics [is] to allow legitimate and traditional . . . interaction . . . but [also] to prohibit apparent efforts to improperly influence state decision-makers through the provision of substantial benefits.” The former Commission has also allowed “essentially unobjectionable entertainment and benefit passing.” See, e.g., AO No. 98-9. In a market economy, it is both legitimate and traditional for companies to extend discounts to various groups. Therefore, absent any “apparent effort . . . to improperly influence” any government official, or conversely, an attempt by a public official or state employee to improperly request “substantial, and clearly inappropriate, gifts or other benefits by virtue of public position,” the discounts are permitted.

Finally, while not critical to our conclusion, it is important to note that ethics agencies throughout the nation, including New York, Kentucky, Massachusetts, Texas, and the federal government have considered these kinds of discounts and have all allowed public officials and state employees to utilize the discounts. The common thread among the opinions is the general availability of the discounts to government employees – such availability indicates that the discount-giver is not seeking to influence a particular public official or state employee.

CONCLUSION

The Code of Ethics does not prohibit public officials and state employees from receiving a government employee discount from a non-restricted donor valued at more than \$100 while on personal time, even if such discount is not offered to the general public or other large group on an equal basis. The discount in question must be equally available and advertised to all government employees, regardless of rank, agency, or position with the state. If the discount meets the above requirements, public officials and state employees may accept it.

By order of the Board,

/ss/

Robert Worgaftik, Chairperson

Dated: October 25, 2007