

NOTE: The following is a draft response to a request for an advisory opinion prepared for consideration by the Citizen’s Ethics Advisory Board. It does not necessarily constitute the views of the Board.

TO: Board Members

FROM: Katherine C. Essington, Interim General Counsel

RE: Draft Response to RAO # 4271 (General Statutes § 1-84 (q))

DATE: April 27, 2006

INTRODUCTION

The Citizen’s Ethics Advisory Board issues this advisory opinion in response to a request for an opinion submitted by an assistant general counsel with the Office of State Ethics (OSE). In that request, the assistant general counsel asked for an interpretation of a recently-enacted provision, General Statutes § 1-84 (q), in the Code of Ethics for Public Officials, chapter 10, part 1, of the General Statutes (Code of Ethics).

BACKGROUND

Under the Code of Ethics, a state employee or public official may not knowingly accept a gift from a regulated donor: i.e., a registered lobbyist or a person who is (1) doing business with or seeking to do business with the individual’s department or agency; (2) engaged in activities regulated by such department or agency; or (3) prequalified under General Statutes § 4a-100.¹ General Statutes § 1-84 (j) and (m).

The term “gift” is defined as “anything of value, which is directly and personally received, unless consideration of equal or greater value is given in return.” General Statutes § 1-79 (e). The Code of Ethics exempts from that definition what are commonly referred to as “gifts to the state”: “Goods or services (A) which are provided to the state (i) for use on state property, or (ii) to support an event or the participation by a public official or state employee at an event, and (B) which facilitate state action or functions.” General Statutes § 1-79 (e) (5).

Under the “gift-to-the-state” exception, the former State Ethics Commission permitted the acceptance of a wide range of items, including, for example, the following:

- Donations of either physical property and/or cash contributions; Advisory Opinion No. 1997-18;
- Free seminar training from individuals and companies with consulting contracts with the department in question; Advisory Opinion No. 2004-6;

¹Prequalified donors are pre-approved state contractors.

- Contributions from regulated donors in order for a state agency to fund the continuation of a state position; Advisory Opinion No. 2003-2; and
- Free conference registration in order for a state legislator to attend a lobbyist association’s annual conference. Advisory Opinion No. 1999-2.

If a “gift to the state” from a regulated donor cost fifty dollars or more and incidentally benefited a particular state employee or public official (for example, paying the costs for a state employee to take a course relative to his or her expertise), then the individual’s superior had to certify in writing to the former State Ethics Commission, before accepting the gift, that it would facilitate state action or functions. Regs., Conn. State Agencies § 1-81-27 (b).

Public Acts 2005, No. 05-287, effective July 1, 2005, added a new provision to the Code of Ethics, § 1-84 (q), which affects the “gift-to-the-state” exception. Section 1-84 (q) provides as follows:

No public official or state employee shall knowingly accept, directly or indirectly, any goods or services provided to the state under subdivision (5) of subsection (e) of section 1-79 . . . by a person prohibited from making gifts to public officials and state employees under this section or section 1-97.

QUESTION

To what extent § 1-84 (q) affects the “gift-to-the-state” exception in § 1-79 (e) (5).

ANALYSIS

The interim Legal Division (July 1, 2005, to December 16, 2006) of the OSE interpreted § 1-84 (q) as prohibiting gifts to state agencies from regulated donors that incidentally provided a personal benefit to a public official or state employee. Thus, the interim Legal Division concluded that, pursuant to § 1-84 (q), an employee of the state Department of Banking would be prohibited from attending a conference in Washington, D.C., and having his or her travel costs (e.g., airfare, meals, hotel, conference fees) paid for by ABC Bank, because the state employee would be incidentally receiving a personal benefit in the form of a free trip.

Our interpretation of § 1-84 (q), based on the plain meaning of the language used by the legislature, is somewhat different. Under the “plain meaning” rule of statutory interpretation, codified at General Statutes § 1-2z:

The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text

and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

We conclude that the plain meaning of § 1-84 (q) is that it prohibits the acceptance of all goods or services given to the state under § 1-79 (e) (5) (the “gift-to-the-state” exception) from regulated donors, even if they do not incidentally benefit a particular state official or employee. These include goods or services that are used on state property as well as those that support an event or an employee's participation in an event that facilitates state action or functions. Thus, the donation by XYZ Corporation, a registered lobbyist, of a fax machine to a state agency, which remains at the agency and is used to conduct agency business, and which could have been accepted under the interim Legal Division’s interpretation of §1-84 (q), is no longer permitted. No goods or services from regulated donors may be accepted whether they are given (or accepted) directly or indirectly (e.g., from a third party). Thus, as a result of § 1-84 (q), the only goods or services that may be accepted pursuant to § 1-79 (e) (5) are those from non-regulated donors. Based on this interpretation, § 1-81-27 of the Regulations of Connecticut State Agencies is no longer valid.

Under General Statutes § 1-84 (k), however, public officials and state employees may still accept “necessary expenses” from regulated (and non-regulated) donors for “an article, appearance or speech, or for participation at an event, in the public official’s or state employee’s official capacity” “Necessary expenses” include travel costs (not first class), lodging (the cost of a standard room) for the nights before and the night after the speech, meals and related conference expenses (but not entertainment expenses). Regs., Conn. State Agencies § 1-81-21 (b). Speaking fees or honorariums may not be accepted. General Statutes § 1-84 (k).

CONCLUSION

It is the opinion of the Citizen’s Ethics Advisory Board that, as a result of § 1-84 (q), goods or services provided to the state under § 1-79 (e) (5) may no longer be accepted from regulated donors. Goods or services meeting the requirements for the “gift-to-the-state” exception of § 1-79 (e) (5) from non-regulated donors may still be accepted. Necessary expenses for active participation in an event may be accepted from regulated as well as non-regulated donors.