

**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 view of the Board.**

TO: Board Members

FROM: Brian J. O'Dowd, Assistant General Counsel

RE: Draft Response to RAO # 4385

DATE: July 26, 2006

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## INTRODUCTION

The Citizen's Ethics Advisory Board issues this advisory opinion in response to a request for an opinion submitted by an employee of the Department of Transportation (DOT). In that request, the DOT employee asked a series of questions concerning General Statutes § 1-84 (p), a recently-enacted provision in the Code of Ethics for Public Officials, chapter 10, part 1, of the General Statutes (Code of Ethics).

## BACKGROUND

In Public Acts 2005, No. 05-287, § 41, the state legislature amended General Statutes § 1-84 by adding subsection (p), a three-part provision that limits gift-giving between certain individuals (as specified below) in state service. Specifically, § 1-84 (p) provides as follows:

- (1) No public official or state employee or member of the immediate family of a public official or state employee shall knowingly accept, directly or indirectly, any gift costing one hundred dollars or more from a public official or state employee who is under the supervision of such public official or state employee.
- (2) No public official or state employee or member of the immediate family of a public official or state employee shall knowingly accept, directly or indirectly, any gift costing one hundred dollars or more from a public official or state employee who is a supervisor of such public official or state employee.
- (3) No public official or state employee shall knowingly give, directly or indirectly, any gift in violation of subdivision (1) or (2) of this subsection.

## QUESTIONS

The DOT employee asked (1) whether the monetary limit imposed by § 1-84 (p) is a per-gift or per-year amount; (2) whether individuals subject to the limitations

imposed by § 1-84 (p) may nevertheless use the major-life-event exception; and (3) whether the limitations imposed by § 1-84 (p) apply only to a *direct* supervisor and subordinate or to any individual up or down the chain of command.

## ANALYSIS

### I. Per-gift vs. Per-year Amount

The first question is whether the monetary limit imposed by § 1-84 (p) is a per-gift or per-year amount. The answer to that question is a matter of statutory interpretation, the fundamental objective of which “is to ascertain and give effect to the apparent intent of the legislature.” (Internal quotation marks omitted.) *Perodeau v. Hartford*, 259 Conn. 729, 735, 792 A.2d 752 (2002). In seeking to ascertain that intent, we must first consider “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.” General Statutes § 1-2z.

#### A. Text of § 1-84 (p)

As mandated, we look first to the text of § 1-84 (p), which provides, in relevant part, as follows: “No public official or state employee . . . shall knowingly accept, directly or indirectly, *any gift costing one hundred dollars or more*” either “from a public official or state employee who is under the supervision of such public official or state employee” or “from a public official or state employee who is a supervisor of such public official or state employee.” (Emphasis added.) There is nothing in that language, either expressed or implied, that might reasonably be construed as limiting gifts between such individuals to \$99.99 per year.<sup>1</sup> Section 1-84 (p) simply prohibits them from accepting (or giving) “any gift costing one hundred dollars or more . . . .” To make that monetary limit a per-year—as opposed to a per-gift—amount would require us to import words into the statute that do not exist in its original form; which is neither a function nor a privilege of this board. See *Doe v. Manson*, 183 Conn. 183, 188, 438 A.2d 859 (1981) (“[i]t . . . is not our function to attempt to improve upon the actions of the legislature by reading into a statute what is clearly not there” [internal quotation marks omitted]); *Evans v. Admin., Unemployment Comp.*, 135 Conn. 120, 124, 61 A.2d 684 (1948) (“[w]e are not at liberty to . . . indulge in the license of striking out and inserting, and remodeling, with the view of making the letter express an intent which the statute in its native form does not evidence” [internal quotation marks omitted]); *Urbanowicz v. Planning & Zoning Commission*, 87 Conn. App. 277, 289, 865 A.2d 474 (2005) (“we may not read into clearly expressed legislation provisions which do not find expression in its words” [internal quotation marks omitted]). Thus, we conclude that, under its plain language, § 1-84 (p) limits gift-giving between such individuals to \$99.99 per gift.

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<sup>1</sup>We note that § 1-84 (p) prohibits gifts “costing *one hundred dollars or more . . . .*” (Emphasis added.) Thus, regardless of whether the monetary limit is a per-gift or per-year amount, the maximum permissible amount is \$99.99.

## B. Other Statutory Provisions

Our interpretation is reinforced by the relationship of § 1-84 (p) to other provisions in the Code of Ethics. For instance, in four of the statutory exceptions to the definition of the term “gift,” the legislature expressly imposed an annual limit:

- “Food or beverage or both, costing less than fifty dollars in the aggregate per recipient *in a calendar year*, and consumed on an occasion or occasions at which the person paying, directly or indirectly, for the food or beverage, or his representative, is in attendance . . .” (Emphasis added.) General Statutes § 1-79 (e) (9).
- “Food or beverage or both, costing less than fifty dollars per person and consumed at a publicly noticed legislative reception to which all members of the General Assembly are invited and which is hosted not more than once *in a calendar year* by a lobbyist or business organization. . . .” (Emphasis added.) General Statutes § 1-79 (e) (10).
- “Food or beverage or both, costing less than fifty dollars per person and consumed at a publicly noticed legislative reception to which all members of the General Assembly from a region of the state are invited and which is hosted not more than once *in a calendar year* by a lobbyist or business organization. . . .” (Emphasis added.) General Statutes § 1-79 (e) (11).
- “Anything having a value of not more than ten dollars, provided the aggregate value of all things provided by a donor to a recipient . . . *in any calendar year* shall not exceed fifty dollars.” (Emphasis added.) General Statutes § 1-79 (e) (16).

It is evident that the legislature, by use of the phrase “in any calendar year,” knows how to use limiting language when it so desires; and that the absence of that phrase (or some close equivalent) in § 1-84 (p) signals that the legislature did not intend to include such a limitation in that subsection. Had the legislature intended that the monetary limit imposed by § 1-84 (p) be a per-year amount, it could have specifically written it into the statute, just as it did in the above-quoted provisions.

Accordingly, we conclude that the relevant statutory text and the relationship of that text to other statutes is plain, unambiguous, and supports but a single conclusion: that the monetary limit imposed by § 1-84 (p) is a per-gift—not a per-year—amount.

## II. Major Life Event

The second question is whether an individual subject to that limitation may nevertheless use the major-life-event exception. By way of background, the Code of Ethics exempts from the definition of the term “gift” the following: “A gift . . . provided

by an individual for the celebration of a major life event . . . .” General Statutes § 1-79 (e) (12). “Major life event” is defined by regulation to include “a ceremony commemorating an individual’s induction into religious adulthood, such as a confirmation or bar mitzvah; a wedding; a funeral; and the birth or adoption of a child.” Regs., Conn. State Agencies § 1-92-53. Thus, if we conclude that an individual subject to the \$99.99 per-gift limit in § 1-84 (p) may use the major-life-event exception, then he or she will be permitted to give and accept a gift, without monetary limit, for the celebration of a “major life event.”

To answer the question at hand, we turn to another gift provision in the Code of Ethics, General Statutes § 1-84 (m).<sup>2</sup> Section 1-84 (m) generally prohibits a public official or state employee from knowingly accepting a “gift” from any person regulated by, doing business with, or seeking to do business with his or her department or agency. Importantly, at least insofar as we are concerned, the legislature amended § 1-84 (m) in 2004 by adding the following language: “For the purposes of this subsection, the exclusion to the term ‘gift’ in subdivision (12) of subsection (e) of section 1-79 for a gift for the celebration of a major life event shall not apply.” Public Acts 2004, No. 04-245, § 5. The effect of that language was to eliminate—for purposes of § 1-84 (m) only—the major-life-event exception to the definition of the term “gift”; thus prohibiting a public official or state employee from accepting a gift given in celebration of a “major life event” from any person regulated by, doing business with, or seeking to business with his or her department or agency.

Unlike § 1-84 (m), however, § 1-84 (p) contains no such language. It is a well established rule of statutory interpretation that, when a statute concerning one subject contains a particular provision, “the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed.” (Internal quotation marks omitted.) *M. DeMatteo Construction Co. v. New London*, 236 Conn. 710, 717, 674 A.2d 845 (1996). In the absence of any language in § 1-84 (p) similar to that used in § 1-84 (m), we conclude that an individual subject to the \$99.99 per-gift limit in § 1-84 (p) may use the major-life-event exception; and may, therefore, give and accept a gift, without monetary limit, for the celebration of a “major life event.”

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<sup>2</sup>Section 1-84 (m) reads in full: “No public official or state employee shall knowingly accept, directly or indirectly, any gift, as defined in subsection (e) of section 1-79, from any person the official or employee knows or has reason to know: (1) Is doing business with or seeking to do business with the department or agency in which the official or employee is employed; (2) is engaged in activities which are directly regulated by such department or agency; or (3) is prequalified under section 4a-100. No person shall knowingly give, directly or indirectly, any gift or gifts in violation of this provision. For the purposes of this subsection, the exclusion to the term ‘gift’ in subdivision (12) of subsection (e) of section 1-79 for a gift for the celebration of a major life event shall not apply. Any person prohibited from making a gift under this subsection shall report to the [Office of State Ethics] any solicitation of a gift from such person by a state employee or public official.”

### III. Direct Supervisor/Subordinate vs. Chain of Command

The final question is whether the limitations imposed by § 1-84 (p) apply only to a *direct* supervisor and subordinate or to any individual up or down the chain of command. Specifically, the DOT employee asked whether “gifts in excess of [\$99.99] given from a subordinate to a supervisor . . . two or three levels above the subordinate are prohibited”; and, conversely, whether the \$99.99 per-gift limit from supervisors to subordinates applies only “if the gift is given by a direct supervisor to a direct subordinate.”

Section 1-84 (p) (2) reads, in relevant part, as follows: “No public official or state employee . . . shall knowingly accept . . . any gift costing one hundred dollars or more from a public official or state employee who is *a supervisor* of such public official or state employee.” (Emphasis added.) It is important that the legislature used the indefinite article “a”—rather than the definite article “the”—to qualify the word “supervisor.” Had the legislature intended to limit application of the provision to a direct supervisor, it would have used the definite article “the,” thereby restricting the modified noun (i.e., supervisor). Instead, it used the indefinite article “a,” thus suggesting that the modified noun is but one of several of that kind. See Black’s Law Dictionary 1324 (5th Ed. 1979) (“Grammatical niceties should not be resorted to without necessity; but it would be extending liberality to an unwarrantable length to confound the articles ‘a’ and ‘the.’ [M]ost . . . persons understand that ‘a’ is indefinite, but ‘the’ refers to a certain object.” [Internal quotation marks omitted.]). Accordingly, we conclude that the limitation imposed by § 1-84 (p) (2) applies not only to a direct supervisor, but also to any individual up the chain of command.

Section 1-84 (p) (1) provides, in relevant part, that “[n]o public official or state employee . . . shall knowingly accept . . . any gift costing one hundred dollars or more from a public official or state employee *who is under the supervision of* such public official or state employee.” (Emphasis added.) In light of the conclusion above, it would strain logic to conclude that the limitation imposed by § 1-84 (p) (1) applies only to a direct subordinate. We conclude, therefore, that the limitation imposed by § 1-84 (p) (1) applies not only to a direct subordinate, but also to any individual down the chain of command.

### CONCLUSION

It is the opinion of the Citizen’s Ethics Advisory Board that: (1) the monetary limit imposed by § 1-84 (p) is a per-gift amount; (2) an individual subject to the \$99.99 per-gift limit in § 1-84 (p) may use the major-life-event exception; and (3) the limitations imposed by § 1-84 (p) apply to a direct supervisor and subordinate and to any individual up or down the chain of command.