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## Attorney General's Office Declares Discounts To Be Gifts

As first reported at Seyfarth Shaw's Ethics Breakfast Briefing held on July 8, 2004, the Office of the Attorney General ("AG") has issued an informal advisory opinion regarding whether government employee discounts are gifts covered by the new Ethics Act. In that opinion, No. I-04-009, dated June 17, 2004, the AG found that a "discount" provided on goods and services which is offered to all state employees does constitute a "gift" under the State Officials and Employees Ethics Act. Thus, for example, a discount on a computer purchase for government employees would constitute a "gift" under the Act if the computer vendor offering the discount is a prohibited source (does business or seeks to do business with the governmental entity).

The AG opinion first noted the Ethics Act's definition of "gift" which includes:

*any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment or the official position of an employee, member, or officer. (Emphasis added in informal opinion letter.)*

The AG further declared:

[B]efore a State employee may accept a discount from a prohibited source it will be necessary to determine whether the opportunity is being provided to the State employee because of his or her position with the State or whether the discount is available to the general public on similar terms. If the discounts are offered to the general public or to a segment of the general public and the State employee is a member of that group, *irrespective of his or her employment with the State*, then . . . the State employee would not be precluded from accepting the discount merely because of his or her State position. If, however, a discount is being offered *only* to State employees, [the Act] would not except such an opportunity from the general gift prohibition.

(Emphasis added). In other words, general discounts available to employees solely because they are public employees constitute gifts which, if accepted, would violate the Ethics Act. The only circumstance where a discount would not be considered a gift in violation of the Ethics Act is if the discount is given for some reason other than public employment – a reason for which non-employees also qualify (e.g. first time customer, club membership, senior discount, resident discount, etc.).

The AG also addressed whether a vendor approved by the state, pursuant to a master contract, to be a source for goods or services would be considered to be a "prohibited source" for employees within the agencies that purchase goods and services, and employees that utilize the goods and services after they are purchased. The AG determined such a vendor would constitute a "prohibited source" under the Act for any employee authorized to approve a purchase from that vendor and for all employees within a state agency that received goods or services from that vendor. The AG did not address whether employees of agencies that did not purchase goods from that vendor would also have to consider the vendor a prohibited source given the vendor, by virtue of the master contract, clearly has an interest in doing business with the agency. We believe that answer would also be in the affirmative.

Remember, even if an employee is provided a discount from a prohibited source, if the discount would qualify under one of the 12 gift exceptions, however, accepting it would not violate the Act. For example, a discount for food at a restaurant where the food is consumed would be exempted provided the discount value was \$75 or less in a calendar day. Similarly, employees can accept any discount from a vendor provided that the total amount of discounts accepted by that employee from that vendor (for which other exemptions do not already cover the discount) add up to less than \$100.00 in a calendar year.

Copies of the opinion letter are available upon request by emailing [mfee@seyfarth.com](mailto:mfee@seyfarth.com). If you have any questions, please feel free to contact Mary Kay Klimesh (312-269-8985), Ron Kramer (321-269-8560), or any other Seyfarth Shaw attorney.



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