

## **INTERPRETING THE GIFT BAN – GIFTS TO THE COMMONWEALTH**

This supplement to the Frequently Asked Questions (FAQs) addresses the issue of gifts to the Commonwealth within the context of the Gift Ban. Commonwealth agencies occasionally receive donations of funds, goods, and services. Section 513 of the Administrative Code of 1929, 71 P.S. § 193, authorizes every administrative department, independent administrative board and commission, and departmental administrative board and commission to accept gifts or donations of money, securities, or other personal property, and to use them in conducting the business of the department, board or commission. Donors may designate specific agencies, boards, and commissions, and even specific programs within the entities, as the recipients.

If the donor is a covered entity for purposes of the Gift Ban, the offer of a gift should be further evaluated to determine whether the acceptance thereof creates a conflict of interest, implicates other laws, such as the State Adverse Interest Act, 71 P.S. § 776.1, *et seq.* or the Procurement Code, 62 Pa.C.S. 101, *et seq.*, and whether the donation is a gift to the agency or an employee.

Agencies are to keep records of gifts. Instructions for acceptance of gifts follow the FAQs.

### **IS IT A GIFT TO THE COMMONWEALTH?**

#### **FREE SPACE**

**Q:** A local business club is holding a job expo. The group representative contacts an agency regional director and offers the director free booth space at the event. May the director accept the offer?

**A:** Yes. The donation of the booth space is a gift to the Commonwealth agency, not a personal gift to the regional director.

#### **FREE ADMISSION**

**Q:** A professional sports team offers home game tickets to the Department of Community and Economic Development (DCED). DCED's International Business Development Office uses the tickets for representatives of businesses that it wants to attract to the area. A DCED employee attends the game, serving as the agency host. May DCED accept the tickets? Is the ticket a gift to the employee? Must the DCED employee pay for the ticket?

**A:** DCED may accept the donation of the tickets; however, the tickets must be used for agency purposes, and not for employee entertainment.

The employee who serves as the DCED host for the game has not received a gift under the Code of Conduct. The employee is performing official duties for DCED. The employee

need not pay for the ticket. Expenditures for the employee's refreshments are subject to the Commonwealth Travel Policy, Management Directive 230.10.

### **COMMEMORATIVE ITEMS**

**Q:** To commemorate the signing of an international agreement between the Commonwealth and the government of Italy, the Italian consul general gives an agency representative a Murano glass bowl. May the representative accept the bowl?

**A.** Yes, the representative accepts the bowl not as a personal gift but as a gift to the Commonwealth. After the event, the agency should contact the Pennsylvania Historical and Museum Commission in order to properly account for the gift.

### **SERVICE RECOGNITION ITEMS**

**Q:** Organizations frequently hold recognition events at which items such as plaques are presented to honor law enforcement officers and other Commonwealth employees for their service. May employees accept the plaque? If refreshments are served, must the employees pay for the food and drink consumed?

**A.** The plaque or other acknowledgment of service recognizes the achievements of the agency; therefore, it may be considered a gift to the agency. The representative that attends the event should accept the gift on behalf of the agency, document its receipt and display it at the agency offices in accordance with the registration requirements, below. If an individual honoree wishes to accept the plaque as a personal gift, he or she must pay for it.

Food and drink consumed at the recognition event must be paid for at market value. Employees may seek reimbursement in accordance with applicable Commonwealth travel and expense reimbursement policies.

### **REIMBURSEMENT OF AGENCY EXPENSES**

**Q:** An organization wishes to reimburse the Commonwealth for expenses incurred by an agency to send an employee to the organization's conference. May the Commonwealth accept the funds?

**A:** The Commonwealth may accept the donation, provided there is no conflict of interest or Adverse Interest Act implication. In this instance, the agency receives the benefit of the conference, because the information obtained at the conference inures to the agency.

**Q:** If the employee receives continuing education credits or other accreditation as a result of attending the conference, may the agency still accept the funds?

**A:** If the employee receives credits or professional certification as a result of attending the conference, the employee receives a personal benefit in addition to the benefit to the agency. If the benefit inures exclusively to the employee, the employee will be required to pay the cost of the conference. Thus, the Commonwealth will not accept payment from the conference sponsor.

In evaluating whether the employee alone, or both the agency and the employee, receives the benefit of a conference, the agency should consider whether the conference enhances the employee's job-related skills, provides information on best practices and new developments related to agency business, or provides accreditation or credits required of the agency employee. Conversely, the benefits of attendance at a conference will inure solely to the employee if the conference or course merely enhances employee skills that are unrelated to the employee's Commonwealth duties or provides accreditation unrelated to the employee's job.

**Q:** An organization, of which an agency is a member, offers 'scholarships' to the first 100 registrants to its conference. The scholarships cover the registration fee, travel and subsistence expenses for the attendees. The organization reserves and pays for the flight and the hotel. The organization is important in the agency's industry, so the agency wants the employee to attend. May a Commonwealth employee apply for the 'scholarship' by registering early enough to qualify? Is the value of the 'scholarship' a gift to the employee? How should the payment of subsistence expenses be handled?

**A.** The employee is attending the conference in furtherance of the employee's Commonwealth duties. The value of the conference is a gift to the Commonwealth. The employee should maintain receipts and request reimbursement from the Commonwealth for his travel and subsistence expenses. The organization should make payment of the travel and subsistence portion of the conference 'scholarship' directly to the Commonwealth. Alternatively, if the organization reimburses the employee directly by sending a check to the employee, the employee should endorse the check to the Commonwealth, in accordance with the Commonwealth Travel Policy, MD 230.10.

**Q:** Contractors offer free training to agency employees. (Examples: Software companies offer sessions for agency IT staff; consulting firms offer training on contract-related subjects.) Are these training courses gifts? If so, is the employee or the agency the recipient of the gift?

**A:** If an agency's contract provides for free training, the sessions are covered by the contract and they are not gifts. As noted, above, the training is not a gift to the employees to attend if the training is in furtherance of their Commonwealth employment.

Agencies considering whether to participate in such training sessions should determine whether the Adverse Interest Act is implicated.

## **DONATION OF PROFESSIONAL SERVICES**

**Q:** Occasionally, law firms, accounting firms, and consulting firms will offer their services gratis to an agency. If the offer is accepted, the firm will provide training to employees and officials selected by the agency. Services may include teaching a continuing education or professional development course, conducting a process review for an agency, or developing analytical tools. The firms may have contracts with Commonwealth agencies, but not for the offered services. May these services be accepted without payment?

**A:** The services are intended to be a gift to the agency, not to the employees who would participate. When considering an offer of pro bono services, agencies should carefully consider whether such services would give rise to a conflict of interest or implicate the Procurement Code or Adverse Interest Act.

## **DOCUMENTING GIFTS TO THE COMMONWEALTH**

### **TANGIBLE GIFTS**

When accepting tangible gifts on behalf of the Commonwealth, the Commonwealth official should acknowledge during any related public ceremony where a tangible gift is conferred as well as in writing after the fact that that the gift has been accepted on behalf of the Commonwealth. Agencies should establish a procedure for logging and displaying gifts along with who should maintain the agency gift register or log. The agency register should include the following information:

- The event, event date and event sponsor;
- A description of the item (along with a picture of the item);
- The estimated fair market value of the item received;
- The date and manner of acknowledgement;
- The name of the individual accepting the gift on behalf of the Commonwealth;
- Where the gift will be maintained or displayed (at the agency in a public reception area, another public area; Pennsylvania Museum collection);

All tangible gifts (other than ordinary service recognition gifts) should also be registered with the Pennsylvania Historical and Museum Commission (PHMC) through its accessions process, even if the tangible item is returned to the agency for permanent or temporary display. This will require completion of an Accessions Form and Gift Agreement. If the type of donated item is known prior to acceptance, the agency or the official may want to contact PHMC about the accessions procession to assure that the item (“artifact”) to be

catalogued is of the kind that PHMC would agree to retain. The PHMC should be consulted when tangible gifts that contribute to the political history of the Commonwealth agency are received. Most artifacts that would be collected by commonwealth officials or employees will likely be items classified as part of the Political History Collection. Plaques and other ordinary service recognition gifts ordinarily will not contribute to the agency's political history and need not be reported to PHMC.

## **MONETARY GIFTS**

When accepting monetary gifts to the Commonwealth, the following protocol should be followed:

- Identify the name and address of the donor;
- Identify the amount of the donation;
- Identify any restrictions upon the use of the monetary donation (funds are to be directed to a specific purpose);
- Agency head should acknowledge receipt of the donation in writing;
- Notify the agency comptroller's office. That office will follow the Office of Budget Protocol that will involve establishing an "augmentation" to the agency line item which is consistent with the purpose of the gift.

For assistance with the interpretation of the Gift Ban as it applies to particular situations, employees should seek direction from their agency human resources office and, if necessary, their agency office of chief counsel.