

Answers to FAQs Regarding the State Officials and Employee Ethics Act

July 2004

Published by the
Ethics Act Committee of the Illinois Council of School Attorneys, 2004¹

The responses provided are for information purposes only. The answers are speculative as there is no case law interpreting the Act. They represent the combined thinking of committee members. The Act says little that is directly applicable to local public entities like school districts and, for that reason, it is very difficult to predict outcomes. However, in its effort to provide continuing assistance to school officials, the ICSA provides this guidance. **For legal advice, you must contact a lawyer.**

Frequently Asked Questions:

1. **Board members and district employees (school officials) may attend a reception sponsored by a prohibited source provided that the food or refreshments do not exceed \$75 per person in value on a single day. 5 ILCS 430/10-15.**
 - a. **Who is a “prohibited source?”** The State Officials and Employee Ethics Act regulates conduct between school officials (board members and employees) and a “prohibited source.” An entity will be a prohibited source if, among other things, it “is seeking official action” or “does business or seeks to do business with” school officials. Examples of prohibited sources would be any law firm, architect firm or software vendor seeking to do business with the district. School officials are prohibited from taking a gift from a prohibited source unless the gift falls within one of the twelve exceptions. ² The ban applies to spouses and immediate family members living with the school official.
 - b. **Are educational meetings included in the prohibition?** No; “educational materials and missions” are specifically exempted. Thus, meetings held with an educational mission are exempt from the gift ban even if refreshments are served. However, as with any exception, this will be a factual inquiry; if under the circumstances the “educational mission” appears to be a guise, the exception will be negated.
 - c. **Are vendor, architect, and law firm receptions, holiday parties, and private dinners included in the prohibition?** Yes; school officials may attend functions sponsored by a prohibited source only if the food and refreshments do not exceed \$75 in value on a single day.
 - d. **Is the calculation based on actual food costs or food costs plus overhead (e.g., room rental as well as the cost of a band, bartenders, or servers)?** Generally the food costs will include overhead. However, where the room is separately contracted for and/or the room amounts to an entertainment venue, it must be analyzed separately using the exemption allowing a school official to accept a gift from any one prohibited source during a calendar year having a cumulative total value less than \$100.

- e. Is the calculation based on: (a) the school official's actual consumption, or (b) how much the vendor spent on food divided by attendance?** There is a divergence of opinion here. Some attorneys representing school districts believe the calculation is based on a school official's actual consumption – that, after all, is the gift the person is receiving. In addition, it is impossible for a vendor to accurately determine the per person cost unless the event is open to a limited number of invited guests. However, other attorneys believe a per person cost should be calculated and used. The vendor may calculate the per person costs in a variety of manners, e.g., by dividing the reception's cost by the number of invitees or by the number of attendees.

Ultimately, both methods will probably be used and accepted, depending upon the type of event at which the food or refreshments are served. For example, where there is a private dinner party, the individual's actual consumption is the appropriate calculation, since the cost of a particular dinner and beverages can be traced to that individual. On the other hand, where there is an open house or buffet, an average per-person cost based upon the number of invitees or attendees (again, depending upon the nature of the event) is certainly reasonable.

- f. On one day, may a school official attend more than one reception at which food and refreshments are served?** Yes, as long as the particular official does not receive more than \$75 in food or refreshments whether from one particular prohibited source or several. The Act provides that the \$75 limit is "per person in value on a single calendar day."

2. School officials may accept gifts from any one prohibited source during a calendar year having a cumulative total value less than \$100. 5 ILCS 430/10-15.

- a. Is the value calculated based on: (a) fair market value, or (b) the amount the vendor actually paid for the item (assuming the vendor got a deal)?** The appropriate computation is the fair market value. However, the vendor's ability to get a commercially reasonable price that was lower than the fair market value should be taken into consideration. A price that is substantially below fair market value (e.g., no cost or only a nominal cost) may, however, be a subterfuge to allow the school official to receive a gift under the statutory minimum.
- b. May a school official accept a gift beyond the limit from a prohibited source who is also a friend?** Yes, unless the school official has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the school official and not because of the personal friendship. This exception's applicability will depend on facts demonstrating that the prohibited source really was a personal friend. If the prohibited source takes a tax deduction, the relationship will appear more business than personal.
- c. May a school official participate in a drawing sponsored by one vendor in which the prize is valued more than \$100?** Yes. The school official purchased a "chance-to-win" so that the winnings are not a "gift" as defined under the Act. However, if the odds of winning make the value of the "chance-to-win" appear as a subterfuge to allow the board member to receive a gift under the statutory minimum, the transaction may be treated as a gift under the Act and subject to the statutory limitation.
- d. May a school official purchase an item at a silent auction sponsored by one vendor in which the item being bought is valued more than \$100?** Yes. A school official may purchase an item in a silent auction for any price, because the auction establishes fair market value, i.e., there is no "gift."
- e. May a school official accept tickets to events from a vendor?** Yes, provided the ticket's price is less than \$100 and the school official has not accepted any other item from the same vendor that would cause the calendar year's total to exceed \$100. Ticket broker fees are added to an event ticket's face value to determine fair market value.

f. May a school official accept tickets to events from multiple vendors that are valued more than \$100? Yes, provided the per vendor cost is less than \$100 and the school official has not accepted any other item from the same vendors that would cause the calendar year's total to exceed \$100 from a specific participating vendor. However, a corporation or partnership would be considered one "prohibited source" even though it might have multiple professional members.

g. How are receptions treated that occur at museums or locations that normally charge a fee for admission, e.g., golf courses? There is no specific exception for entertainment, yet the definition of "gift" includes "entertainment." Since the exceptions are independent of one another, two exceptions may be used for entertainment – "food or refreshments not exceeding \$75 per person in value on a single calendar day," and "any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100." Another example is greens fees: one prohibited source may pay a golf course's \$95 greens fee for a school official only once a year (or a \$45 greens fee twice a year). After playing golf, the school official may accept a dinner valued less than \$75 from the same prohibited source.

Sometimes a golf outing is actually a fundraiser. If so, the price might include the greens fee as well as the costs of a golf cart, meals, and a significant charitable donation. The price of the charitable donation is not a gift to the school official, and should be excluded.

h. An exception to the gift ban exists for intra-governmental and inter-governmental gifts. If an event is co-sponsored by one governmental entity and one or more nongovernmental prohibited source, how is a gift valued? The gift's value should be determined based on the agreement between the entities.

i. "Honorariums" are included in the definition of "gifts." Does this prohibit a school official from accepting an honorarium in excess of \$100 from one prohibited source in one calendar year? Yes. The school official may, however, receive in excess of \$100 according to the terms of an employment or independent contractor relationship with a prohibited source, subject to the prohibitions contained in applicable conflict-of-interest statutes, rules, regulations, and policies and enforceable pre-existing contracts.

3. Should school officials expect prohibited sources to provide a disclaimer stating that the amount spent on a "gift" was below the statutory maximum? Probably not. School officials must investigate the costs of gifts. A diligent inquiry of a gift's value will, at the very least, help establish good faith in accepting the gift. However, there may be factual circumstances in which a school official may not reasonably rely on a vendor's representation.

Section 10-10 states that "[n]o prohibited source shall intentionally offer or make a gift that violates this Section." Vendors may, as a protection for themselves and as a service to the school officials they are doing or hoping to do business with, provide school officials with a statement of the value of the food or refreshments if they use an average per-person cost. Such a statement would be similar to a charitable organization's statement of what amount of a contribution to it is tax-deductible, accompanied by a disclaimer to not rely on the statement but seek the advice of the contributor's tax adviser.

Regardless of whether a vendor includes a disclaimer with a statement of value, a school official should make his or her own determination as to whether the average per-person cost is reasonable. It will be little comfort to the school official who is found guilty and fined to know that the vendor is also being found guilty and fined for a violation of Article 10 because of a gross under-valuing of food and refreshments.

4. How are school board ethics and gift ban policies enforced? The enforcement of locally adopted resolutions or policies is very problematic because the Act does not specify an enforcement means. There is a divergence of thinking here. Many attorneys believe that school boards do not have the authority to prosecute offenders and adjudicate fines and penalties. However, the only way the statute seems to work at

all would be as the Attorney General outlines, i.e., that school boards have an implied duty to prosecute offenders and adjudicate fines and penalties. Thus, other attorneys representing school districts are advising their clients to follow the advice and interpretation given by the Illinois Attorney General. The contributors to this publication are seeking a legislative amendment to cure the enforcement quagmire.

5. “Prohibited political activity” generally includes participating in political events and supporting candidates and referendum (5 ILCS 430/5-15).

a. May a superintendent or other staff member participate in a lobby day in Springfield during compensated time? Yes. A “lobby day” is not in furtherance of a “political meeting, political rally, political demonstration, or other political event.” In addition, the definition of “political” specifically exempts activity “in furtherance of the person’s official [district] duties.”

b. May a superintendent or other staff member support a referendum during compensated time, such as by attending focus groups or coffees? No. Assuming that the statute is valid on its face, an area of likely trouble concerns referenda. The definition of “prohibited political activity” includes several provisions that would prohibit an employee from supporting a referendum during compensated time. Determining whether a salaried employee is “supporting” a referendum during “compensated time” is a factual inquiry. It is easy to determine when an hourly worker is on the clock. It is harder to do so as the level of the employee gets higher. High-ranking, salaried employees must carefully consider their actions on a case-by-case basis. This leaves two obvious choices for staff members: (1) limit your comments to the facts when on compensated time, or (2) when articulating support for a referendum, be sure you are off school grounds and not at a school function. In addition, express that you are not speaking as part of your official duties and are not on compensated time.

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² The exceptions to the gift ban are:

1. Opportunities, benefits, and services that are available on the same conditions as for the general public;
2. Anything for which the officer, member, or State [district] employee pays the market value;
3. Any (i) contribution that is lawfully made under the Election Code or under this Act or (ii) activities associated with a fundraising event in support of a political organization or candidate.
4. Educational materials and missions. [text omitted]
5. Travel expenses for a meeting to discuss State [school district] business. [text omitted]
6. A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, [text omitted naming additional relatives].
7. Anything provided by an individual on the basis of a personal friendship unless the member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the member, officer, or employee and not because of the personal friendship.
8. Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared or (ii) catered. For the purposes of this Section, “catered” means food or refreshments that are purchased ready to eat and delivered by any means.
9. Food, refreshments, lodging, transportation, and other benefits resulting from the outside business or employment activities (or outside activities that are not connected to the duties of the officer, member, or employee as an office holder or employee) of the officer, member, or employee, or the spouse of the officer, member, or employee, if the benefits have not been offered or enhanced because of the official position or employment of the officer, member, or employee, and are customarily provided to others in similar circumstances.
10. Intra-governmental and inter-governmental gifts. [text omitted]
11. Bequests, inheritances, and other transfers at death.
12. Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.