

Answers to FAQs Regarding the Gift Ban Provisions of the State Officials and Employee Ethics Act

June 2014

Published by a
Committee of the Illinois Council of School Attorneys¹

ICSA publishes this guidance as part of its continuing effort to provide assistance to school leaders. The responses to the FAQs represent the combined thinking of committee members. Potential conflict questions may arise that are not addressed in this guidance. **This guidance is published for informational purposes only, and is not a substitute for legal advice. For legal advice or a legal opinion on a specific question, you should consult a lawyer.**

1. School board members and district employees (collectively referred to herein as *school officials*) are occasionally given gifts and invitations because of their position with the school district. How does State law limit their ability to accept these gifts and invitations?

The State Officials and Employee Ethics Act (Ethics Act) contains gift ban provisions. 5 ILCS 430/10-10 through 10-40. The gift ban provisions significantly limit the gifts that school officials may accept. The gift ban applies to spouses and immediate family members living with the school official. Almost anything of any value comes within the Ethics Act's definition of *gift* quoted below:

Gift means 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.

5 ILCS 430/1-5. The Ethics Act also requires local government units, including school boards, to adopt an ordinance or policy "no less restrictive" than the Ethics Act's provisions. 5 ILCS 430/70-5. Board members should check their board's policy in case it contains additional requirements. The **PRESS** sample policy is 2:105, *Ethics and Gift Ban*.

2. The gift ban applies to gifts from a *prohibited source*. Who is a *prohibited source*?

The gift ban provisions regulate conduct between school officials and *prohibited sources*. Any entity or person becomes a *prohibited source* by, among other things, "seeking official action" or "do[ing] business or seek[ing] to do business with" school officials. Examples of a *prohibited source* include any law firm, architect firm, vendor seeking to do business with the district, and even a parent of a student in the district.

3. School officials are prohibited from taking a gift from a *prohibited source* unless the gift falls within one of the twelve exceptions. What are the exceptions to the gift ban?

The exceptions to the gift ban are in 5 ILCS 430/10-15 and are quoted below:

❑ 2921 Baker Drive • Springfield Illinois 62703-5929
217/528-9688 • Fax 217/528-2831

❑ One Imperial Place • 1 East 22nd Street, Suite 20 • Lombard, Illinois 60148-6120
630/629-3776 • Fax 630/629-3940

- (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.

4. School officials are occasionally invited to events sponsored by a *prohibited source* at which food and refreshments are served. An exception to the gift ban (#8) permits school officials attending the event to consume food and refreshments not exceeding \$75 per person in value on a single day. 5 ILCS 430/10-15.

a. Are vendor, architect, and law firm receptions, holiday parties, and private dinners included in this exception?

Yes. Vendors, architects, and law firms are *prohibited sources* because they either are doing business or want to do business with the district. School officials may consume food and refreshments at events sponsored by them, but only if the food and refreshments do not exceed \$75 in value on a single day.

b. Is the calculation based on: (a) the school official's actual consumption, or (b) how much the prohibited source spent per person on food and refreshments?

Ultimately, both methods are probably acceptable, depending upon the type of event at which the food or refreshments are served. For example, for a private dinner at a restaurant, the individual's actual consumption is the appropriate calculation since the value of the dinner and beverages can be traced to that individual. On the other hand, when the event offers an open bar or buffet, an average per-person value based upon the number of invitees or attendees (again, depending upon the nature of the event) is certainly reasonable.

- c. Does the school official's spouse or family member living with the school official receive his or her own \$75 exemption for consuming food and refreshments at an event sponsored by a prohibited source?**

Yes, each individual may be considered independently.

5. What is the status of a seminar or workshop sponsored by a *prohibited source*?

"Educational materials and missions" are specifically exempted (#4). As with any exception, if the "educational mission" is a pretense, the exception will be negated.

6. A *prohibited source* will occasionally pay a school official's entrance fees to an event (like golf course fees) or otherwise give a gift to a school official. An exception to the gift ban (#12) allows a school official to accept multiple gifts from any single *prohibited source* during a calendar year, provided the cumulative total value is less than \$100.

- 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, but the vendor's ability to get a deal 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 that negates the exception.

- b. May a school official accept a gift beyond the limit from a prohibited source who is also a personal friend?**

Yes. Exception #7 permits a school official to accept a gift of any value from a personal friend, unless the school official has reason to believe that, under the circumstances, the gift was provided because of his or her position with the district. 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 for the expense, the relationship will appear more business than personal.

- c. If a school official wins a prize valued \$100 or greater from a prohibited source, may she or he keep it?**

An exception to the gift ban (#1) permits a school official to accept a benefit of any value if it was available to members of the public. The question is whether the contest was open to the public. If so, the school official may keep the prize. If not, then the school official may not keep the prize. The winnings from a contest or drawing that is available only to school officials and their family members are analyzed under exception #12. See the analyses in other subparts of this question.

- d. May a school official accept tickets to events from a prohibited source?**

Yes, provided the ticket's value 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.

- e. May two exceptions to the gift ban be used for the same event?**

Yes. The exceptions are independent of one another and may be used simultaneously. One exception may be used for "food or refreshments not exceeding \$75 per person in value on a single calendar day," and another for "any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100." For example, one prohibited source may pay a golf course's \$95 greens fee for a school official only once a year. After playing golf, the school official may accept a dinner not exceeding \$75 in value from the same prohibited source.

7. 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 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, and policies and enforceable pre-existing contracts.

8. How are gifts between board members treated?

Gifts between board members are covered by the exception permitting intra-governmental and inter-governmental gifts (#10). An intra-governmental gift covers any gift given to a board member or employee from another board member or employee; an inter-governmental gift covers any gift given to a board member or employee from an officer or employee of another governmental entity.

9. May a school official avoid violating the gift ban by: (a) returning a prohibited gift to a *prohibited source*, or (b) giving a prohibited gift to someone else?

A school official does not violate the gift ban if he or she promptly: (a) takes reasonable action to return the prohibited gift to its source, or (b) gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code. If a school official returns an impermissible gift or donates it to a charity, he or she should document this action and explain the situation to a supervisor, if applicable.

10. 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 value of gifts. An inquiry of a gift's value will, at the very least, help establish good faith in accepting the gift. Section 10-10 states that “[n]o *prohibited source* shall intentionally offer or make a gift that violates this Section.” *Prohibited sources* may, as a protection for themselves and as a service to the school officials, provide school officials with a statement of the value of the food or refreshments.

11. How are school board ethics and gift ban policies enforced?

The enforcement of locally adopted resolutions or policies is very problematic because the Ethics Act does not specify an enforcement means for school boards. Many attorneys believe that school boards do not have the authority to prosecute offenders and adjudicate fines and penalties. Board policies typically provide for complaints to be filed with the superintendent or board president who, after consulting with the board attorney, will either place it on the board's meeting agenda for disposition or refer the complainant to the district's Uniform Grievance Procedure.

While the enforcement means are uncertain, the penalties for violating the gift ban are stated in Section 50-5, quoted below in relevant part:

- (c) A person who intentionally violates any provision of Article 10 is guilty of a business offense and subject to a fine of at least \$1,001 and up to \$5,000.
- (d) Any person who intentionally makes a false report alleging a violation of any provision of this Act to an ethics commission, an inspector general, the State Police, a State's Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor.
- (e) An ethics commission may levy an administrative fine of up to \$5,000 against any person who violates this Act, who intentionally obstructs or interferes with an investigation conducted under this Act by an inspector general, or who intentionally makes a false, frivolous, or bad faith allegation.

As of the date of this guidance document, Illinois has no case law discussing violations or interpreting the type of conduct that violates the Act, so there is uncertainty about what constitutes a violation. This uncertainty should counsel additional caution. School officials should review the discussion of avoiding the appearance of impropriety in the ICOSA's *Answers to FAQ Regarding Conflict of Interest and Incompatible offices*, published on the IASB website. The court of public opinion may be the ultimate tribunal.

¹ The following attorneys are members of the 2014 committee: Lauren Abbott, Tueth, Keeney, Cooper, Mohan & Jackstadt, P.C.; Heather Brickman, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP; John Izzo, Sraga Hauser, LLC; Thomas Melody, Klein, Thorpe and Jenkins, Ltd.; Melinda Selbee, Illinois Association of School Boards; Peter Wilson, Jr., Mickey, Wilson Weiler, Renzi & Andersson, P.C. The 2014 ICOSA Executive Committee provided peer review.

© 2014 Illinois Council of School Attorneys