

MEMORANDUM

State of Alaska

Department of Law

TO: The Honorable Bruce M. Botelho
Attorney General

DATE: March 20, 2000

FILE NO: 663-00-0156

TELEPHONE NO: (907) 465-4135

SUBJECT: AS 39.52.130
Gifts to Public Officers

FROM: Janice Gregg Levy
Assistant Attorney General

You have asked for a summary of the Department of Law's ("department's") interpretation and guidance regarding AS 39.52.130, gifts given to public officers. The Executive Branch Ethics Act ("Ethics Act") provides as follows:

A public officer may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the officer's personal or financial interests, under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, action, or judgment.

AS 39.52.130 (a). If a public officer receives a gift with a value in excess of \$150, and either the public officer may "take or withhold official action that affects the giver" or "the gift is connected to the public officer's governmental status," then the public officer must inform his or her designated ethics supervisor of the gift within 30 days of its receipt. AS 39.52.130(b). The designated supervisor, who may seek guidance from the attorney general, determines whether acceptance of the gift is prohibited. AS 39.52.130(c). The requirement that the gift be disclosed does not establish that its receipt constitutes a violation; it simply triggers review and a determination by the designated supervisor.

The department has consistently interpreted the phrase "under circumstances in which it could reasonably be inferred" as establishing a reasonable person standard. Thus, the department does not ask whether *in fact* the giver is trying to influence the public officer. *See*, e.g., 1999 Inf. Op. Att'y Gen. at 8 (223-98-0210; March 10) ("inquiry does not hinge on any showing of actual intent"); 1996 Inf. Op. Att'y

Gen. at 2 (663-96-0360; March 21) (tips received by state employee would support inference of intent to influence even though no wrongdoing by employee occurred). Additionally, the department does not ask whether anyone, including the most suspicious citizen, could possibly view the gift as intended to influence the officer. *See* 1995 Confidential Memorandum from this office to Commissioner (August 24) (absent facts suggesting otherwise, wedding gifts of moderate value are intended in celebration of wedding of friends and do not support inference of intent to influence official action).

The statute looks to whether the gift is given "*under circumstances* in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, action, or judgment." AS 39.52.130(a) (emphasis added). The decision, then, must turn on the facts and circumstances of the gift, including its value, the relationship between the public officer and the giver, and the extent to which the public officer can take or withhold official action that affects the giver. Accordingly, full disclosure of facts is important in enabling a supervisor to determine whether the circumstances surrounding a gift support a reasonable inference that it is intended to influence official action. The following are inquiries that the department advises designated supervisors to make in evaluating whether a gift is prohibited:

1. Can the public officer take or withhold official action that affects the giver? At one end of the spectrum, if the officer can take no action that affects the giver, there is little to support an inference that the gift was intended to influence the officer, and the gift is probably not prohibited.¹ At the other end, a reasonable inference can be made that a gift is intended to influence a public officer if an important decision is currently pending directly before the officer. The inference would be even stronger if the giver did not know the officer personally, and the gift was of considerable value. Other relevant questions are what kind of action the officer could take that would affect the giver, and of what importance the action would be to the giver. Is a gift prohibited if no action is currently pending, but could be taken in the future to affect the giver? Again, it depends. A giver may generously bestow gifts on a public officer to develop and maintain friendly relations, with the intent that when policy decisions are made in the future, the officer will be favorably disposed to give more weight to the giver's viewpoint. Those facts could support a reasonable inference that the gifts were intended to influence the officer. The gift is not necessarily prohibited, however, if the giver simply intends to maintain a cordial working relationship with the public officer.

¹ We use the qualifying language "probably" because unusual facts could alter the analysis.

2. Was the gift given to the public officer in his or her personal or professional capacity? This can be a difficult question to answer, particularly where both a professional and a personal relationship exist. The giver may have a friendship with the officer that predates the officer's appointment to state service. Again it is useful to identify the two ends of the spectrum. If the giver has been friends with the public officer for years, and they have always exchanged birthday gifts of a certain value, and no decisions are pending before the officer that would affect the giver, we would be unlikely to find an inference that a birthday gift was intended to influence the officer. At the other end, if the giver had never given a gift to the officer before, and gave the gift solely to an officer before whom an important decision was pending, a reasonable inference would exist that the gift was intended to affect the decision-making of the officer. If many people receive the same gift, some of whom are public officers and some of whom are not, the inference that the gift was intended to influence may be weakened. If the public officer has a friendship with the giver and is uncertain in which capacity the gift was given, the public officer should so state when disclosing the gift.

3. What is the value of the gift? Since January 1, 1999, gifts with a value in excess of \$150 must be disclosed (if other requirements are met).² The legislature's identification of a threshold value reflects a policy that gifts of lower value are unlikely to be intended to influence judgment. The threshold value also constitutes the legislature's recognition that, within a certain range, it is neither uncommon nor improper for individuals or organizations to provide meals, gifts, or entertainment to recognize, honor, or be cordial to a public officer. On the other hand, the threshold value clearly establishes that the department and other agencies are not free to make such an assumption as to gifts of a value above the threshold. Disclosure, analysis, and determination must be made if the value is above \$150 and the gift is either connected to the public officer's governmental status or the officer may take or withhold official action affecting the giver. As a general principle, the greater the value of the gift, the stronger the inference that it was intended to influence the public officer. In addition to inquiring into the value of a gift, the designated supervisor may inquire into frequency. A designated supervisor's determination could change if a gift which by itself did not support an inference of intent to influence was, in fact, one of a series of gifts that, in the aggregate, constituted substantial value. This observation underscores the need for the facts and circumstances to be provided to the designated supervisor.

² Before that time, the threshold value for disclosure was \$50. The increased value permits more gifts in the category of "social functions" to be unreported and suggests that the legislature recognized that most gifts of meals and entertainment are not intended to influence public officers' decision-making.

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In summary, this office has consistently advised that whether a gift is prohibited turns on the facts and circumstances of the gift giving. The question is not whether the public officer or the giver thinks the gift is intended to influence the officer; the focus is on whether, under the circumstances, an impartial person could reasonably infer that the gift was intended to influence the officer's performance. If facts or circumstances exist that either support or weaken the inference, the public officer should provide that information to the designated supervisor.

Please let me know if I can be of further assistance.