

42 IAC 1-5-1 Gifts; travel expenses, waivers

A dog food manufacturer offered to donate dog food to the Indiana State Police Alliance for use by ISP K-9s, and the ISP Ethics Officer sought advice on whether the agency could accept the donation from the Alliance. SEC found it would not be a violation of the Gifts rule for ISP to accept the donation made by the manufacturer via the Alliance since it was being made to the agency and not to any individual employees.

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The Indiana State Ethics Commission (“Commission”) issues the following advisory opinion concerning the State Code of Ethics (“Code”) pursuant to IC 4-2-6-4(b)(1). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

BACKGROUND

A state employee serves as Commander of the Office of Professional Standards and Ethics Officer for the Indiana State Police (“ISP”). The Commander requested an informal advisory opinion from the Office of the Inspector General on February 5, 2013, to determine whether the ISP would be prohibited from accepting dog food for the ISP K-9s. Specifically, a vendor (“Vendor”) that manufactures “NO-Grain” and “RescueMix” dog food contacted the ISP through the Indiana State Police Alliance (“Alliance”) and offered to donate dog food to the Alliance for all ISP K-9s at no cost to the ISP for 2013 and 2014. The Alliance, which is a 501(c)(3) not-for-profit organization, would then donate the dog food to the ISP. The Sergeant who oversees the K-9 program advised the Vendor to submit the proper paperwork to become a state vendor so the dog food could be purchased at cost in 2014 if the Vendor is prohibited from donating the food.

ISSUE

Is the ISP prohibited from accepting dog food from the Alliance that has been donated to the Alliance by the Vendor, particularly in light of the fact that the Vendor may be a registered state vendor in 2014?

RELEVANT LAW

42 IAC 1-5-1 Gifts; travel expenses; waivers

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 3-9-2; IC 4-2-6

Sec. 1. (a) A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any:

- (1) gift;
- (2) favor;
- (3) service;
- (4) entertainment;
- (5) food;
- (6) drink;
- (7) travel expenses; or

(8) registration fees;

from a person who has a business relationship with the employee's or special state appointee's agency or is seeking to influence an action by the employee or special state appointee in his or her official capacity.

(b) The following shall not be subject to this rule:

(1) Gifts, favors, services, entertainment, food, drink, travel expenses, or registration fees from public agencies or public institutions.

(2) Food or drink consumed at a public meeting to which at least twenty-five (25) individuals are invited. A meeting will be considered public if:

(A) the event is a reception or other gathering for public officials that is not arranged to solicit government

procurement of goods or services;

(B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or

(C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.

(3) Mementos or souvenirs of nominal value.

(4) Food or drink consumed by an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.

(5) Gifts, favors, services, entertainment, food, or drinks from relatives, or a person with whom the employee or special state appointee has an ongoing social relationship, so long as:

(A) the gifts or other items of value are not deducted as a business expense; and

(B) the gift giver is not seeking to influence an action by an employee or special state appointee in that person's official capacity.

(6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.

(7) Nominal refreshments offered to a state employee or a special state appointee conducting official state business while the employee or special state appointee is at a workplace of a person who:

(A) has a business relationship; or

(B) seeks to influence official action;

with the employee's or special state appointee's agency.

(8) Discount and other promotional programs approved and made available to state employees and special state appointees through the state personnel department or the Indiana department of administration.

(c) An employee's or special state appointee's state officer or appointing authority may waive application of subsection (a) of this rule in individual cases when consistent with the public interest. The waiver shall:

(1) be in writing; and

(2) identify the following:

(A) The employee or special state appointee.

(B) The nature and value of the gift.

(C) The donor of the gift.

(D) Why acceptance of the gift is consistent with the public interest.

(d) Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency's ethics officer to waive application of this rule on behalf

of the appointing authority or state officer. The designation shall be in writing and filed with the commission.

(e) If a person wishes to reimburse the state for any part or all of the expenses incurred by the state for appearances of a state officer, employee, or special state appointee or their official representatives on behalf of the state, the person shall remit to the treasurer of state any such amounts. The treasurer of the state shall quietus the funds into the general fund.

ANALYSIS

In this case, it appears that the dog food would be donated by the Vendor to the Alliance, not directly to the ISP. As a result, the primary consideration would be whether the Alliance has a “business relationship” with the ISP as the term is defined in I.C. 4-2-6-1(a)(5) or whether it is seeking to influence action by ISP personnel in their official capacities. However, since the dog food would be provided to the ISP and not to any specific individuals or employees at the agency, the ISP would not be prohibited under the Gifts rule from accepting the dog food from the Alliance, even if such a business relationship exists between the Alliance and ISP. This analysis would hold true, too, in the event the Vendor becomes a registered vendor of the state next year.

CONCLUSION

The Commission finds that the ISP is not prohibited from accepting dog food from the Alliance that was donated to the Alliance by the Vendor even if the Vendor may be a registered state vendor in 2014.