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## **HOLIDAY GIFT REMINDERS**

The holidays are almost here, and each year, the State Ethics Commission receives numerous questions concerning the State Government Ethics Act (SGEA) gift ban law and what exceptions, if any, might be applicable during the holidays. Therefore, the Commission is devoting this newsletter to providing general information on some of the most common gift situations arising during the holidays. However, it is important to note that the purpose of this information is to alert you to these very general situations. If you have specific questions, you should contact the Commission's office for advice and guidance.

In addition to the State Government Ethics Act, there may be other laws or agency policies that apply to you. For example, Executive Order #24 issued by Governor Perdue prohibits all State employees in the Cabinet agencies and Governor's office from receiving gifts or favors from contractors, subcontractors, or suppliers to State agencies. Other agencies have adopted gift policies as well. Therefore, in addition to contacting the State Ethics Commission for advice concerning the State Government Ethics Act gift ban and exceptions, you should also check with your agency's legal counsel to determine if any additional prohibitions or restrictions apply to you.

**Holiday Greeting Cards.** *Holiday greeting cards are not gifts.* Thus, greeting cards may be given and received without violating the SGEA's gift ban rule. Obviously, this applies to greeting cards and not gift cards that can be exchanged for something of value.

**General Gift Ban.** If you are covered by the gift ban provisions of the SGEA, i.e., you are a legislator, legislative employee, or public servant, or you are a registered lobbyist, lobbyist principal, or liaison personnel covered by the Lobbying Law, you are subject to the gift ban rules at all times. While there are exceptions, the SGEA's general rule is that gifts from certain persons to certain persons are prohibited (see below).

It is also very important to remember that there is ***no de minimis or small gift exception.*** In other words, unless there is a gift ban exception, all gifts are prohibited regardless of value.

In addition, this general prohibition includes both gifts given directly to a legislator, legislative employee, or public servant and indirect gifts – those that are given to another with the intent that the legislator, legislative employee, or public servant be an “ultimate recipient.” Therefore:

<b>If You Are A:</b>	<b>You Generally Cannot Accept Gifts From:</b>
Public Servant	<ul style="list-style-type: none"> <li>▪ Lobbyists</li> <li>▪ Lobbyist Principals</li> <li>▪ “Interested Persons” (<i>see below</i>)</li> </ul>
Legislator or Legislative Employee	<ul style="list-style-type: none"> <li>▪ Lobbyists</li> <li>▪ Lobbyist Principals</li> <li>▪ Liaison Personnel</li> </ul>
<b>If You Are A:</b>	<b>You Generally Cannot Give Gifts To:</b>
Lobbyist or Lobbyist Principal	<ul style="list-style-type: none"> <li>▪ Legislators</li> <li>▪ Legislative Employees</li> <li>▪ Public Servants</li> </ul>
Liaison Personnel	<ul style="list-style-type: none"> <li>▪ Legislators</li> <li>▪ Legislative Employees</li> </ul>

Names of lobbyists, lobbyists’ principals, and liaison personnel are on the Secretary of State’s website at <http://www.secretary.state.nc.us/lobbyists/>. Names of public servants, legislators, and legislative employees are on the Commission’s website at <http://www.ethicscommission.nc.gov/coverage/coveredPersons.aspx>

There is, however, no list of “interested persons.” As a result, public servants must be especially aware of who is an **“interested person.”** Specifically, interested persons are persons: (1) seeking to do business of any kind with the public servant’s agency; (2) engaged in activities that are regulated by the public servant’s agency; or (3) having a financial interest that may be substantially affected, different from the public generally, by the public servant’s action or inaction.

**Some Limited Exceptions.** As most people are aware, the SGEA does contain several exceptions to the general gift ban rule. Some of these exceptions are especially relevant during the holiday season.

- **Gifts Based on Certain Relationships.** The most common exception during the holidays applies to gifts that are given as part of certain relationships that are not related to the person’s public position. In particular, gifts given as part of a business, civic, religious, fraternal, personal, or commercial relationship do not violate the gift ban if certain conditions are met. Specifically, (1) the relationship cannot be tied to the legislator’s, legislative employee’s, or public servant’s public service or position; and, (2) the gift must be given under circumstances that a reasonable person would conclude that the gift was not given for lobbying.

- **Food & Beverage.** There are several exceptions allowing for food and beverage for immediate consumption at certain types of events. However, if the person sponsoring the event – either directly or indirectly – is prohibited from giving gifts, there are very specific rules that must be met in order for the legislator, legislative employee, or public servant to accept the food and beverage.
- **Gifts from Extended Family.** There are situations where an extended family member of a legislator, legislative employee, or public servant is also a lobbyist, liaison personnel, or interested person. However, gifts given by an extended family member or member of the same household are permissible even though the person would otherwise be prohibited from giving such a gift.
- **Gifts Given Generally to All Others.** Anything made available or distributed to the general public or all other State employees by lobbyists, lobbyist principals, or interested persons does not violate the gift ban.

If you receive a prohibited gift, you should decline it, return it, pay fair market or face value for it, or donate it to the State. You should also keep a record.

**Charitable Solicitations.** Certainly, the holidays present many opportunities for charitable donations. However, as a reminder, legislators, public servants, and judicial officers are prohibited from soliciting charitable donations from subordinate State employees. This rule does not apply to generic written solicitations to all members of a class of subordinates. Those types of solicitations are permissible.

**Things to Remember.** The most important thing to remember, not only during the holidays, but also throughout the entire year, is that if you are a legislator, legislative employee, or public servant, you “wear that hat” at all times, not just when you are engaged in your official duties or employment. Therefore, you should always think about the following before accepting a gift:

- **Is it a gift?**
- **Who is paying for or funding the gift?** (i.e., is the gift directly or indirectly being paid for by a lobbyist, lobbyist principal, liaison personnel, or “interested person”?)
- **If it is a gift from one of the above, does it fit a gift ban exception?**

Finally, in order to help you navigate the gift ban maze, we have attached a gift ban decision tree. Of course, if you are unsure about what your duties are under the SGEA, please feel free to **ask** the State Ethics Commission. Commission staff will be happy to assist you. You may reach us at 919-715-2071 or by e-mail at [ethics.commission@doa.nc.gov](mailto:ethics.commission@doa.nc.gov).