



THINK TWICE BEFORE GIVING GIFTS TO CITY OFFICIALS OR EMPLOYEES

Question: Should *anyone* (e.g., an individual, professional association, nonprofit or for profit business, or a city) ever give gifts to city officials or employees?

Answer: Gifts should never be offered in exchange for a city official or employee's vote or similar exercise of discretion because that is bribery. Assuming the gift is not given in exchange for any particular action, the most conservative practice is to avoid ever giving city officials or employees gifts that exceed \$50 in value. (A gift below \$50 may never be in the form of cash, a check, or gift card.)

Explanation: A gift should never be offered or given to a city official or employee in exchange for an exercise of official discretion because that is bribery. There are no exceptions to this rule!

Even when a gift is not meant as a bribe, state law may prohibit the gift. For instance, a city official or employee who makes decisions about contracts, purchases, payments, claims, or other financial transactions of the city commits an offense if he solicits, accepts, or agrees to accept a gift from a person interested in or likely to become interested in the contract, purchase, payment, claim, or transaction. This prohibition applies to elected officials, city managers, and department heads, and it can apply to other city employees as well. It applies whether the gift is given directly or as a "door prize," raffled item, or similar giveaway.

Why is this important to you, the giver of the gift? Any person who offers, confers, or agrees to confer any gift on a city official or employee that the person knows the official or employee is prohibited by law from accepting commits a *Class A misdemeanor* (up to one year in jail and \$4,000 in fines).

There are a few exceptions to state laws that prohibit giving gifts to city officials and employees (remember, these exceptions do not apply to bribery). Some of the most commonly-used exceptions allow you to give: (1) a city official or employee an item with a value of less than \$50 (this does not include cash, gift cards, checks, and similar items); (2) a gift to a city official or employee with whom you have a familial, personal, business or professional relationship that is independent of the official or employee's public status or work; (3) a benefit that the official or employee is entitled to receive by law or for which he has performed a duty independent of his status as an official or employee (for example, a jury duty fee); or (4) political contributions as defined by Title 15 of the Texas Election Code.

In addition to the exceptions above, a city official or employee may accept, as your guest, an unsolicited gift of food, lodging, transportation, or entertainment (so long as the gift is not a bribe). In order to rely on this exception, the official or employee must comply with any reporting/disclosure laws. For instance, Local Government Code Chapters 145 (for cities with 100,000 or greater population) and 176 (for all cities) require elected officials and certain employees to report the receipt of gifts. And if you have a contract or are seeking one with the city, you too may have to file a disclosure under Chapter 176.

Finally, it is important to remember that some cities have adopted local laws and policies that contain more stringent gift prohibitions than found in state law.

This memo is not meant as legal advice, but rather to provide general information. Each person or entity must consult with their own legal counsel in making a final decision about whether to give a gift.