

STATE ETHICS COMMISSION
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SUBJECT: Agency Fundraising

From time to time the Commission receives requests for advice from agencies concerning the application of the Public Ethics Law (General Provisions, Title 5) to agency solicitations of private entities for funding of State projects or initiatives. The following general guidance is provided to assist in determining if the contemplated activity is permissible under the Ethics Law.

The conduct of agencies is not regulated by the Ethics Law. However, agencies generally act through their employees, and the Ethics Law does regulate the conduct of individual officials and employees with respect to gifts. Section 5-505 (a) of the Ethics Law prohibits an official or employee from soliciting gifts. Section 5-505 (b) goes on to prohibit acceptance of a gift from individuals or entities that: 1) have regulatory or contractual dealings with the agency; 2) have interests that can be directly impacted by the official or employee; or 3) are lobbyists as to the official's or employee's agency.

In interpreting subsection (a) (solicitation), the Commission has distinguished between soliciting gifts for the benefit of State officials and employees (prohibited) from the solicitation of gifts/donations for agency programs. For example, solicitation by an agency of a local restaurant for discount coupons for agency employees as part of an "employee appreciation day" event would be a solicitation for the benefit of employees, not part of an established program, and would be prohibited under §5-505 (a). On the other hand, the Commission has recognized that in some cases solicitation and gift activities that are clearly part of an agency's mission are matters for agency policy makers rather than the Ethics Law¹. So, for example, an agency may be able to solicit donations from private citizens or entities to fund agency initiatives (e.g. public health grant programs) where agency employees are not the beneficiaries of the solicited funds.

The Commission has specifically addressed the application of the gift provisions of the Ethics Law to situations in which agencies have sought private contributions or donations for legitimate agency or inter-agency programs. It is the responsibility of the agency to ensure any applicable laws, policies or procedures established by the government branch or agency are followed, including, if required, obtaining proper authorization for the activity. In this regard the agency should consider seeking advice from the Office of Attorney General. The agency should ensure relevant laws, policies and procedures are followed by the officials and employees involved in the fundraising activity, and should address with the officials or employees any failure to do so. In carrying out a fundraising activity that is consistent with established law and policy, there are certain ethics concerns that must be satisfied as follows:

¹See, e.g., Opinion 94-13

1. Requests for donation to a State agency solicitation should be broad, and not directed at vendors or those regulated by the agency;
2. Employees or officials involved in regulatory and procurement matters should not be involved in the solicitation;
3. It should be made clear to those solicited that a donation will not confer any special access or benefit in their dealings with the State;
4. The gifts solicited should not result in personal benefit to any employee or official²;
5. All funds and in-kind gifts should be solicited and accounted for in accordance with legal authority for acceptance of gifts and be processed in accordance with any applicable State fiscal, procurement or related accounting principles.

The Commission will continue to address, on a case by case basis, situations where individual officials or employees solicit or receive gifts outside of a recognized agency program and apply the Ethics Law as appropriate.

² Funds to pay for an employee's or official's travel expenses may be acceptable in some situations, where the travel is part of an established agency program and the identification of the individual participants is a matter of agency determination, or where the travel funding is specifically provided for in the context of a contractual relationship. See Opinions 81-6, 81-31 and 82-28.