

Memo

To: Commissioners

From: Wayne Barnett

Date: October 6, 2010

Re: Receipt of gift cards by Covered Individuals

Commission staff has received inquiries about the propriety of accepting commercial gift cards as token appreciations from persons they serve, regulate, or with whom they contract. The use of gift cards to express appreciation seems to be a growing practice. We are seeking guidance from Commissioners regarding this question.

Background

City employees often receive thank-you cards, holiday greetings, and token gifts from constituents they serve, as well as contractors and vendors with whom they conduct City business. At times the sender encloses a gift card with the thank-you. Popular gift cards include those from coffee shops, lunch vendors, and department stores. Values are as low as five dollars.

When the Commission adopted the Gift Rule in 2006, we did not anticipate the growing popularity of commercial gift cards, and so the rule is silent on this topic. The Gift Rule does, however, provide the following safe harbors if the Covered Individual participates in contractual or regulatory decisions involving the giver:

- i. Unsolicited advertising or promotional items valued at twenty-five dollars or less, with an aggregate value of less than fifty dollars from a single source in a calendar year; or
- ii. Unsolicited items valued at twenty-five dollars or less that are placed in a common area where they are shared with coworkers. The aggregate value of such unsolicited items must not exceed fifty dollars from a single source in a calendar year.

If the Covered Individual does not participate in regulatory or contractual business involving the donor, the Gift Rule's safe harbors are: "Unsolicited gifts with an aggregate value of less than fifty dollars from a single source or a single item from multiple sources with a value of less than fifty dollars," as well as plaques, publications, food and beverages consumed at hosted receptions, and admission to civic, charitable, governmental, or community organizations.

The Gift Rule is rooted in two Code provisions. The first bars Covered Individuals from receiving anything of value that was given or would appear to a reasonable person to have been given with the intent to obtain special consideration or influence as to any action by the Covered Individual in his or her official capacity. The second bars Covered Individuals from using their official position for their private benefit.

Discussion

Staff's advice to date has been that gift cards fit within the safe harbor for promotional items valued at less than \$25 that are shared with coworkers. The rationale has been that a \$10 gift card, when used to purchase coffee for a staff meeting, is no different in kind than a box of chocolates dropped off at the office. We have stressed that the Ethics Code sets a floor, not a ceiling, and that departments are free to adopt policies that may be more restrictive than the Ethics Code.

I am aware of one large department that believes this advice is off base, and would like to see the Commission declare gift cards off limits. The contrary position is that gift cards are a cash equivalent, and should be treated as cash. It is just not possible to track how these gift cards are used in the way it is possible to track the use of candy or flowers that are delivered to the office.

I look forward to our discussion. I anticipate amending the Gift Rule to make explicit the Commission's opinion of gift cards at a subsequent meeting. (That process would also provide an opportunity for commissioners to hear from the public on the topic.)