



## **Guidelines on Acceptance of Gifts**

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The State Legislature in 1975 created an independent commission on governmental ethics and election practices to guard against corruption or undue influencing of the election process and against acts or the appearance of misconduct by Legislators. That Commission is charged with the responsibility to investigate and make advisory recommendations to the appropriate body of any apparent violations of the ethical standards set by the Legislature and to conduct an ethics seminar for Legislators. Along with those duties, the Commission is authorized to issue advisory opinions and guidelines on problems or questions involving possible conflicts of interest in matters under consideration by, or pertaining to, the Legislature.

A frequently troublesome area is that of “gifts.” The question periodically is asked whether a “gift” to a Legislator violates the legislative ethics law or any other provision of Maine law. Two statutes raise possible barriers to the acceptance by Legislators of gift offers. The first limitation is found in the legislative ethics law [1 M.R.S.A. § 1014(1)(B)] which provides that a **conflict of interest** occurs when a Legislator or a member of the Legislator’s immediate family accepts a gift, other than a campaign contribution, from any person affected by legislation or who has an interest in a business affected by proposed legislation, **where it is known or reasonably should be known that the purpose of the gift is to influence the performance of the Legislator’s official duties or vote, or is intended as a reward for action on the Legislator’s part.**

As used in that provision, “**gift**” means anything of value, including the forgiveness of an obligation or debt, given to a person **without** that person providing **equal or greater consideration** to the giver. However, “gift” **does not include** things of value received from a **single source** during the reporting period with an **aggregate value of \$300 or less**; a bequest or other form of inheritance; a gift received from a relative or from an individual on the basis of a personal friendship as long as that individual is not a Maine registered lobbyist or lobbyist associate, unless the Legislator has reason to believe that the gift was provided because of the Legislator’s official position and not because of a personal friendship; a subscription to a newspaper, news magazine or other news publication; legal services provided in a matter of legislative ethics; a meal, if the meal is a prayer breakfast or a meal served during a meeting to establish a prayer breakfast; or a meal, if the meal is provided by industry or special interest organizations as part of the informational program presented to a group of public servants.

The key questions that must be answered are: (1) Is the offer of anything of value to a Legislator intended to influence the performance of the Legislator’s duty or vote or as a reward for any action on the Legislator’s part; and (2) Does the offer constitute a “gift” under the legislative ethics law’s definition of that term? Thus, the applicability of the legislative ethics law with respect to the acceptance of a gift would depend on the **purpose** of the offer and the **nature and value** of the thing offered. If the purpose is to influence or reward a Legislator in the performance of official duties, and/or if the value of the thing offered exceeds \$300, the item would be a prohibited “gift” for purposes of the applicability of the legislative ethics law.

However, a second limiting statutory provision, the stricter (narrower standard) Maine Criminal Code (17-A M.R.S.A. § 605), provides that it is improper for a public servant to solicit, accept or agree to accept any

pecuniary benefit from a person “if the public servant knows or reasonably should know that the purpose of the donor in making the gift is to influence the public servant in the performance of the public servant’s official duties or vote, or is intended as a reward for action on the part of the public servant.”

As used in the Criminal Code provision, the term “**pecuniary benefit**” means **any advantage** in the form of money, property, commercial interest or anything else, the **primary significance** of which is **economic gain**. It does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally. “Pecuniary benefit” **does not include a meal**, if the meal is provided by industry or special interest organizations as **part of an informational program** presented to a **group of public servants**; **a meal**, if the meal is a **prayer breakfast** or meal served during a meeting to establish a prayer breakfast; or a **subscription** to a newspaper, news magazine or other news publication.

What must be answered, then, is: (1) Does the giver of the gift have an interest in a matter before the Legislature or a matter that is expected to come before the Legislature; and (2) Would the gift result in any economic advantage to the recipient that is not applicable to the general public or otherwise permitted by the law? Under the criminal law standard, the value of the gift is not a factor. Any economic gain or advantage is enough to invoke the proscription of the statute.

The comment that accompanied the Legislature’s 1975 enactment of the criminal law provision stated:

It seems to be a warranted assumption that gifts from persons who have an interest in an official matter before the public servant would be so often **made with the hope and intent of influencing** [that public servant] that it is appropriate to **prohibit all such gifts generally**. This prohibition also serves to contribute significantly to the appearance, as well as the substance, of public integrity.

The Legislature has assigned to the Ethics Commission the responsibility to investigate and make advisory recommendations to the Legislature of any apparent violations of the ethical standards set by the Legislature. However, the Attorney General enforces the provisions of the Maine Criminal Code. Therefore, the Ethics Commission is the arbiter regarding the applicability of the legislative ethics law, while the Attorney General’s Office is the final authority concerning the applicability of the criminal law provisions.

Individual Legislators are encouraged to consult with the Commission’s staff, which includes the availability of legal counsel from the Attorney General’s Office, about the particular facts of a potential gift situation before embarking on a course of action with respect to the acceptance of that particular gift. That is especially true with respect to the acceptance of offers of expense-paid trips, including reimbursement for travel, meals, and accommodations. The Commission and its staff will make every reasonable attempt to review the facts and offer advice in a timely manner within the limits of the Commission’s authority. In that regard, some examples of gift situations that the Commission has addressed in the recent past are illustrative:

1. In 1996 a Legislator requested the Commission’s guidance concerning the propriety of a member of the Legislature accepting an expense-paid trip to a conference sponsored by a national trade association. After reviewing the specific facts presented, the Commission concluded that acceptance of the trip would not constitute a violation of Maine’s legislative ethics law because the conference would be an educational opportunity that would serve to benefit the Legislator in the discharge of the Legislator’s duties. However, the Commission questioned the propriety of attending a conference at which such diversions as golf and deep-sea fishing are offered as part of the program and referred the requesting Legislator to the State law regarding the purpose of the donor in making the gift and the relation of that purpose to possibly influencing that Legislator in the performance of official duties or as a reward for past actions. Additionally, the Attorney General was asked to render a formal opinion regarding the questions raised.

2. Also in 1996, the Commission concluded that a Legislator's acceptance of an expense-paid trip of unknown value to another state to participate in a conference sponsored by a Maine political action committee, including hotel accommodations and travel expenses associated with the trip, was not a conflict of interest. However, the Commission encouraged the Legislator in the future to seek advice before accepting anything of value from anyone with a potential interest in proposed legislation. The Commission also reminded the Legislator of the responsibility to ascertain the value of those goods or services that may bear upon the question of the propriety of accepting such "gifts." Finally, the Commission reminded the Legislator of Maine's financial disclosure law that requires Legislators to report annually the source of any gifts received with an aggregate value of more than \$300.

3. In 1997 the permissibility was questioned of a paper company inviting certain members of the Legislature to tour Maine's northern woodlands, including payment for overnight accommodations, one restaurant meal, and bus transportation to view the woodlands. The invitation was valued at less than \$100 per Legislator, not including transportation to and from the point of departure. The program included various presentations, but no lobbying was planned. Legislation involving woodland issues was pending before the Legislature. The Commission concluded that Legislators who participated in the tour would not be in violation of the Legislative ethics law because the value to each Legislator was considerably less than the \$300 threshold by which a "gift" is defined. However, the Commission recommended that the Attorney General be consulted regarding the applicability of the criminal law provisions involving improper gifts to public servants.

4. Finally, in 1997 the Commission considered whether the offer of the services of a free community-service web page on the Internet and 20 hours of free Internet access per month, including installation of the appropriate software on the Legislator's at-home personal computer, offered to certain Legislators by a communications company would constitute a violation of State law. Issues were expected to arise on the legislative agenda that would affect the future health of the Internet and telecommunications industries in Maine. The company acknowledged its belief that "hands-on experience will help [the benefited Legislators] make informed decisions about legislation as these issues come before you." The Commission concluded that the applicability of the Legislative Ethics Act with respect to the question of whether the offer constituted a "gift" would depend upon whether the value of the services to be rendered was less than \$300 per year in the aggregate so as not to trigger the "gift" prohibition. However, the Commission decided that the acceptance of the offer was prohibited because of the appearance that the offer may have been intended to influence Legislators in the performance of their official duties or vote at some time in the future. Moreover, the Commission concluded that the acceptance of the offer would violate the State's criminal law prohibition against public servants accepting any "pecuniary benefit" in the form of a "commercial interest" or advantage that is not generally available to other members of the general public.

Consequently, Legislators and prospective sponsors of so-called "fact finding," "educational," or "informational" programs that may include sponsor-paid offers of meals, travel, and transportation routinely question the propriety of accepting proposed offers of such "gifts."