

Executive Order #2007 - 01S

Interpretation & Application February 20, 2008

Governor Strickland's Executive Order Number 2007 - 01S (which will be referred to as EO#1) has engendered a great many questions about its interpretation and application. As the order, itself, suggests, the Governor's office is eager to receive questions about these matters and will periodically post material on the Governor's website, in "Q and A" format, designed to assist in the interpretation and application of the order. Questions should be directed to the Governor's Chief Legal Counsel, Kent Markus, at kent.markus@governor.ohio.gov. The Ohio Ethics Commission also welcomes questions regarding the application of the Ethics Laws at 614.466.7090.

Most of the questions received so far have concerned the "gifts" section of the Order. There are two key principles to keep in mind when applying that portion of the Order:

- 1) There are only four categories of people from whom those affected by the Order **may accept** gifts (a term which includes the gift of food and/or beverages), as those categories are defined in the Order:
 - Close family members
 - Friends (including other family members) who aren't lobbyists, state contractors or state grantees
 - Anyone providing a token gift (including food and/or beverages) valued at less than \$20
 - Government officials from other states or countries (with gifts accepted on behalf of the State of Ohio)

If the gift's donor doesn't fit into one of these four groups, state employees may not take the gift.

- 2) When, under the Order, an employee **may** accept a gift, that employee is still controlled by state ethics laws, including:
 - No gift should ever be **solicited** by a state employee
 - No state employee may receive compensation for the performance of official duties from anyone other than the State
 - The prohibition against receiving multiple nominal gifts in the same year from a "prohibited source" as the ethics laws define that term. To comply with the limits in EO#1, employees may not accept multiple gifts in this category with a collective value of such gifts beyond the "nominal" level over the course of a calendar year.
 - The obligation to abide by the ethics law disclosure requirements

Questions & Answers

Meetings, Conferences & Similar Events

- Q1) If those sponsoring a meeting, conference or similar event, want to provide complimentary admission and/or cover my lodging, food and/or travel costs associated with attending or making a presentation at the event, may I accept any or all of these?
- A1) It is, in general, best for the state to pay for conference fees and travel, lodging, food costs related to state employee participation in such activities, but there are limited circumstances in which reimbursement of costs and/or complimentary admission may be permissible. Ohio's

ethics laws provide for the few circumstances in which costs may be reimbursed to, or waived for, state employees and the Ethics Commission has a great many advisory opinions on the subject.

In general, the only impact EO#1 has had on prior policy in this regard is to further restrict that which it was permissible to accept under the Ethics Laws. Thus, in circumstances in which it was, for example, previously permissible to accept reimbursement from an organization to which the agency pays dues or from those hosting an event at which the employee is speaking, it is still permissible to do so. Furthermore, travel paid by the federal government or another government entity that is clearly associated with one's public duties is also permissible, especially when state employee participation in various meetings is required of those receiving federal funds. If you are authorized to be reimbursed for costs or to accept complimentary admission to an event, you may be reimbursed for and/or accept meals which are served to those attending the event. Your meal reimbursements should not exceed the standard *per diem* amounts authorized by OBM for meals and you must, of course, disclose in any required filings the receipt of reimbursements.

Employees are strongly encouraged to consult with the Chief Ethics Officers at their respective agencies or the Ethics Commission in order to avoid violations of the ethics laws and EO#1.

Q2) Can I accept continuing education credits earned by those at a meeting, conference or similar event when I haven't paid a fee to attend that event?

A2) If you are properly at the event without having paid a fee, under the circumstances discussed above, you may earn continuing education credits while you are there.

Q3) Can I accept food and/or beverages provided at the event?

A3) If you have paid the registration fee to attend the event, and food and/or beverages (or other gift items like a tote bag) are included in the registration fee, the food, beverages and/or tote bag are not gifts but are, instead, part of what you are paying for with the registration fee, and you may accept them. If your registration fee has been waived in one of the very limited circumstances in which it is permissible for a host to do so for you, you may accept food and/or beverages served to those attending the event.

Q4) If my agency is sponsoring or co-sponsoring an event by providing some or all of the funding associated with the event, can we include as part of the sponsorship arrangements the authority for some number of agency employees to attend the event without charge?

A4) For the most part, yes. As long as there is a reasonable demonstrable need for the employees to be attending the event for legitimate business reasons, this kind of arrangement is fine. Such an arrangement that authorized every agency employee to attend without charge or some other indiscriminately large group of employees would be improper.

Q5) May I take key chains, squeeze balls, and sports bottles handed out by vendors at such events?

A5) Yes, as long as you don't take any item, or aggregate of items, from any vendor that is of more than nominal value. You will always be in compliance with EO#1 if the value or aggregate value of an item or items you take from any vendor is less than \$20.

Q6) Can I receive a plaque or award at such a meeting?

A6) Only if its value is “nominal” as that term is used in the EO. Since the EO has set the nominal meal and beverage cost at \$20, the value of any gift you receive, including an award or plaque, generally should not exceed \$20. Those who have an assistant involved in scheduling their appearances and presentations are strongly encouraged to have those assistants communicate the limits of EO#1 to those who invite you to speak or attend events. Advance explanation about the significant gift limits contained in EO#1 can help avoid embarrassing circumstances required by the Order.

Q7) Can someone give a plaque or an award to our agency?

A7) As long as no individual is identified by name or position, no individual would have received a gift under EO#1 if an entity provides recognition to an agency or component of the agency. Any such plaque or award should be displayed in a public area since it is not the property of any employee of the agency.

Q8) Can I attend a continuing education program without paying the tuition if it is free for all government employees?

A8) See answer “A1” above. The fact that it is a continuing education program does not modify that answer. You may take advantage of a group rate available to any other group. In addition, if there is a special rate for government employees or there is no fee for government employees, you may take advantage of that rate if the host entity is not involved in advancing a public policy agenda with or on behalf of state agencies or is not a contractor with or grantee from the State. Government employee consortia assembled to provide continuing education programs may certainly provide those programs to other government employees without charge. Private entities seeking to influence state agencies may not provide continuing education programs at a reduced rate or without charge to state government employees unless admission is free for all program attendees.

Q9) Can I take advantage of a group rate or reduced rate for non-work related activity, like “government employee day” at an amusement park?

A9) Yes. You may take advantage of any group rate that any other group of individuals who are not state employees could utilize. And, you may take a reduced rate that is targeted at government employees if it is widely available to government employees and the provision of the reduced or waived fee could not be reasonably construed as an effort to influence or advantage any specific group or set of state employees.

Q10) Can the host of a fundraiser for a non-profit organization allow me to attend such an event without paying for a ticket?

A10) You should never attend any such event on the state clock, but even in your free time, you must not take an impermissible gift. If the event host chooses to forgo its fundraising “profits” - that is, the portion of the ticket price that does not cover the reasonable cost of your attendance at the event - such a decision by the host will not be deemed a gift to you. Thus, if there is a \$100 fundraising dinner at which a meal that costs \$35 is served, the host may admit you for free, but you must still cover the cost of the food being provided to you. If the host has a “Night with the Blue Jackets” for \$250 a person and provides you a complimentary ticket

to the event, you may attend if you still cover the cost of your seat at the game and any food or beverages you consume worth more than \$20 and pay for any other out-of-pocket costs incurred by the host on your behalf.

Q11) Can the host of a fundraiser for a political candidate or party allow me to attend such an event without paying for a ticket?

A11) Yes, if you're not on state time, if you are an employee otherwise permitted to participate in that form of political activity and if you follow the procedures outlined above with respect to non-profit fundraising events.

Q12) Does the Order otherwise impact my ability to participate in political activities?

A12) You must comply with the Political Activity Policy of November 7, 2007, and must refrain, in particular, from participation in any political activities using state time or resources. You may allow campaign committees to cover lodging, food, travel, or other costs incidental to your permissible political activity as long as any such expenditures are reported in state or federal campaign finance reports. Furthermore, you must disclose these expenditures on your financial disclosure form to the extent required by Ohio's ethics laws.

Q13) Can I solicit corporate and/or individual contributions to support the operation of a meeting, event or other conference if the contributions are provided to the state, to a non-profit entity hosting the conference or event, or to an event vendor?

A13) While nothing in EO#1 is specifically responsive to this question, Ohio's ethics laws would not prevent a state official or employee from soliciting financial or co-sponsor support for an educational or information conference, meeting, or event that the state is sponsoring, as long as there is no personal benefit to the person soliciting or receiving the funds. If the event is sponsored or co-sponsored by a non-profit or for profit entity, the solicitation is permissible as long as there is no personal benefit to the person soliciting or receiving the funds and the solicitor is not on the board or an officer or employee of the entity receiving the funds.

Permissible and Impermissible Gifts

Q14) Can I accept a gift worth more than \$20 from a personal friend who is a state employee?

A14) Generally, yes. Such a person fits in the second category of those from whom state employees may receive gifts.

Q15) But what if my friend the state employee is registered with JLEC? Doesn't that make the person a lobbyist who may not give me a gift worth more than \$20?

A15) EO#1 is only intended to apply to lobbyists not employed by the State. An upcoming modification of the Order will reflect this intent.

Q16) The Order has a very small list of individuals included within the “close family members” group. Am I not allowed to take a gift worth more than \$20 from my uncle or my sister-in-law?

A16) It depends. Although not included in the small group defined as “close family members”, if your uncle and your sister-in-law are friends, but are not lobbyists or contractors with or grantees from the state, you can accept whatever gift from them they want to give you. If they are lobbyists or contractors with or grantees from the state, they can only give you a gift of nominal value like a t-shirt, mug, etc.

Q17) Who is included within the term “domestic partners”?

A17) Those who live together and share a common domestic life.

Q18) So if my boyfriend or girlfriend (or fiancé) is a lobbyist or contractor with or grantee from the State and I don’t live with him or her, I can’t accept a gift or meal from him or her worth more than \$20?

A18) Although the EO technically prohibits gifts of this sort, the strict application of the EO in this way would be impractical and would result in unintended limitations on the purely private conduct of State employees. Because the interpretation and enforcement of the governor’s EO is a matter wholly within the governor’s control, no person should in any way be disciplined for the technical violation of this provision if the gift would be proper under the ethics laws. Thus, such gifts are permissible under the EO as long as they do not violate JLEC restrictions or other ethics law prohibitions aimed at curbing improper influence peddling activity.

Q19) Why weren’t grandparents included in the list of those who can give a gift whether or not they are lobbyists or contractors or grantees?

A19) While the intent was to draw the “unrestricted” list of close family very narrowly, grandparents should not have been excluded from that list. They will be included in the upcoming modification of the Order.

Q20) If someone wants to give me a book, vase, bowl, clock, coffee table, photo print or other item worth more than \$20 for use at my office, can I accept it on behalf of the State of Ohio, understanding that I can’t keep it when I leave state employment?

A20) No. EO#1 only authorizes the acceptance of gifts “on behalf of the state” if they come from officials of the governments of other states or countries. Allowing officials or employees to accept items “on behalf of the state” creates an unacceptably large loophole.

Q21) Is there a way someone can donate a book, vase, bowl, clock, coffee table, photo print, or other item to the State so that it might be used by state employees or made available to the Ohio Historical Society?

A21) Items may be donated to the State through DAS, to the Historical Society, to other agencies authorized by law to receive gifts, or to the Governor’s Residence Foundation, but the donor has no ability to control how the item will be used after it is donated.

Q22) If I receive a gift on behalf of the state and I am a mandatory filer, do I have to report the gift on my ethics disclosure form?

A22) Such a gift is expressly permitted by EO#1, but the EO doesn't respond to this question. You are not required to disclose a gift of this nature, but to provide transparency, the Ethics Commission recommends listing the source and gift on a disclosure form, with a notation that the gift was accepted on behalf of the State.

Q23) If someone sends me a gift of food worth more than \$20 - like a large fruit basket or an expensive candy arrangement - can my colleagues and I accept them jointly, spreading the value across the group?

A23) No. If the gift was sent to you, it was meant for you. If you cannot accept it, you must return it. Whenever you can, you should return gifts you cannot accept with the delivery person who brings it.

Q24) Can I send on to a food shelter a perishable gift of food that I can not accept?

A24) In general, no. In order to send a gift on to someone else, you need to first have ownership of that gift. If you weren't allowed to accept the gift, you can't give it to someone else. You should try to send such gifts back with the delivery person whenever possible. All that said, you can seek permission from the gift's donor to divert the gift elsewhere. In that way, you are not taking ownership of the gift and determining where it should be donated, you are allowing the owner of the gift - the donor - to authorize the diversion of the gift elsewhere. This practice is acceptable as long as it is not part of any pattern that creates the appearance that the donor is attempting to curry favor with one or more state employees by sending gifts which the employees are allowed to continuously divert to a favorite charitable cause.

Q25) What if someone sends candy, food or flowers to a group of employees?

A25) If it's worth more than \$20, it should be sent back to the person who is trying to be clever and get around the rules.

Q26) What if we genuinely have no idea who sent the gift?

A26) Give it away, if at all possible to a non-profit, charitable entity. Also, if you file an ethics disclosure form, if the gift is within the requisite threshold, you must report that the gift was received from an unknown source.

Q27) Can I receive complimentary copies of publications related to my work, even if valued at more than \$20?

A27) Yes, as long as such publications are received at the office and those to whom you report concur in your judgment the publications have not been provided in an effort to improperly influence decision-making at the agency. Those receiving such publications should be confident that the publications have been provided as a marketing activity of the publication or to provide information of value to the agency. Furthermore, no matter how they are addressed, such publications should be considered the property of the state, and you should not treat the publications as though they belong to you. Sharing such publications with colleagues also interested in their content is strongly encouraged.

- Q28) As a reward for excellent performance, my spouse, who works in the private sector, received an all-expense paid trip for two for a long weekend out of town. Can I go?**
- A28) As long as it is absolutely clear that the reward to your spouse has no relationship, whatsoever, to your position or work with the State, go enjoy yourself, you deserve it! (Just be wary of anything that looks like an effort to give a the benefit of a gift by giving it to your spouse.)
- Q29) If a lobbyist friend of mine has tickets to an event (like, say, a football game), can I buy a ticket from him at face value even though the fair market value of the ticket would be a good deal more?**
- A29) Only if your lobbyist friend paid face value for the ticket. If she paid more than face value for the ticket and your bought it from her from face value, she'd be giving you a gift of the difference. If she paid more than face value for the ticket, you can buy it from her for whatever she paid for it.
- Q30) Can I donate my time to a charitable auction - a lunch or dinner with a couple of other folks, on me?**
- A30) Nothing in EO#1 would prohibit your donation of your time in this way, but you should be cognizant of the appearance that you are "selling access". If you want to make this kind of contribution to a charitable auction, it is essential that you limit those who can buy the item to individuals who are not lobbyists or actual or prospective contractors with or grantees from the state. It's fine for ordinary citizens or students or others who have no substantial financial interest in your work to buy such items, but you must set clear terms when making such items available to the charitable entity and must insist that those terms are followed.

State of Ohio Board and Commissions

- Q31) The Order says that it applies to all of the members and employees of the Boards and Commissions appointed by the Governor. Does the governor really have the authority to impose the requirement of an Executive Order on all of those people?**
- A31) The Governor believes that he does have that authority. In addition, no person will be appointed to a board or commission by the Governor who does not commit to abide by EO#1 and to work to require the employees of their board or commission to do so. Also, in the near future, the Governor will be asking all current members and employees to sign an acknowledgement of their intent to abide by the terms of the Order.
- Q32) Is there a distinction between the way the gift restrictions in the Order is applied to board and commission members and board and commission employees?**
- A32) No distinction is created in the Order, but the first nine months of the implementation of the Order have led to a conclusion that while board and commission members who are, themselves, state employees, should be treated the same as any other state employee, those board and commission members who are volunteers, or more like volunteers than employees, should be given a small degree of additional flexibility. This conclusion is based upon the belief that board and commission members who are volunteers (or very close to being volunteers) generally have business endeavors in which a certain amount of gift giving between and among business clients, vendors, and others is typical and even necessary to operate effectively in that business environment. The Order is designed to protect the integrity of government operations and is not intended to impact the legitimate, non-governmental business activities of citizens serving on boards and commissions.

Accordingly, the EO will be modified, in the near future to recognize that non-state employee board and commission members may accept gifts except those valued at more than \$20 from individuals or entities:

- Doing business or seeking to do business, with the Board or Commission on which the individual sits, or
- Interested in matters before or regulated by that entity

Q33) How do we know whether a board or commission member is more like a state employee, with more gift restrictions, or more like a volunteer, with fewer gift restrictions?

A33) In many cases this will be obvious. When a board or commission appointment is the individual's full-time work, with salary and benefits from the state, that person is an employee obligated to abide by the terms of the Order as currently written. Those board or commission members who are volunteers receiving no compensation, or who are merely reimbursed for actual out-of-pocket costs associated with their board or commission service, should follow the more flexible standard set out above.

Inevitably, there will be those in the middle. For the purpose of the interpretation and application of the EO, board and commission members will be considered employees obligated to follow the current terms of the EO, when their fundamental professional, business, or other work activity is delivering or supporting the delivery of government services on behalf of and paid for by the State of Ohio. Board and Commission members who receive some payment or benefit associated with that service, but for whom that service is supplemental and ancillary to their primary professional or business activity may use the more flexible standard. For the purposes of this distinction, all those employed by state colleges and universities (faculty and staff) will not be deemed state employees in recognition of their unique position more in the sphere of their university employers than that of the Governor.

To the extent additional clarification is needed (and undoubtedly it will be) additional materials will be posted.

Q34) If board and commission members or employees have questions about the Order, or about the application of the Order to any specific scenario or situation, who should they contact?

A34) Questions from members and/or employees of any Ohio boards or commission should first be directed to the individual(s) who provide legal counsel to that board and/or commission. The chair and/or executive director of your board or commission should be able to provide you with this information. Questions may also be directed to the Governor's Chief Legal Counsel, Kent Markus, at kent.markus@governor.ohio.gov. The Ohio ethics Commission also welcomes questions regarding Ohio's Ethics Laws at 614.466.7090.