



Government Relations Client Bulletin



January 2007

Bricker & Eckler LLP

100 South Third Street
Columbus, Ohio 43215-4291

Phone 614 . 227 . 2300
Fax 614 . 227 . 2390
info@bricker.com
www.bricker.com

COLUMBUS | CLEVELAND
CINCINNATI-DAYTON

This document has been prepared as a general reference document for informational purposes. The information contained herein is not intended to be and should not be construed as legal advice. Each circumstance should be considered and evaluated separately, and possibly with involvement of legal counsel.

Please contact Bricker & Eckler for permission to reprint this bulletin in part, or in its entirety.

A Corporate Guide to Ohio Ethics Laws: Governor Strickland's Executive Order

Introduction

On January 8, 2007, immediately after being sworn in, Ohio Governor Ted Strickland signed his first Executive Order to establish an ethics policy for his administration. Among other things, Executive Order 2007-01S requires the Governor, his staff, cabinet agencies and state boards and commissions to decline virtually all gifts from individuals and companies that interact with the state, except *de minimus* gifts valued at under \$20.

It is important to note that Ohio ethics laws have not changed. It has been illegal for a public employee to accept a gift of "substantial value" from any person or company doing business with, seeking to do business with, or regulated by the government since 1974 when Ohio's first ethics laws went into effect. Executive Order 2007-01S provides greater context to existing state law and sets a new policy for the administration that will impact any individual or business that works with the state.

Among other things, the new Executive Order will require businesses to certify their understanding of and compliance with the Executive Order and state ethics laws in state contracts and grant documents. Companies that have not already reviewed and revised their policies governing corporate interactions with public employees should take the opportunity to do so now.

Ohio Ethics Laws

There are a number of ethics laws that regulate the conduct of public officials and those employees who interact with them. Corporate clients should pay close attention to section 102.03(F) of the Ohio Revised Code, which provides:

No person shall promise or give to a public official or employee anything of value that is of such character as to manifest a

substantial and improper influence upon the public official or employee with respect to that person's duties.

In order to determine whether or not a particular gift might violate this statute, the Ohio Ethics Commission uses the following very fact-specific test:

- (1) Is the source of the gift *improper*?
- (2) Is the gift of *substantial value*?

If the answer to both questions is "yes," then the gift might violate R.C.102.03(F) and criminal sanctions (up to a \$1,000 fine and six months in jail) could be imposed.

Improper Source

In general, the Ohio Ethics Commission defines an improper source as any entity that is: (1) regulated by; (2) doing business with; (3) seeking to do business with; or (4) interested in, matters before the public entity that employs the recipient of the gift. Accordingly, a corporation that holds a public contract, grant or license of some sort with a public agency is an improper source to the employees or officials of that public agency. There is no exception for a long-standing friend or neighbor. If your company is regulated by, doing business with or interested in matters before the agency, you can be an improper source regardless of how long you and the public official have been personal friends.

Substantial Value

There is no clear test in the law for determining whether a gift is of "substantial value." State law does not contain a specific dollar amount. Nor has the Ohio Ethics Commission established a specific standard for determining if an item is of "substantial value."

Government Relations Group

Faith M. Williams, Chair
614.227.2374
fwilliams@bricker.com

Maria J. Armstrong
614.227.8821
marmstrong@bricker.com

Luther L. Liggett, Jr.
614.227.2399
lliggett@bricker.com

Sean A. Mentel
614.227.8892
smentel@bricker.com

Miranda C. Motter
614.227.4810
mmotter@bricker.com

Terrence O'Donnell
614.227.2345
todonnell@bricker.com

Christopher N. Slagle
614.227.8826
cslagle@bricker.com

Jeffery E. Smith
614.227.2352
jsmith@bricker.com

Oyango A. Snell
614.227.2349
osnell@bricker.com

Elisabeth A. Squeglia
614.227.2396
esqueglia@bricker.com

Kurtis A. Tunnell
614.227.8837
ktunnell@bricker.com

However, the Ohio Ethics Commission has repeatedly reviewed the question of whether a particular item constitutes “substantial value” and has issued a number of Advisory Opinions to provide guidance on the matter. In general, a modest lunch, a coffee mug, or a small gift is probably not “substantial.” But a dinner at an upscale restaurant, tickets to a professional sporting event, lodging, or a golf outing have all been deemed to be “substantial” and are illegal if given by an improper source. Because the value of gifts is aggregated over the course of a calendar year, a series of modest lunches or several small gifts will be deemed to be of “substantial value.”

Executive Order 2007-01S

Executive Order 2007-01S sets a policy for all Governor’s Office staff, cabinet level agencies, and state boards and commissions that prohibits them from accepting any gifts except gifts from:

- Close family members (defined as parents, children, siblings, spouses and domestic partners);
- Personal friends who are not lobbyists, have no contracts with the State, and do not receive State grants;
- Individuals or groups who on occasion present a token gift or inexpensive meal valued at \$20 or less; or
- Government officials from other states or countries who offer a gift as a gesture of friendship.

The Executive Order makes clear that any additional restrictions in the ethics laws must also be followed. Further, all gifts must be reported to the extent required by law.

The Order requires that each state department and agency appoint a senior staff member to serve as the chief ethics officer for the department who will be responsible for educating staff about all ethical requirements. Cabinet agencies and state boards and commissions are encouraged to make public meetings more accessible, including presenting meetings live or recorded on the Internet.

As for private sector entities, the Executive Order requires that state contractors and grant recipients must certify in writing that they understand and will abide by Ohio ethics laws and the Executive Order. The Order also requires that the reasons for awarding unbid contracts must be described in writing and made available to the public. Finally, the Executive Order creates an anonymous system for reporting possible ethical violations.

Practical Application

Entertaining clients and prospective clients is a valuable and commonplace practice in the private sector. However, state law and Executive Order 2007-01S make this common business practice a risky (and perhaps illegal) practice with public sector clients. Because of these ethical considerations, the best policy is to make sure that your public sector clients and friends pay their own entertainment expenses. As a practical matter, most public employers will not accept any gift or meal from a vendor or grant recipient, even one of modest value.

There will be times when you or your corporation must interact with public employees and often times buying a modest gift or providing a reasonable amount of food or beverage is perfectly legal and in compliance with Executive Order 2007-01S.** However, if you are doing business with or are interested in matters before the public agency that employs your guest, be aware that any expenditure of over \$20 could have serious consequences.

Conclusion

Ohio law prevents any individual or corporation that is doing business with, seeking to do business with, interested in matters before, or regulated by a public agency from giving anything of value to an elected official or employees servicing that public agency. With recent events and scandals at the state level, plus the new Executive Order, scrutiny on these practices will be higher than ever before. The safest policy is to simply make sure the public official pays his or her own way. While it may be uncomfortable or embarrassing to suggest to your public sector client or prospective client that they pay their own way, most public employees understand and often appreciate the reasons for the suggestion. The alternative could be public embarrassment, investigation or criminal conviction.

If you have any questions about the ethical considerations addressed in this bulletin or would like assistance informing your corporate employees about these matters, please contact Maria J. Armstrong at 614.227.8821 or marmstrong@bricker.com. In addition, if you believe that some sort of ethical violation has occurred, consult legal counsel immediately.

(Footnotes)

**Registered lobbyists and their employers must consider additional regulations and reporting requirements that are the subject of a separate Bricker & Eckler LLP Client Bulletin.