

# State Employee Charitable Campaign (SECC) October 2010

## Special Event Scenarios

The guidance on these special event scenarios is given with the following caveats:

- (1) The Public Integrity Commission has never issued an opinion on SECC activities so this guidance is based solely on the statutory language.
- (2) The Commission bases its opinions on the “particular facts” of each case so it does not render advice on hypotheticals.
- (3) Separate laws deal with whether State agencies, as opposed to individuals, may accept gifts, and this guidance does not address those provisions, as the Code of Conduct gift restriction law applies only to individual State employees, officers and officials. The guidance is based on that law.

1. Our office would like to sell candy bars or muffins and donate all proceeds to SECC. Since we have vending machines operated by the Business Enterprise Program (benefitting visually impaired) can we sell food that competes with the vending machine or should we offer items not available in the vending machines? It is suggested that you **contact whoever is responsible for the Business Enterprise Program or the State contract that designates BEP programs to ascertain if there can be any competition against BEP regardless of what food is sold.**
2. Are we able to accept donations from local businesses to raise money for SECC? For example, I work part-time at a local hair salon and they want to donate a basket of hair care products for our silent auction. Can I accept this donation? **There are four criteria that apply to State employees accepting gifts. 29 Del. C. § 5806(d). First, acceptance must not impair judgment in performing official duties. That means that if, in your State capacity, you have any decision making authority over the gift giver, you should not accept. Second, acceptance may not result in preferential treatment to any person. If the business does business with your State agency, even if you are not the decision maker, the concern is that other businesses that do business with your agency may, at a minimum suspect preferential treatment will be given to the gift giver. Third, acceptance may not result in official decisions outside official channels. This means that even if you are not involved in decisions about the company, and even if the company does not do business with your agency, you cannot engage in such conduct as saying to the company that if they give, you know someone in another agency and you could make sure that that person would “help them out” with something the business may need from that agency. Fourth, acceptance may not result in any adverse effect on the public’s confidence in the integrity of government employees. This is basically an appearance of impropriety test—would acceptance appear improper to the public. The Commission considers**

**all the facts in deciding this issue. That would include whether or not the company does business with the State, the value of the gift, the fact that the gift is not being given to the individual State employee, etc.**

- 3. Can we have a 50/50 raffle? I think there may be State laws against raffles, etc., being conducted in State offices. However, we are not responsible for those laws, so you may want to check with the Deputy Attorney General assigned to your agency and ask if such conduct is barred by other laws.**
- 4. I am getting rid of my Longaberger Basket collection. Can I donate it to my office raffle for SECC? That depends on the answer to the raffle question above.**
- 5. As a fundraising opportunity, BJ's Wholesale Club offers a percentage of membership dues to organizations that sign up for their membership cards. If the employees in our office sign up for membership cards can BJ's Wholesale Club donate the proceeds from memberships in our office to SECC? If I understand how BJ's works, the organization (that would be the State) would have to "sponsor" for lack of a better word, membership in BJ's club. That could raise issues about State agency's endorsing a company. Normally, the State does not actively endorse a company. You would need to get more details on how the program works, and find out if there is an endorsement problem, and that would be covered by other laws. If there is no endorsement problem, the same 4 criteria apply as discussed in question 2, so the answer would depend on the particular facts.**
- 6. Our agency would like to have a fundraiser for SECC selling soft Philly Pretzels. If an employee pays the initial \$25 to purchase the pretzels, can we give that employee their \$25 back after the sale? The employee does not make a profit, they are just giving us the money up front to purchase the pretzels. A State employee cannot represent or otherwise assist a private enterprise before the agency by which they are associated by employment. 29 Del. C. § 5805(b)(1). "Private enterprise" means "any activity conducted by any person, whether conducted for profit or not for profit." 29 Del. C. § 5804(9). The reason State employees are not to deal with their own agencies is because of the potential for bias—positive or negative. For example, if a State employee "fronts" the money, other employees may think the individual would receive preferential treatment or "get a boost" in their performance evaluation, etc. On the other hand, if the employee fronts the money, then supervisors might "bend over backward" to make sure there is no preferential treatment, which would have a negative impact on the individual. Even if it were not a problem under that law, the same criteria apply as in question 2 regarding accepting gifts, because that law applies to accepting anything of monetary value. Obviously, an advancement by the State employee would be a thing of monetary value. In addition to the 4 criteria under that law.**