

UNT System Ethics Advisory Opinion – 01

April 2009

“Guest” exception to the prohibited benefits provision – Entertainment and Food

A UNT System Enterprise employee with procurement authority asked about application of the “guest” exception to the prohibited benefits section of the component’s ethics policy. The request states that a vendor with whom the component “spent significant...[amount of] money” invited the employee and spouse to a black-tie dinner in which a sitting President of the United States was the guest of honor. The employee asked whether the invitation to the event qualified as a gift, and if so whether the employee and spouse could attend.

Opinion

The component’s ethics policy contains prohibitions on the acceptance of benefits by its employees.¹ This prohibition derives from section 36.08 of the Texas Penal Code, which prohibits the acceptance of benefits by public servants. The component’s policy states, “[employees] who exercise discretion in connection with contracts, purchases, payments, claims, and other pecuniary transactions of government may not solicit, accept, or agree to accept any **benefit** from any person the employee knows is interested in or is likely to become interested in any contract, purchase, payment claim, or transaction involving the employee's discretion.”² In the situation described in this request, the vendor would be providing benefits in the form of entertainment (attendance at a black-tie event) and food (dinner).

However, under the component’s policy and state law, there is an exception to the benefits prohibitions for food, lodging, transportation or entertainment received as a **guest**. [Section IV.F.3] of the component’s policy states: “[An employee] may accept food, lodging, transportation, or entertainment from persons or entities he or she knows or reasonably should know are interested in or likely to become interested in a contract, purchase, payment, claim, decision, or transaction involving the exercise of the employee's discretion only if the [employee] is a “guest” as defined by Texas law. [An employee] is a guest if the person or a representative of the entity providing the food, lodging, transportation, or entertainment is present at the time the food, lodging, transportation, or entertainment is received or enjoyed by the [employee].”³

For a UNT System Enterprise employee to accept the entertainment and food as a guest, the person providing it would have to be present. If the entertainment and food are provided by a corporation, a person must be present whose position, authority, or

¹ The number of the component’s ethics policy changed since the original advisory was issued and is now Policy 05.015. In 2009, the policy was number 1.2.9.

² This language is the same as the 2009 policy.

³ This language is the same as the 2009 policy.

*conduct could create corporate liability for exemplary damages (i.e. extra financial liability).*⁴

Notwithstanding the guest exception to the benefits prohibition, a UNT System Enterprise employee must consider whether there will be the appearance that the employee is acting unethically or unlawfully by accepting the entertainment and food.⁵ Factors that should be consider in making this determination are:

- How involved the employee is in making contracting and purchasing decisions involving the vendor;
- The nature and value of the entertainment and food the employee will receive;
- whether there is a benefit to the employee's component as well as to the employee in accepting the entertainment and food;
- whether the invitation relates to the employees job duties so that if not for the benefit the University would be able to lawfully pay for the employee's attendance at event; and
- whether the employee would be comfortable with lower level employees accepting similar benefits.

Reference

Texas Ethics Commission [Ethics Advisory Opinion No. 90](#) (1992)

⁴ This paragraph was added in the reissued opinion for further clarification. See Texas Ethics Commission Ethics Advisory Opinion No. 90 (1992).

⁵ UNT System Regents Rule 05.701.1.a.xi ("employees shall not: engage in actions that would create the appearance that he or she is violating the law, these Regents Rules, or System Administration or Institution policies and procedures).