

Gift for Guest's of Honor

Here is the situation posed to me: Officers of a particular branch (e.g., Signal Branch) are hosting a formal ball at an installation. They have invited a senior Signal Corps officer (3-star General Officer (GO) not in their chain of command) to attend as the Guest of Honor and Speaker at the event. If he cannot attend, then their CG will act in his place. They want to pay the cost of the Guest Speaker's attendance and also to present a nice token of their appreciation. They are looking at such possibilities as: a crystal clock with pictures of the locality etched in, set into a marble base (about \$50); a crystal eagle for \$35; and a crystal multi-tiered knick-knack with the division patch. They figure that there surely should not be any problem if it is the senior GO who is the Guest Speaker because he is not in their chain of command.

The local Ethics Counselor asked for my thoughts. This is how I analyzed the situation.

"First off, you correctly recognize that you have a gift issue even if the senior GO is not in the chain of command, because one of the two rules concerning "gifts between employees" is that employees may not ACCEPT gifts from employees who make less money than they do unless there is an independent personal relationship that justifies such a gift, and there is no official superior-subordinate relationship.

"However, I do not approach this as a "gift" issue as the first analysis. I think that you start at 5 C.F.R. Sec. 2635.807 that says employees may not accept compensation for speaking that relates to their official duties (which is what we have here whether the speaker is the senior GO or the CG). Then, look at the definition of compensation (Sec. 2635.807(a)(2)(iii)). Compensation is anything of value. The important part of the definition is what it does NOT include. Subpara (B) takes care of the meal and free attendance. How do you pay for that? By voluntary donations from the attendees (as part of the ticket price). See Sec. 2635.304(a)(2). I know that it does not exactly fit, but, from the beginning, DA has interpreted this type of situation to be tantatmount to the exception involving food shared among employees. If it doesn't fit here, then it doesn't fit anyplace. There are only two exceptions under gifts between employees where you can solicit from others... food shared among employees and the special, infrequent occasion. OGE does not agree with this interpretation, but we continue to use it. But, I digress from the token of appreciation issue...

"Subpara (A) permits the speaker to accept anything that he could otherwise accept from a prohibited source in Subpart B (Gifts from Outside Sources). So, if the item meets the criteria of what is not a gift (e.g., a plaque or something else with little intrinsic value for presentation purposes only) (Sec. 2635.203(b)(2)), your speaker can accept it. You will have to decide whether the proposed gifts have "little intrinsic value" and are for "presentation purposes only." If it's Waterford crystal, that might be too much intrinsic value, but if it's cheap crystal or heavy glass, with an appropriate plaque commemorating the event, perhaps so. If the proposed item does not fit the exclusion, then the only exception that I see is applicable for either the senior GO or the CG, is the \$20 exception (Sec. 2635.204(a)).

"But, now you have to look at the other side, those who are presenting the gift: his employees (the CG) or from those who make less money than he does (the senior GO). For this part of the analysis, you look to Subpart C, Gifts Between Employees. These rules restrict whether they can solicit among other employees (they can't) and the amount of the gift (\$10).

"If it's the senior GO who's presenting, I suppose that one could argue that "there is a personal relationship between the employees that would justify the gift," meaning that his attendance and presentation at their Signal Ball creates a "personal relationship" between the senior GO and those attending the Signal Ball, so as to "justify the gift." But, that's a strain, and I don't think it's worth the risk... and it only increases the amount that they can give to \$20, because that is all that the senior GO, as the speaker, can accept. But, still the employees may not seek contributions for the gift because it does not fit either of the two situations that permit soliciting among employees (food to be shared or the special, infrequent occasion).

"I suggest keeping the token of appreciation within the "items of little intrinsic value ... which are intended solely for presentation" exclusion. But, you still have the issue as to how to pay for it? You can't use appropriated funds of course. Can you solicit from the attendees sufficient money to cover these costs? I'm not sure that this is correct, but I have opined previously "yes," on the basis that we are not soliciting contributions to gifts (remember, they are excluded from the definition of "gift"). Therefore, I think that these costs, along with the costs of the Guest Speaker's meals, may be amortized in the ticket price.

"I note that the officer asking you the question makes reference to possible donations from POs and vendors. I urge caution here. More often than not, someone is asking for them. If the donations are solicited, they are bad, even if they might fit an exception. But, maybe they are indeed unsolicited. If so, then you only have to worry about them fitting an exception. For example, if, unsolicited, and your local Signal Association wanted to donate the gift to be presented to the senior GO (or the CG) for speaking, that's okay... but, it will be subject to the rules of gifts from outside sources as discussed above.

"As a hint, whatever you decide, you might want to run it by the senior GO's legal advisors. They are the ones that will advise him as to whether he can keep the "gift" or "nongift" as the case might be. You want to ensure that his legal advisor is of the same mind to avoid future embarrassment. Remember, these are opinions, and his or hers might be different from yours.

"I hope that you can follow the above. It is admittedly convoluted, but I think that it is the correct analysis for this issue. If you wish to discuss, feel free to call."

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