

No Strings Attached?

by C. Gregory Dale, AICP

How do you handle gifts or other offers of value that are made to you in your capacity as a planning commissioner?

Consider this scenario. You are invited to attend a local sporting event by a developer who has a development approval pending before the planning commission. The offer involves dinner in the private box of the developer. What is your response? Does your response change if the invitation comes from a local developer who does not have an item pending before the commission? Does it change if the entire commission is invited?

There are many variations on this scenario. Some involve offers to travel to view similar projects by the same developer. Some involve offers to use facilities such as resort condominiums. Some involve something as seemingly harmless as a fruit basket delivered during the holiday season. Certainly developers are not alone in this area. How would you handle a weekend retreat invitation from a conservation group that is active in lobbying local governments?

All of these scenarios raise the same ethical issue. Is there an attempt being made to influence your vote or attitude

towards a particular project, individual, group, or issue? I believe the answer to this question *for all of the scenarios described above* is "yes."

Even the holiday fruit basket is being offered to engender good will. Remember that your job as planning commissioner is to be a dispassionate judge of

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factual evidence presented to you for the purpose of determining compliance with standards or policies adopted by the community.

Any effort to create good will or otherwise color your perception of an individual, company, or group outside of this process of factual consideration creates a clear ethical problem. In addition, as is always the case with ethical issues, the perception of impropriety is as damaging to your reputation and credibility as an actual case of wrongdoing. Acceptance of a gift may also create an atmosphere where even more such offers are made, damaging the planning process further.

It is human nature to enjoy gestures of appreciation. On the other hand, any offer of a gift should be viewed as tainting the process. In fact, it can be more serious than just an ethical problem. Remember that even though you are probably not getting paid as a planning commissioner, you are still considered a public official. Your state may deem your accepting something of value to be an illegal act.

How should one respond to the offer of a gift. First, let me state the obvious: the gift should be refused (and, if delivered to you, returned). Secondly, you may want to consult with your legal counsel. To the extent that the offer occurs outside of a public meeting, it may be viewed as an ex-parte contact — possibly requiring disclosure of the offer at your commission's meeting. [For more on ex-parte contacts, see my columns in PCJ #2 and 24].

As with many ethical matters, one of the best ways to prevent the problem is to deal with it up-front in your regulations or commission's by-laws. Consider clearly stating that gifts are unacceptable (or, perhaps, providing that nothing greater than two or three dollars in value can be accepted, allowing commissioners to accept something of nominal value, like a cup of coffee).

The acceptance of gifts or favors in your capacity as a planning commissioner is a serious matter. At best it taints the process and undermines your objectivity. At worst it may be a criminal act. ♦

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"On coming into public office, I laid it down as a law of my conduct, while I should continue in it, to accept no present of any sensible pecuniary value. ... [T]hings of sensible value, however innocently offered in the first examples, may grow at length into abuse, for which I wish not to furnish a precedent.

—Letter from Thomas Jefferson to Samuel Hawkins, 1808, sent in response to offered gift of an ivory staff. The Writings of Thomas Jefferson (Lipscomb & Bergh, eds.), Vol. 12, p.203.