



# Office of General Counsel

## The Gift Rule, 42 IAC 1-5-1

The gift rule prohibits a state employee or special state appointee, or their spouse or unemancipated child from knowingly soliciting, accepting or receiving any gift, favor, service, entertainment, food, drink, travel expenses or registration fees from a person who has a business relationship with their agency or who is seeking to influence action by the state employee or special state appointee in their official capacity. The agency appointee authority or ethics officer may waive the application of the rule when it is consistent with the public interest.



### What is a business relationship?

A business relationship as defined in IC 4-2-6-1(a)(5) includes: 1) the dealings of a person with an agency seeking, obtaining, establishing, maintaining or implementing a pecuniary interest in a contract or purchase with the agency; or a license or permit requiring the exercise of an agency's judgment or discretion; or 2) the relationship a lobbyist has with an agency.

Pursuant to IC 4-2-6-1(a)(9), an employee not only includes individuals that are employed by an agency on a full-time, a part-time, a temporary, an intermittent or an hourly basis, but also any individual who contracts with an agency for personal services. The term employee does not include state officers.

### Gift Rule exceptions under 42 IAC 1-5-1(b)

#### Food and drink

The following are instances where it may be permissible for an employee to accept food or drink:

- » At a public meeting where at least 25 individuals are invited; or
- » While conducting official state business at a workplace of a person who has a business relationship with or seeks to influence official action with the employee's or special state appointee's agency, so long as it is only nominal refreshments such as water, coffee or tea.

#### ***A meeting is considered public if:***

- A) It is a reception or other gathering for public officials that is not arranged to solicit government procurement of goods or services;
- B) An employee is giving a speech or participating in a presentation in the employee's official capacity; or
- C) The meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.

## Gift and discount exceptions

The following are not subject to the gift rule:

- » Mementos or souvenirs of nominal value (e.g., an inexpensive key chain or pen).
- » Gifts, favors, services, entertainment, food or drinks from relatives or a person with whom the employee or special state appointee has an ongoing social relationship, so long as: the gifts or other items of value are not deducted as a business expense and the gift giver is not seeking to influence an action by an employee or special state appointee in that person's official capacity.
- » Discount and other promotional programs approved and made available to state employees and special state appointees through the State Personnel Department or the Indiana Department of Administration

## What should I do if a vendor sends a gift to my office?

Please notify the ethics officer immediately and return the item with a thank you note explaining that the state ethics rules prohibit you from accepting the gift. Keep a copy of the letter and forward a copy to the ethics officer.

See the sample letter at right:

### *What if it is not feasible to return the gift?*

Donate the gift to charity.

### *What if it is not feasible to return or donate the gift?*

Place the gift in a common area for general use and consumption.

#### **Example note:**

Dear Sir or Madam,

This letter is in response to the gift of [insert description of gift] that you sent me. Your thoughtfulness is sincerely appreciated; however, pursuant to 42 IAC 1-5-1, as a state employee I cannot accept the gift. Therefore, I am returning it to you. As a state employee, I may not accept any gift, favor, service, entertainment, food, drink, travel expenses or registration fees from a person who has a business relationship with their agency or who is seeking to influence action by me in my official capacity.

## When is it permissible to give and accept gifts?

- » Employees may give gifts to co-workers and participate in office gift exchanges so long as employees refrain from using state resources or time while participating in the exchange. Additionally, participation in the activity must be voluntary.
- » An employee may accept gifts and donations from donors that do not have a business relationship with the agency and who are not seeking to influence an employee in their official capacity.
- » The State Ethics commission has found that the gift rule does not restrict the ability of an agency to solicit, accept or receive gifts for the benefit of the agency as a whole. The agency may accept items donated to the agency as a whole, even if a business relationship exists.



*This information is intended to provide a brief overview of ethics laws applicable to state employees and special state appointees regarding political activity. This is not an exhaustive statement of law. This information should not be considered a substitute for statutory or regulatory language. For informal advice, contact the FSSA ethics officer at [FSSA.Ethics@fssa.in.gov](mailto:FSSA.Ethics@fssa.in.gov) or the Office of Inspector General for information and opinions.*