

Advisory Opinion AO-18-02

October 31, 2018

Question: Is sponsorship of social event at USET meeting allowed? Is it a contribution? Can tribal vendors undertake the sponsorship? Can Tribal Officials solicit the sponsorship?

Review of Ethics Code:

Sec. 117- 45.3. Code of Ethics.

(b) No Tribal official or any member of their immediate family shall solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors or subcontractors who are contracting to perform services or sell goods or property to the Tribe or a Tribal program.

(11) Tribal officials of the EBCI shall not offer, solicit, or accept, directly or indirectly, anything of value if the gift could reasonably be expected to influence the vote, official actions, or judgment of, or for, the official or could reasonably be considered a reward for any official action or inaction.

Factual Background:

The Principal Chief of the EBCI and Tribal Council Chair are on the board of directors of the United South and Eastern Tribes Sovereignty Protection Fund (USET of the directors which was SPF) and they attended the annual meeting.

At the meeting, the EBCI hosted a hospitality suite at the meeting site as part of the social activities held in conjunction with the meeting. Several business entities, including some which are EBCI contractors, were solicited by tribal officials to provide refreshments at the hospitality suite and some acknowledgment at the did so. [There was a hospitality suite of the sponsorship of the refreshments by the business entities.] [There was no acknowledgement of the sponsorship by the business entities at the hospitality suite.] [There were no representatives of the sponsoring business entities present at the hospitality suite.]

After the conclusion of the meeting, ECBI tribal officials inquired of the Office of Internal Audit and Ethics about the propriety of 1) the solicitation by tribal officials of sponsorship of the hospitality suite from EBCI contractors, and 2) the acceptance by tribal officials of the benefits of the refreshments at the hospitality suite.



Analysis:**Solicitation of Refreshment Sponsorships**

Section 117-45.3(b) prohibits a tribal official or any member of their immediate family from “solicit[ing] or accept[ing]. . . anything of monetary value from contractors, potential contractors or subcontractors who are contracting to perform services or sell goods to the Tribe. . . .”

This section obviously implies that the tribal official (or family member) would be the one accepting the benefit of “anything of monetary value.” Where the solicitation is for the benefit of those attending the hospitality suite of the Tribe itself, there is no violation of this provision (beyond the tribal official receiving the possibly trivial benefit of a free drink or snack at the hospitality suite, the same as any other attendee).

Section 117-45.3 (d)(11) prohibits Tribal Officials from soliciting or accepting “anything of value if the gift could reasonably be expected to influence the vote, official actions, or judgment. . . of the official or could reasonably be considered a reward for any official action. . . .”

Where the hospitality suite benefits are not directed at any particular Tribal Official, and the only benefit received is the possibility of a trivial benefit such as a free drink or snack (if the Tribal Official took one), it seems unreasonable to believe that such drink or snack could influence the vote, action, or judgment of the official or be considered a reward.

In spite of this interpretation, Tribal Officials should be wary of soliciting hospitality suite sponsorships or similar benefits for tribal functions solicitation itself, if it became repetitious, because this could be interpreted by ECBI contractors as coercive, as a “cost of doing business” with the Tribe.

Conclusion:

In light of the foregoing analysis, it appears that the acceptance by a Tribal Official of a free drink or snack at a hospitality suite which was, to some extent, sponsored by a contractor of EBCI is a trivial benefit which does not violate the cited provisions of the Ethics Code.

Note: This advisory opinion was based on specific circumstances, the Standards of Ethical Conduct (Cherokee Code Sec.117-45), and other relevant code provisions and policies in effect on the date the legal analysis was prepared and subsequently released.