

Advisory Opinion AO-19-02

April 4, 2019

Question: The office recently received an inquiry concerning the reporting and the acceptance of what might be considered gifts or things of value from a long-time friend.

Factual Background

“I have a long-time friend with whom I occasionally travel with and share expenses. For example, I will pay for event tickets and dinners and my friend pays for lodging. My long-time friend is majority co-owner of a business that does contract work for the Tribe. I was appointed to a board and am classified as a Tribal official. We recently went on a trip, and I reported the lodging paid by my friend (not the business) on my gift report. As a Tribal official can I accept the lodging paid by my friend? During the ethics training it was presented that an absolute prohibition is “you or your immediate family will not solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors or subcontractors”. But it’s my long-time friend and our trips are customary.”

Review of Ethics Code:

These provisions of the Ethical Code seem to be applicable:

Sec. 17-45.3. 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
- (d) The following represents the very minimum standards of conduct on the part of Tribal officials important to ensure ethical behavior and maintenance of public trust:
 - (9) Any gift, donation, or contribution received or provided by a Tribal official, irrespective of value, must be reported by the official who received or provided the gift, donation, or contribution to the Office of Internal Audit.
 - (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.

Analysis

First, the Tribal official is to be commended for seeking guidance from the Office of Internal Audit and Ethics on this issue. The answer is not immediately obvious, but a course of action does become apparent, in my opinion.

There are three aspects to the question that need examination: 1) the cost-sharing arrangement, 2) the fact that the friend is not the contractor dealing with the Tribe, but is the majority-owner of the contractor, and 3) the long-time-friend status.

Cost Sharing:

If the dealings between the friend and the tribal official are literally sharing equally the costs of everything, then there isn't any gift given by either one to the other. There is no substantive difference between each splitting every separate expense in half and the two of them dividing where one pays for the meals and tickets and the other pays the lodging, but only IF they exactly come out equal with that second method.

The issue comes up when their method of dividing meals/tickets by one and lodging by the other doesn't come out EXACTLY equal. In that case, if the lodging was more than the meals/tickets (for example) then the friend has made a gift to the tribal official of the difference between the two totals and that gift must be reported on the OIAE gift report per subsection (d)(9) and the gift is probably prohibited by subsection (b), quoted above.

It seems that they could continue their method of splitting the expenses if they keep good records and "even up" in money after all the expenses are totaled, so that neither pays more than the other. In that case, in my opinion, the tribal official has neither made nor received a gift and the tribal official doesn't have any reporting responsibility because they have not given or received anything – they have just split their common expenses.

Majority Owner Versus Actual Tribal Contractor:

The second part of the question deals with the status of the friend as the majority owner of the tribal contractor, but the friend is not the actual tribal contractor. For discussion purposes, assume that the tribal contractor is General Plumbing, LLC and the friend owns the majority interest in General Plumbing, LLC. Further, assume that the expenses are paid by friend's own account (credit card, or bank account) in the friend's own, personal name and that the expenses are not paid from a credit card or bank account of General Plumbing, LLC. (I will assume that the tribal official is not in a position to grant contracts or manage them relating to General Plumbing, LLC. That seems obvious from the inquiry.)

By the literal language of subsection (b), quoted above, if the friend is not the tribal contractor, then it seems that a gift from the friend is not prohibited.

At the same time, the gift from the friend must be reported on the OIAE form per subsection (d)(9), quoted above, because the gift-reporting requirements require the tribal official to report gifts from any source, without regard to whether it comes from a tribal contractor or anyone else.

Long-time Friend Status:

The inquiry reveals a very common situation in our area. Tribal officials often have lived in our area for a while and often have long-standing friendships. Many folks living in our area deal with the Tribe as tribal contractors. Does having a friendly relationship that came about, as in this case, before someone became a tribal official change this analysis?

It doesn't.

The Ethics Code applies to everyone in the same way.

It will certainly seem goofy the first few trips that the tribal official and the friend make when they start having to keep receipts and add things up and one of them pay the other in money to keep the expenses exactly even. But that is just a minor inconvenience to be able to demonstrate their commitment – the commitment of both of them – to a transparent and fair relationship with their Tribe.

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.