

## **EXECUTIVE ORDER # 2 COMMON SCENARIOS**

The following scenarios and answers are designed to help you better understand your obligations under Executive Order (EO) #2 and potential disclosure requirements for certain executive branch officers. However, there are two important principles to always keep in mind: (1) there is no substitute for using good, common sense when addressing an issue; and (2) there is no obligation to accept a gift. When a question arises, seek advice from the Executive Branch Ethics Commission or just do not accept the gift.

**1. You are a state officer or employee and you have been invited to speak at an event in another state. The event and topic are directly related to your position and are in the best interests of the Commonwealth. The organization sponsoring the event has offered to pay the costs of your travel, meals and lodging. May the organization cover your costs?**

**Answer:**

Yes, so long as the trip serves a legitimate public purpose and the costs are reasonable. You may need to disclose the cost of the trip on your annual disclosure statement, depending on your position and related disclosure requirements.<sup>1</sup> Any trips taken utilizing this exemption should be very infrequent so as not to raise the appearance of impropriety. Approval should be sought before agreeing to accept the offer to cover costs from your agency or secretariat. The preferred approach in this situation is to have the agency or employee cover the costs of the trip. If the employee pays for the approved trip, the employee will then be allowed to receive the appropriate reimbursement.

In Part II of EO #2, a gift is defined as “anything of value to the extent that a consideration of equal or greater value is not received by the donor.” “Anything of value” includes (8) lodging, (9) a meal, or other food or beverage, or both; (10) entertainment, including a ticket to an event, or hospitality; and (11) the provision of travel or the payment or reimbursement of travel expenses.

However, there are exemptions allowing for the receipt of certain gifts related to legitimate public purposes contained in the EO. A gift does not include “(8) Payment or reimbursement of reasonable legitimate travel and related expenses incurred by an officer or employee in order to engage in an activity that serves a legitimate public purpose.” If the approved trip to the other state would serve to promote the interests of the Commonwealth and, therefore, serve a legitimate public purpose, an appropriate organization may pay the costs of the trip.

It is always important to remember, however, that all public employees should be careful to avoid the appearance of impropriety. For example, the costs associated with flying first class and staying in a very expensive hotel may not be viewed as reasonable costs. Employees should always consider how the public will view these expenditures, and whether they will be viewed as maintaining the integrity of their offices as good stewards of taxpayer funds.

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<sup>1</sup> See § 2.2-3114. Disclosure by state officers and employees

**2. Individuals want to showcase certain products and occasionally bring several items of food or small craft items to an agency office. May the agency accept the gifts? Must I disclose the gifts?**

**Answer:**

Yes, if the value of the items is \$25 or less and the item has not been solicited by the individual or agency. Common examples of such gifts have included coffee mugs, hats, cans of peanuts, chocolates, bagels, and pens.

Under EO #2, the receipt of unsolicited items with a value of \$25 or less is not prohibited unless “a reasonable person, having knowledge of the relevant circumstances, would conclude that the officer or employee may unduly favor the source or be influenced by the source when performing the officer’s or employee’s official duties.” EO #2, Part III, Para. 2, Personnel Directive-Prohibited Conduct.

Because the item is below \$50, the item does not need to be included on a disclosure form. However, where the value of a combination of gifts or entertainment from a single source exceeds \$100 in a twelve (12) month period, those who are required to disclose the gifts would need to list such items under Schedule E of the disclosure statement as set forth in Va. Code § 2.2-3117.

**3. My friend whom I have known since high school invites me to dinner “just to catch up.” After appetizers, entrees, dessert and drinks, the cost of my meal is \$75. Can my friend pay for my meal? Must I disclose the dinner?**

**Answer:**

Yes, your friend can pay for your meal so long as the reason for the meal is solely based on your personal friendship. The following language from the EO is most relevant:

“Anything of value provided by an individual on the basis of a personal friendship unless the officer or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the officer or employee and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the circumstances under which the gift was given shall be considered, including: (1) the history of the relationship of the individual receiving the gift with the individual giving the gift, including any previous exchange between them; (2) whether the individual receiving the gift knew that the individual giving the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (3) whether the individual receiving the gift knew that the individual giving the gift also gave the same or similar gifts to other officers or employees.” Executive Order No. 2, Part II.

You do not have to disclose the meal under § 2.2-3117 because of the exemption for gifts from personal friends or relatives.<sup>2</sup>

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<sup>2</sup>“Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position.” Va. Code §2.2-3117, Schedule E-Gifts.

**a. What if my meal costs more than \$100?**

The answer to this question requires the same analysis as above. Gifts of more than \$100 are banned unless an appropriate exemption under the EO applies. If the meal was provided solely because of your personal friendship and not because of your official position, the gift will be allowed.

**b. What if my friend works for a lobbying firm that seeks to do business with the Commonwealth, and my friend wants to discuss matters pertaining to his clients?**

In this scenario, the gift of the meal would not be appropriate. Gifts from lobbyists are prohibited under EO#2. The payment is now related to your official position, and you are prohibited from accepting any gift over \$100 by EO #2.

To avoid violating the EO, it would be advisable to pay for your own meal in this scenario. It is always important to remember that all public employees should be careful to avoid the appearance of impropriety. You may always refuse to accept a gift.

**4. XYZ organization invites me and several other officials to a dinner and reception. The cost per attendee will be \$25 or less. May I attend the reception and, if so, must I disclose the event?**

**Answer:**

Yes, you may attend the event. You do not have to disclose the event.

An item valued at \$25 or less is not considered a gift under EO #2. The prohibition contained in EO #2 involves lobbyists and prohibits the receipt of any gifts, either directly or indirectly. Because the value of the dinner and reception are \$25 or less, you may attend the reception and the gift is not required to be reported.

However, the same concerns about the appearance of impropriety apply here as stated in the answer to number 1 above.<sup>3</sup>

**5. AAA Department store is offering a discount to all state employees without regard to their official position. May I accept the discount?**

**Answer:**

Yes. A discount offered to all state employees without regard to position or involving an attempt to influence the employee in his or her official position would not violate the EO.

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<sup>3</sup> You should also beware of the prohibition in Va. Code §2.2-3103(9) which prohibits the acceptance of gifts from sources “on a basis so frequent as to raise an appearance of the use of his public office for private gain.”

Officers and employees are also not prohibited from accepting discounts from groups in which they are members that have no bearing on their position in public office. For example, discounts provided by organizations such as AARP or AAA given to all eligible members would not be prohibited.

**6. May I pay for a gift and then keep it? What if I pay an amount that reduces the gift value to less than \$100?**

**Answer:**

You may always pay the actual value of a proffered gift if you choose not to decline it. You may also pay the difference between the value of the gift and the amount of the ban. For example, you are offered a gift of \$375 and you wish to keep the gift. In order to comply with the ban, you must pay the difference of \$275 to bring the actual gift amount within the Executive Order. Because the amount of the gift (\$100) is still over \$50, you must disclose the amount on your annual disclosure form if you are required to file such statement. Consideration of public perception and the appearance of impropriety apply here as stated in the answer to number 1 above.

**7. A friend just offered me tickets to a football game between two Virginia college teams. May I accept the tickets?**

**Answer:**

If the tickets cost \$25 or less, the tickets would not constitute a gift. Additionally, under EO#2, a gift is not:

“Any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used or unless it is a ticket, admission or pass to an event held by a team or organization that is an official team or organization of a public or private institution of higher education or elementary or secondary school located in the Commonwealth or held by another governmental or advisory agency, or by a local government or component part of a local government, or by a school board...”

However, if an individual is offered a ticket worth more than \$50, the individual must disclose the approximate cost of the ticket on their required disclosure form.

**8. I have been invited to attend a dinner sponsored by a large organization. There will be more than 100 people attending this event. The tickets are \$75, but were offered to me for free as an employee in a state agency. Does this event qualify as a widely attended gathering allowing me to accept the tickets?**

**Answer:**

No, there is no legitimate purpose indicated in the above scenario. In order to qualify as a widely attended event, the following criteria as set forth in the EO must be met:

“9. Attendance by an officer or employee at a widely attended event that is attended by at least twenty (20) non-officers or employees, is open to the public or to a wide

range of individuals, and where (i) such attendance serves a legitimate public purpose, or (ii) the officer or employee attends by virtue of being the spouse of an invited public official who attends without charge;”

In the above scenario, there is no indication that attendance at the dinner serves a legitimate public purpose as defined in the EO. Merely attending a dinner sponsored by a large organization does not meet the definition of a widely attended event.

**a. What if the event was a conference or symposium discussing the latest innovations that impact my department?**

Yes, with approval from an employee’s agency or Secretariat, if the event serves to “enhance the knowledge and skills of public officers or employees, . . . , relative to their official duties” the event qualifies as having a “legitimate public purpose.”

The cost of the tickets must be disclosed on your semi-annual statement if you are required to file such statement.

**b. Do I have to speak at the symposium?**

No. Under EO #2, attendance at training and education events is allowed because of the importance placed on having a well-trained and knowledgeable employment force. However, as with travel, emphasis should be placed on such costs being covered by an employee’s agency.

If you are a speaker at the event, then there are two disclosure requirements of which you should be aware: (1) those events required to be listed on Schedule D of the Statement of Economic Interests where the combined value of lodging, transportation, and other items of value exceed \$200, and (2) those items for which you neither paid nor rendered services in exchange which must be set forth on Schedule E of the Statement of Economic Interests.

In the current scenario, the cost of the tickets would normally be listed on Schedule E based on the factors set forth on the Statement of Economic Interests. However, because you were a speaker at the event, you are not required to disclose the cost of the event as you provided a service in exchange for your attendance at the event.

A different analysis may be reached when discussing those activities that “promote tourism, economic development, charitable, public health, environmental, or educational goals.” Because of the innumerable scenarios that may arise in these areas, employees should refer questions in these areas to the Executive Branch Ethics Commission.