

This is in response to a request for guidance regarding when Air Force employees can accept free attendance at a sporting event given to them because of their official position. As discussed below, Air Force employees can accept free attendance at these events, so long as it meets the definition of a widely attended gathering and other criteria in 5 CFR § 2635.

LAW AND ANALYSIS

Federal government employees, including military members, are generally prohibited from accepting gifts if the gifts are from a prohibited source or if given because of the employees' official position.¹ However, one of the principle exceptions to the general prohibition on accepting gifts is the "widely attended gathering" exception. Under this exception, Air Force members can accept unsolicited tickets to sporting events if their agency designee² makes a written determination that the event (1) constitutes a widely attended gathering; (2) the sporting event is integral to the widely attended gathering;³ (3) the member's attendance at the event is in the Air Force's interest; and (4) the Air Force's interest in the member's attendance outweighs the concern that the member may be, or appear to be, improperly influenced in the performance of his or her official duties.⁴

A gathering is "widely attended" if it is expected that a large number of persons will attend, that persons with a diversity of views or interests will be present, and that there will be an opportunity to exchange ideas and views among invited persons.⁵ As a result, tickets to a sporting event where the attendees are given assigned seats would not typically qualify as a widely attended gathering, as the attendee's discussions would be limited to only those attendees in the immediate area (e.g., those seated next to or in front of the member).

In addition, receptions that take place immediately before or after a sporting event does not convert the sporting event into a widely attended gathering. Even if the reception event allowed for a more free flow of ideas before or after the sporting event, an employee typically could not accept tickets to the sporting event, as attendance at the sporting event would be collateral or incidental to the widely attended gathering.

On the other hand, tickets that permit attendees to view the sporting event from a large viewing area (e.g., an infield tent or a sky box) can constitute a widely attended gathering if the area is large enough to provide an opportunity to freely exchange views and ideas with a large and diverse group of other attendees. In this situation, the sporting event is integral to the widely attended gathering, as the

¹ 5 CFR § 2635.202(b)

² The written determination discussed must be made by the first supervisor who is a commissioned military officer or a civilian (not a contractor) above GS-11 in the chain of command or supervision of the employee invited to attend the event. The Agency Designee must consult with their ethics counselor. For any military officer in the grade O-7 or above who is in command, the Agency Designee is the ethics counselor. DoD 5500.07-R, *Joint Ethics Regulation (JER)*, paragraph 1-202.

³ Department of Defense Office of General Counsel Standards of Conduct Office (SOCO)

⁴ 5 CFR 2635.204(g)(3).

⁵ 5 CFR 2635.204(g)(2).

employee would have the opportunity to interact and engage with individuals during the sporting event, rather than before or after the event.

In addition, the agency designee must also find that the member's attendance is in the best interest of the Air Force. Some of the factors the designee should consider are: (1) the importance of the event to the Air Force; (2) the nature and sensitivity of any pending matter affecting the interests of the person who extended the invitation and the significance of the member's role in any such matter; (3) the purpose of the event; (4) the identity of other expected participants; (5) whether acceptance would reasonably create the appearance that the donor is receiving preferential treatment; (6) whether the Government is also providing persons with views or interests that differ from those of the donor with access to the Government; and (7) the market value of the gift of free attendance.

EXAMPLE

NorthBoe Corp, a U.S. aeronautical company, is hosting a hospitality tent at a professional golf tournament and has invited a number of people representing a wide array of interests to attend a social gathering. To gain access to the hospitality tent, one must be admitted to the golf course (either by paying the cost of admission or by using a complimentary ticket). Therefore, the gift consists of free attendance at the social gathering and free admission to the golf tournament.

An Air Force member has been invited to attend the social gathering. NorthBoe Corp has also invited members from the other military Services as well as individuals from other aeronautical companies, many of which have submitted bids to provide equipment and services to the Air Force. The Air Force member who was invited has no direct involvement in accepting or rejecting any of these bids. In this case, the employee may, under the "widely attended gathering" exception, accept free attendance to the social gathering in the hospitality tent with the understanding that their primary function is to further Air Force interests. The employee does so by interacting with the diverse group, not by simply watching the sporting event. The fact that they may also have an opportunity to view the sporting event without the group is an incidental benefit that does not preclude the applicability of the "widely attended gathering" exception.

If NorthBoe Corp had failed to invite individuals representing a wide array of interests, or if the Air Force member was intricately involved in accepting or rejecting bids recently submitted by NorthBoe Corp, the Air Force's interest in the member's attendance would likely be outweighed by the concern that the member may be, or appear to be, improperly influenced in the performance of his or her official duties.

APPEARANCE OF IMPARTIALITY

It is also always prudent to remind Air Force members of the cautionary language found in 5 CFR 2635.201(b)(1): "employees should consider declining otherwise permissible gifts if they believe that a reasonable person with knowledge of the relevant facts would question the employee's integrity or impartiality as a result of accepting the gift." Particularly, when a Senior Leader is invited to a restricted attendance sporting event (such as a viewing reception from a corporate sky box) as part of a larger Military Appreciation Day, situational optics might dictate that the majority of the sporting event should be spent seated with other Airmen in general seating in order to send the correct message to the general public.

CONCLUSION

In closing, the “widely attended gathering” exception permits an Air Force member to attend a sporting event so long as it constitutes a widely attended gathering, attendance is in the Air Force’s interest and the Air Force’s interest outweighs any concern that the member may be, or appear to be, improperly influenced in the performance of his or her official duties

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