

TEXAS MUNICIPAL LAW Bulletin™

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GIFTS & BONUSES AT CITY HALL

We are fast approaching the holiday season when cities should exercise caution in gift-giving. Even the best-intentioned holiday gifts or bonuses may create problems for an employer city. Generally, cities are not allowed to be generous with gifts or lavish with bonuses. Rewards should be planned, budgeted and prospective.

Texas Constitution, art. III §52, and art. XI, §3, prohibits cities from granting public money or anything of value to individuals, associations, or corporations. This has been interpreted as limiting gift giving. Generally, where an expenditure of public funds achieves a legitimate public purpose, a gift is acceptable. Regarding receiving gifts, Texas Penal Code §36.10 creates a narrow exception for individuals. The exception most applicable to the holidays allows a gift worth less than \$50.00. Also, beware of locally-adopted ethics policies, which might impose limitations on the receipt of gifts by individual city officials, departments or the entire organization.

More specific guidelines have been carved out by the Attorney General:

- ◇ A City Council can budget for merit raises but can't make individual raises retroactive. *See* Op. Tex. Att'y Gen. No. JM-1113 (1989).
- ◇ Including one guest per city employee at a banquet paid for by city funds is acceptable. Op. Tex. Att'y Gen. No. LO 88-94 (1994).
- ◇ A city can purchase small gifts, plaques, and flowers for employees if the city determines that they will enhance morale. Op. Tex. Att'y Gen. No. LO 96-136 (1996).
- ◇ Cities can implement prospective longevity pay policies that base the amount of longevity pay on an employee's total service. *See* Op. Tex. Att'y Gen. No. LO 96-007 (1996). Such policies include varying forms of compensation, some of which could be presented as a holiday bonus.
- ◇ If a government office in general is prohibited from accepting gifts, any department of that office is also prohibited. *See* Op. Tex. Att'y Gen. No. GA-0956 (2012).



Overall, gifts should never be given to (or accepted by) city officials in exchange for a directly anticipated public action. Adult entertainment gifts (including gambling) should never be given. If cities wish to provide a *holiday bonus*, it is recommended that such expenditures be provided for in annual budgets as part of broader compensation policies that seek to encourage *future* productivity and increase morale (not to reward past behaviors.) Cities (as organizations) are generally allowed to accept gifts, but some local policies may impose restrictions.

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