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Legal Background Briefings are prepared and updated periodically by the Legal Services Division of the Iowa Legislative Services Agency, a non-partisan agency providing legislative drafting and research services to the committees and members of the Iowa General Assembly. The briefings provide background information regarding a particular area of law. Although a briefing may identify issues for consideration by the General Assembly, nothing contained in a briefing should be interpreted as advocating a particular course of action. The reader is cautioned against using in

Legal Background Briefing on...

# Gift, Honoraria, and Loan Prohibitions for Legislators and Legislative Employees

## Overview

The gift, honoraria, and loan prohibitions are three components of the government ethics laws included in Iowa Code Chapter 68B. While the gift law is broad in terms of who is covered under the law, this legal background briefing focuses on common issues under the gift law as it relates to legislators, legislative staff, and immediate family members of legislators and legislative staff. The honoraria and loan prohibitions and exceptions to the prohibitions are also described in this briefing. This document is by no means an exhaustive or complete examination of these Iowa ethics laws.

References to the Code in this briefing are to the 2007 Iowa Code and Code Supplement unless otherwise noted.

formation contained in a briefing to draw conclusions as to the legality of a particular behavior or set of circumstances.

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## **Gifts**

### **General Prohibition — Scope**

The gift law prohibits a public official, public employee, candidate, or that person's immediate family members from accepting, receiving, or soliciting a gift from a restricted donor.<sup>1</sup> A restricted donor is prohibited from offering or making a gift to a public official, public employee, or candidate.<sup>2</sup> The gift law is not limited by time or location; rather, it applies regardless of when or where the gift is offered, accepted, received, or solicited.

Members of the General Assembly and permanent full-time legislative staff are included under the gift law due to their inclusion under the definitions of "public official" and "public employee."<sup>3</sup> Spouses and dependent children of members of the General Assembly and permanent full-time legislative employees are also included under the gift law under the definition of "immediate family members."<sup>4</sup>

### **Analytical Overview**

The issues to consider in a typical gift law situation facing a legislator or legislative staff member relate to the following:

- The definition of "gift."
- The definition of "restricted donor."
- Exceptions to the prohibition of receiving impermissible gifts.
- Options upon receipt of otherwise impermissible gifts.

If a person included under the gift law is offered, receives, or accepts anything of value,<sup>5</sup> the first question to consider is whether equal or greater consideration has been given in return, in which case the thing of value does not meet the definition of "gift."

The second question to consider is whether the donor is a restricted donor. If a restricted donor is not involved, the gift is permissible. If a restricted donor is involved, then the next question is whether the gift fits under one of the exceptions to the gift law prohibitions.

Finally, if a restricted donor is involved, an exception does not apply, and the impermissible nonmonetary gift has been accepted and received, the donee has several options to consider to remedy the situation.

### **Restricted Donors**

Four types of restricted donors are defined in the gift law: parties or potential parties to state or local governmental contracts, sales, or purchases; persons substantially affected financially by a public official's or public employee's performance of official duties; parties to matters before an executive branch regulatory agency; and lobbyists and clients of lobbyists.<sup>6</sup> Of the four types, the most common type of restricted donor a legislator or legislative staff member encounters is a lobbyist or client of a lobbyist.<sup>7</sup> A client of a lobbyist is a private person<sup>8</sup> or a state, federal, or local government entity that pays compensation to or designates an individual to be a lobbyist.<sup>9</sup> Four types of individuals qualify as a lobbyist and a number of exceptions to the definition of "lobbyist" are provided.<sup>10</sup> In the legislative arena, the most common type of lobbyist is a paid lobbyist who receives compensation to encourage the passage, defeat, approval, veto, or modification of legislation by the General Assembly.<sup>11</sup>

### **Exceptions to the Prohibition — Permissible Gifts**

If a gift is offered to, received by, or accepted by a legislator or legislative staff member and a restricted donor is involved, then the next consideration is to determine whether one of the 18 listed exceptions to the gift law prohibition applies.

One possible way to examine the exceptions is to view them in terms of the type of gift involved. Although not exhaustive of all possibilities and with some overlap between categories, permissible gifts may be categorized as follows:

#### **Gifts received in personal or professional life**

Permissible gifts include the following:

- Gifts from Close Relatives. Anything received from anyone related within the fourth degree of kinship or marriage.<sup>12</sup>
- Inheritances.<sup>13</sup>
- Gifts to the General Public. Anything available or distributed free of charge to members of the general public without regard to the official status of the recipient.<sup>14</sup>
- Gifts Received as a Dues-Paying Member. Items received from a bona fide charitable, professional, educational, or business organization to which the donee belongs or is a dues-paying member.<sup>15</sup>
- Gifts Valued at \$3 or Less. Nonmonetary items of a value of \$3 or less received from any one donor during one calendar day.<sup>16</sup>
- Funeral Gifts. Funeral flowers or memorials to a church or nonprofit organization.<sup>17</sup>
- Wedding and Anniversary Gifts. Wedding gifts or 25<sup>th</sup> or 50<sup>th</sup> anniversary gifts.<sup>18</sup>
- Salary or Expenses Paid by an Employer for Certain Governmental Meetings. Payment of salary or expenses by a person's employer or firm for costs associated with attending certain governmental meetings when the person is not entitled to receive compensation or reimbursement from the governmental entity.<sup>19</sup>
- Informational or Educational Gifts. Informational or educational material relevant to official functions.<sup>21</sup>
- Gifts to the General Public. Anything available or distributed free of charge to members of the general public without regard to the official status of the recipient.<sup>22</sup>
- Recognition Gifts With Negligible Resale Value. Plaques or items of negligible resale value given as recognition for the public services of the recipient.<sup>23</sup>
- Gifts Valued at \$3 or Less. Nonmonetary items of a value of \$3 or less received from any one donor during one calendar day.<sup>24</sup>
- Gifts Solicited by or Given to Certain State, National, or Regional Government Organizations. Items or services solicited by or given to a state, national, or regional government organization, in which the state or local government or their officers or employees are members, for purposes of a business or educational conference, seminar, or other meeting.<sup>25</sup>
- Gifts Received at Meetings Sponsored by Certain State, National, or Regional Government Organizations. Items or services received at a regularly scheduled event that is part of a business or educational conference, seminar, or other meeting that is sponsored and directed by any state, national, or regional government organization of which the state or local government or their officers or employees are members.<sup>26</sup>
- Gifts Related to Business Recruitment. Gifts of food, beverages, travel, or lodging related to certain business recruitment activities.<sup>27</sup>
- Ceremonial Gifts Received From a Foreign Citizen. Gifts other than

### **Gifts received in public life**

Permissible gifts include the following:

- Campaign Contributions. Contributions to a candidate's committee.<sup>20</sup>

food beverages, travel, and lodging of personal value only to the donee received from a citizen of another country and given during a ceremonial presentation or as a result of a custom of the other country.<sup>28</sup>

- Meeting Registration Costs Relating to the Performance of Official Functions. Actual registration costs (not food, drink, lodging, or travel) for informational meetings or sessions which assist a public official or employee in the performance of the person's official functions.<sup>29</sup>
- All-Member Social Functions Held During a Regular Session of the General Assembly. Food, beverages, and entertainment provided at a function held during a regular session of the General Assembly when every member of the General Assembly has been invited to attend.<sup>30</sup>

**Gifts received as a part of meetings, conferences, or functions**

Permissible gifts include the following:

- Gifts to the General Public. Anything available or distributed free of charge to members of the general public without regard to the official status of the recipient.<sup>31</sup>
- Meetings Involving Participation or Presentation Responsibilities. Actual expenses for food, beverages, registration, travel, and lodging paid in return for participation or presentations but only when the expenses relate directly to the day or days on which the donee has participation or presentation responsibilities.<sup>32</sup>
- Recognition Gifts With Negligible Resale Value. Plaques or items of negligible resale value given as recognition for the public services of the recipient.<sup>33</sup>
- Gifts Valued at \$3 or Less. Non-monetary items of a value of \$3 or

less received from any one donor during one calendar day.<sup>34</sup>

- Gifts Solicited by or Given to Certain State, National, or Regional Government Organizations. Items or services solicited by or given to a state, national, or regional government organization, in which the state or local government or their officials or employees are members, for purposes of a business or educational conference, seminar, or other meeting.<sup>35</sup>
- Gifts Received at Meetings Sponsored by Certain State, National, or Regional Government Organizations. Items or services received at a regularly scheduled event that is part of a business or educational conference, seminar, or other meeting that is sponsored and directed by any state, national, or regional government organization of which the state or local government or their officers or employees are members.<sup>36</sup>
- Salary or Expenses Paid by an Employer for Certain Governmental Meetings. Payment of salary or expenses by a person's employer or firm for costs associated with attending certain governmental meetings when the person is not entitled to receive compensation or reimbursement from the governmental entity.<sup>37</sup>
- Gifts Related to Business Recruitment. Gifts of food, beverages, travel, or lodging related to certain business recruitment activities.<sup>38</sup>
- Meeting Registration Costs Relating to the Performance of Official Functions. Actual registration costs (not food, drink, lodging, or travel) for informational meetings or sessions which assist a public official or employee in the performance of the person's official functions.<sup>39</sup>
- All-Member Social Functions Held During a Regular Session of the General Assembly. Food, beverage

ages, and entertainment provided at a function held during a regular session of the General Assembly when every member of the General Assembly has been invited to attend.<sup>40</sup>

**Informational and educational related gifts**

Permissible gifts include the following:

- Informational or Educational Gifts. Informational or educational material relevant to official functions.<sup>41</sup>
- Gifts to the General Public. Anything available or distributed free of charge to members of the general public without regard to the official status of the recipient.<sup>42</sup>
- Gifts Valued at \$3 or Less. Nonmonetary items of a value of \$3 or less received from any one donor during one calendar day.<sup>43</sup>
- Gifts Solicited by or Given to Certain State, National, or Regional Government Organizations. Items or services solicited by or given to a state, national, or regional government organization, in which the state or local government or their officials or employees are members, for purposes of a business or educational conference, seminar, or other meeting.<sup>44</sup>
- Gifts Received at Meetings Sponsored by Certain State, National, or Regional Government Organizations. Items or services received at a regularly scheduled event that is part of a business or educational conference, seminar, or other meeting that is sponsored and directed by any state, national, or regional government organization of which the state or local government or their officers or employees are members.<sup>45</sup>
- Meeting Registration Costs Relating to the Performance of Official Functions. Actual registration costs (not food, drink, lodging, or travel) for informational meetings or sessions

which assist a public official or employee in the performance of the person's official functions.<sup>46</sup>

**Gifts involving food or drink**

Permissible gifts include the following:

- Gifts to the General Public. Anything available or distributed free of charge to members of the general public without regard to the official status of the recipient.<sup>47</sup>
- Meetings Involving Participation or Presentation Responsibilities. Actual expenses for food, beverages, registration, travel, and lodging paid in return for participation or presentations but only when the expenses relate directly to the day or days on which the donee has participation or presentation responsibilities.<sup>48</sup>
- Gifts Valued at \$3 or Less. Nonmonetary items of a value of \$3 or less received from any one donor during one calendar day.<sup>49</sup>
- Gifts Related to Business Recruitment. Gifts of food, beverages, travel, or lodging related to certain business recruitment activities.<sup>50</sup>
- All-Member Social Functions Held During a Regular Session of the General Assembly. Food, beverages, and entertainment provided at a function held during a regular session of the General Assembly when every member of the General Assembly has been invited to attend.<sup>51</sup>

**Gifts involving travel or lodging expenses**

Permissible gifts include the following:

- Meetings Involving Participation or Presentation Responsibilities. Actual expenses for food, beverages, registration, travel, and lodging paid in return for participation or presentations but only when the expenses relate directly to the day or days on which the

donee has participation or presentation responsibilities.<sup>52</sup>

- Gifts Related to Business Recruitment. Gifts of food, beverages, travel, or lodging related to certain business recruitment activities.<sup>53</sup>

### **Gifts involving entertainment**

Permissible gifts include the following:

- Gifts to the General Public. Anything available or distributed free of charge to members of the general public without regard to the official status of the recipient.<sup>54</sup>
- All-Member Social Functions Held During a Regular Session of the General Assembly. Food, beverages, and entertainment provided at a function held during a regular session of the General Assembly when every member of the General Assembly has been invited to attend.<sup>55</sup>

### **Gifts involving registration costs**

Permissible gifts include the following:

- Meetings Involving Participation or Presentation Responsibilities. Actual expenses for food, beverage, registration, travel, and lodging paid in return for participation or presentations but only when the expenses relate directly to the day or days on which the donee has participation or presentation responsibilities.<sup>56</sup>
- Meeting Registration Costs Relating to the Performance of Official Functions. Actual registration costs (not food, drinks, lodging, or travel) for informational meetings or sessions which assist a public official or employee in the performance of the person's official functions.<sup>57</sup>

### **Acceptance of an Impermissible Nonmonetary Gift**

If an impermissible nonmonetary gift is accepted and received from a restricted donor and none of the exceptions applies, the

donee has several options to remedy the situation. First, the donee may donate the nonmonetary gift within 30 days to a public body, the Department of Administrative Services, or a bona fide educational or charitable organization.<sup>58</sup> Second, the donee may pay fair value for the gift or make an exchange of equal or greater value.

## **Honoraria**

### **General Prohibition**

The honoraria law prohibits a public official or public employee from accepting or seeking an honorarium from a restricted donor.<sup>59</sup> "Honorarium" means anything of value accepted or given as consideration for an appearance, speech, or article.<sup>60</sup>

### **Exception to the Prohibition – Permissible Honoraria**

Permissible honoraria include the following:

- Meetings Involving Participation or Presentation Responsibilities. Actual expenses for registration, food, beverage, travel, and lodging paid in return for participation or presentations but only when the expenses relate directly to the day or days on which the donee has participation or presentation responsibilities.<sup>61</sup>
- Nonmonetary Items Donated to Government or Charity. Nonmonetary items donated within 30 days to a public body, the Department of Administrative Services, or a bona fide educational or charitable organization.<sup>62</sup>
- Payments for Bona Fide Private Business, Trade, or Professional Services. Payments for actual services provided by the donee as part of a bona fide private business, trade, or profession in which the donee is engaged and paid by the donor due to the donee's special expertise or other qualifications and not because of the donee's

status as a public official or public employee.<sup>63</sup>

### Lobbyist Loans

#### General Prohibition

The lobbyist loan law prohibits members of the General Assembly, legislative branch employees, and candidates for state office from accepting or seeking, directly or indirectly, a loan from a lobbyist. Likewise a lobbyist, individually or together with other persons, is prohibited from offering or making a loan to such members, employees, or candidates.<sup>64</sup> Lobbyists include four types of persons who encourage the passage, defeat, approval, veto, or modification of legislation by the General Assembly: paid lobbyists; organization-designated lobbyists; government-designated lobbyists; and lobbyists who expend more than \$1,000 in a calendar year to communicate in person with members of the General Assembly.<sup>65</sup>

#### Exception to the Prohibition – Permissible Lobbyist Loans

Permissible loans include the following:

- Loans Made in the Ordinary Course of Business. Loans made in the ordinary of course of business by a lobbyist regularly engaged in making loans to the general public where finance charges and other terms are the same or substantially similar to those otherwise made available to the general public.<sup>66</sup>

and substantially affected financially by the performance or nonperformance of a public official's or public employee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region; and (3) a person who is personally, or is the agent of a person who is, the subject of or party to a matter which is pending before a subunit of an executive branch regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency subunit. Iowa Code § 68B.2(24)(a-c).

<sup>8</sup> The term "person" is defined broadly to include individuals, corporations, business trusts, estates, trusts, partnerships or associations, or any other legal entities. Iowa Code § 68B.2(18).

<sup>9</sup> Iowa Code § 68B.2(6).

<sup>10</sup> Iowa Code § 68B.2(13).

<sup>11</sup> The other types of lobbyists who encourage the passage, defeat, approval, veto, or modification of legislation by the General Assembly include (1) an organization-designated lobbyist; (2) a government-designated lobbyist; and (3) a lobbyist who expends more than \$1,000 in a calendar year to communicate in person with members of the General Assembly. Iowa Code § 68B.2(13)(a)(2-4).

<sup>12</sup> Iowa Code § 68B.22(4)(c).

<sup>13</sup> Iowa Code § 68B.22(4)(d).

<sup>14</sup> Iowa Code § 68B.22(4)(e).

<sup>15</sup> Iowa Code § 68B.22(4)(f).

<sup>16</sup> Iowa Code § 68B.22(4)(g).

<sup>17</sup> Iowa Code § 68B.22(4)(h).

<sup>18</sup> Iowa Code § 68B.22(4)(i).

<sup>19</sup> Iowa Code § 68B.22(4)(j).

<sup>20</sup> Iowa Code § 68B.22(4)(k).

<sup>21</sup> Iowa Code § 68B.22(4)(l).

<sup>22</sup> Iowa Code § 68B.22(4)(m).

<sup>23</sup> Iowa Code § 68B.22(4)(n).

<sup>24</sup> Iowa Code § 68B.22(4)(o).

<sup>25</sup> Iowa Code § 68B.22(4)(p).

<sup>26</sup> Iowa Code § 68B.22(4)(q).

<sup>27</sup> Iowa Code § 68B.22(4)(r).

<sup>28</sup> Iowa Code § 68B.22(4)(s).

<sup>29</sup> Iowa Code § 68B.22(4)(t).

<sup>30</sup> Iowa Code § 68B.22(4)(u).

<sup>31</sup> Iowa Code § 68B.22(4)(v).

<sup>32</sup> Iowa Code § 68B.22(4)(w).

<sup>33</sup> Iowa Code § 68B.22(4)(x).

<sup>34</sup> Iowa Code § 68B.22(4)(y).

<sup>35</sup> Iowa Code § 68B.22(4)(z).

<sup>36</sup> Iowa Code § 68B.22(4)(aa).

<sup>37</sup> Iowa Code § 68B.22(4)(ab).

<sup>38</sup> Iowa Code § 68B.22(4)(ac).

<sup>39</sup> Iowa Code § 68B.22(4)(ad).

<sup>40</sup> Iowa Code § 68B.22(4)(ae).

<sup>41</sup> Iowa Code § 68B.22(4)(af).

<sup>42</sup> Iowa Code § 68B.22(4)(ag).

<sup>43</sup> Iowa Code § 68B.22(4)(ah).

<sup>44</sup> Iowa Code § 68B.22(4)(ai).

<sup>1</sup> Iowa Code § 68B.22(1).

<sup>2</sup> Iowa Code § 68B.22(2).

<sup>3</sup> Iowa Code §§ 68B.2(20, 22) and 68B.22.

<sup>4</sup> Iowa Code §§ 68B.2(11) and 68B.22.

<sup>5</sup> The term "gift" is defined as "the rendering of anything of value in return for which legal consideration of equal or greater value is not given and received." Iowa Code § 68B.2(9).

<sup>6</sup> Iowa Code § 68B.2(24).

<sup>7</sup> The other types of restricted donors are more specifically defined as follows: (1) a person seeking to be a party to any one or any combination of sales, purchases, leases, or contracts to, from, or with a state or local governmental entity; (2) a person who will personally be, or is the agent of a person who will be, directly

- <sup>45</sup> Iowa Code § 68B.22(4)(k).
- <sup>46</sup> Iowa Code § 68B.22(4)(q).
- <sup>47</sup> Iowa Code § 68B.22(4)(e).
- <sup>48</sup> Iowa Code § 68B.22(4)(g).
- <sup>49</sup> Iowa Code § 68B.22(4)(i).
- <sup>50</sup> Iowa Code § 68B.22(4)(o).
- <sup>51</sup> Iowa Code § 68B.22(4)(r).
- <sup>52</sup> Iowa Code § 68B.22(4)(g).
- <sup>53</sup> Iowa Code § 68B.22(4)(o).
- <sup>54</sup> Iowa Code § 68B.22(4)(e).
- <sup>55</sup> Iowa Code § 68B.22(4)(r).
- <sup>56</sup> Iowa Code § 68B.22(4)(g).
- <sup>57</sup> Iowa Code § 68B.22(4)(q).
- <sup>58</sup> Iowa Code § 68B.22(3).
- <sup>59</sup> Iowa Code § 68B.23.
- <sup>60</sup> Iowa Code § 68B.2(10).
- <sup>61</sup> Iowa Code § 68B.23(1).
- <sup>62</sup> Iowa Code § 68B.23(2).
- <sup>63</sup> Iowa Code § 68B.23(3).
- <sup>64</sup> Iowa Code § 68B.24.
- <sup>65</sup> Iowa Code § 68B.2(13).
- <sup>66</sup> Iowa Code § 68B.24.

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