

Advisory Opinion 09-01

Question

What discounts on goods or services may City employees accept, and how may the City publicize the availability of such discounts?

Answer

City employees may accept discounts on goods and services that (1) are made available to all City employees, (2) on terms comparable to those that the vendor makes available to employees of public and private organizations with substantial numbers of employees.¹

Employees of City Departments may also accept discounts that are made available to employees of similar agencies in the region or nation, provided that there is not a nexus between the work performed by the City employees and the business conducted by the offeror of the discount.

When informing employees of the availability of such discounts, the City must ensure that minimal City resources are employed. Neither the City's e-mail servers nor City publications may be commandeered to provide free advertising for businesses offering discounts to City employees.

Facts

City officials are routinely approached by private businesses seeking to market their goods and services to the City's workforce, which numbers approximately 12,000 individuals. The following two examples are illustrative:

1. A company that sells vacation packages recently contacted the Seattle Police Department to offer a ten percent discount to current and retired officers and their families on the company's products. The company represented that it made the discount available to military personnel and firefighters as well.
2. A chain of salons and spas contacted the City's Personnel Department to inquire about providing discounted prices to City employees on its line of services. The company represented that it makes discounted services available to employees of the region's largest employers, including Starbucks, Alaska Airlines, and Nordstrom.

After receiving both of these requests, the departments contacted the Commission seeking guidance on whether it was appropriate to accept and publicize these offers.

¹ In 2006, the Commission adopted a Gift Rule addressing a variety of situations in which City employees may and may not accept gifts. The rule does not address the issues presented in this opinion. This opinion supplements the Gift Rule, but does not supersede it. The Gift Rule remains in full force and effect.

Relevant Law

A City employee's receipt of a discount raises issues under two separate Ethics Code sections. First, discounts are things of value, and so must be analyzed under SMC 4.16.070.3, which says that no City employee may "[s]olicit or receive any retainer, gift, loan, entertainment, favor, or other thing of monetary value from any person or entity where the retainer, gift, loan, entertainment, favor, or other thing of monetary value has been solicited, or received or given or, to a reasonable person, would appear to have been solicited, received or given with intent to give or obtain special consideration or influence as to any action by such officer or employee in his or her official capacity...."

Second, an employee's acceptance of a discount that he or she knows or should know has been offered because of the employee's position with the City raises issues under SMC 4.16.070.2.a, which says that no City employee may "[u]se his or her official position for a purpose that is, or would to a reasonable person appear to be primarily for the private benefit of the officer or employee, rather than primarily for the benefit of the City; or to achieve a private gain or an exemption from duty or responsibility for the officer or employee or any other person...."

Finally, the City's dissemination of information about discounts available to City employees raises issues under SMC 4.16.070.2.b, which says that no City employee may "[u]se or permit the use of any person, funds, or property under his or her official control, direction, or custody, or of any City funds or City property, for a purpose which is, or to a reasonable person would appear to be, for other than a City purpose...."

Discussion

1. *City employees may accept discounts that are offered to all City employees as well as to employees of other large employers.*

In *Advisory Opinion 02-02*, the Commission considered a request from the Finance Department concerning whether it could provide marketing materials to City employees about a computer vendor's employee discount program. The Commission advised that "[t]he Code of Ethics does not prohibit City officers and employees from accepting discounts offered by City contractors to all City employees and to the employees of similarly situated customers."

Today, the Commission reaffirms that City employees may accept discounts offered to all City employees on terms similar to those offered to employees of other large employers. To the extent that *Advisory Opinion 02-02* can be read to limit this to reach only discounts offered by City contractors, the Commission today announces that acceptable discounts can come from City contractors or from companies that do not do business with the City.

Discounts offered to all City employees would not appear to be offered in an attempt to obtain special consideration from any individual City employee. The Seattle Mariners, for example, have dealings with a number of City departments. They also sponsor two "City Nights with the Mariners" promotions each year, providing all City employees with the opportunity to

purchase discounted tickets to two games. The Commission rejects as faulty any argument that the team would offer a discount to approximately 12,000 City employees to attempt to influence City decisions in the hands of a fraction of the City's workforce.

Furthermore, the fact that discounts are made available to employees of other large employers defeats the argument that City employees are receiving the discount because of their City positions. The Mariners offer a discount to City employees for the same reason they make available a discount to all Amazon or Boeing employees; to fill seats.

2. *Discounts made available to select groups of City employees raise issues under the Ethics Code that defy a blanket rule like the one applicable to discounts offered to all City employees.*

The Commission cannot articulate a "one size fits all" policy that will apply to all discounts offered to select groups of City employees. Instead, we invite departments to submit requests for advice to us or to our Executive Director, and make the following observations to provide guidance to the Commission's staff when responding to requests.

When a gift is offered to a select group of City employees, answers to the following three questions are essential to a proper analysis:

- (1) How large is the class?
- (2) What, if anything, is the nexus between the offeror and the work performed by the class, and
- (3) Is the discount available to similar groups of non-City employees?

Answering these questions, the Commission finds that the discounts on vacation packages offered to Seattle Police officers do not violate the Ethics Code. The class is large, there is little or no nexus between the Police Department and the business performed by the offeror, and the discount is available to, among others, U.S. military personnel. Had the discount been offered to officers at a single station, or to only Seattle police officers, the Commission would likely have reached a different answer. So too would we have likely reached a different answer if a discount was made available to Seattle Police officers on purchases of home security systems or firearms, regardless of whether the discount was made available to officers of other police departments around the nation. In such examples, the nexus between the offeror and the employees offered the discount would raise serious issues for the Commission.

3. *The City must inform employees of discounts in ways that do not translate into cost-free advertising for companies offering discounts.*

Deciding whether City employees can accept discounts is a simpler task than determining how the City may make employees aware of discounts under the Ethics Code. The Commission's precedents on this question are difficult to reconcile, the main reason we are issuing a binding Commission opinion in this case.

In 1993, the Department of Administrative Services asked whether it could include an article in its employee newsletter publicizing discounted cellular phone services offered to City employees by Cellular One and US West Cellular, the companies then under contract to provide cellular service to the City. In *Advisory Opinion 93-11*, the Commission ruled that they could place the article in their newsletter, “so long as there [was] no message of endorsement or encouragement to participate.” In that opinion, the Commission also wrote that **“an article informing City employees of a special discount available to them is primarily meant as a service to employees, not advertising that promotes private gain.”** (Emphasis added.)

In *Advisory Opinion 02-02*, the Commission considered a request from the Finance Department whether it could provide marketing materials to City employees about a computer vendor’s employee discount program. In that case, the Commission took a dimmer view of publicizing discounts available to City employees, writing that **“[u]sing City resources to market products to City employees would achieve a financial gain for the contractor, but would not serve a City purpose.”** (Emphasis added.)

The Commission finds the line between “informing” and “marketing” difficult to discern when the City is making information available to employees about discounts available to them from specific businesses. Informing City employees of the discounts available to them from a specific business, whether that business sells vacation packages, salon services, or theater seats, is inherently promotional.

At the same time, acceptance of a discount that is *available* to all City employees but *known* to only a select few, would likely violate the Ethics Code. An employee who accepts a discount on the grounds that it was offered to all City employees would certainly be well-served by the availability of evidence that the discount was, in fact, publicized. Without publicity, the availability of the discount could turn out to be a sham, designed to cloak a gift made to an employee or a small group of employees whom the offeror wishes to influence.

Steering between these two rocky shores, the Commission notes approvingly the City’s maintenance on the main Inweb page of a list of discounts available to Seattle City employees. The Commission finds that such unobtrusive measures constitute a minimal use of City resources, consistent with prior Commission opinions that provide wider latitude for minimal uses of City resources. An Inweb posting serves two goals: it ensures that all employees can learn of discounts, and does so in a way that provides minimal advertising to businesses offering such discounts. Accordingly, publicizing discounts on the Inweb will not constitute misusing City resources for other than a City purpose. In contrast, an e-mail sent to all or many City employees informing them of a discount, or a notice in a City-sponsored publication distributed to all or many City employees, would likely constitute a misuse of City resources to benefit the business offering the discount.² A City publication can direct employees’ attention to an Inweb page, but should not contain articles or notices informing City employees of specific discounts that are available.

² This analysis assumes that there is no City purpose behind employees’ receipt of the discount. If the City was a party to a contract under which it agreed to inform City employees of a discount offered by a vendor, or if the City could articulate some City purpose behind employees’ receipt of the goods or services, that would take the communication outside the scope of this opinion.

Finally, the Commission recommends that the City develop objective standards for when a discount will be posted on the Inweb. We doubt that the City is interested in informing employees of half-price offers on cartons of cigarettes, and discourage those responsible for determining what gets posted on the Inweb from dealing with such questions on an *ad hoc* basis. Employees should not be taking advantage of unpublicized discounts, so determining what discounts may be publicized is critically important. Objective standards will serve the City well if a complaint is filed with the Commission by a business objecting to the denial of the ability to post a discount.

Conclusion

City employees may accept discounts that are offered to all City employees on terms similar to those offered to all employees of other large employers. Such discounts are not gifts that are intended to influence City actions, nor are they offered to City employees because of their City positions.

When a gift is not offered to all City employees but only to a subset, the Commission will not view the acceptance of the gift as a violation of the Ethics Code so long as the gift is offered to a substantial number of City employees as well as non-City employees, and so long as the business conducted by the offeror does not share a nexus with the work performed by the City employees who are offered the discount.

City employees may not accept a discount unless it has been publicized by the City. The City must inform City employees of the availability of discounts in a manner that involves only a minor use of City facilities.