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## Coates' Canons Blog: Giving and Receiving Gifts

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December brings thoughts of gifts: gifts for hard-working employees, gifts for outgoing board

members and retiring employees, and gifts *from* vendors and contractors. May public money be spent on gifts for employees or board members? May local governments honor outgoing members with gifts of public property, such as allowing them to keep their government-issued iPads? May board members or city employees accept gifts from vendors, local businesses, or contracted service providers? This blog spells out when it is a blessing to give and to receive, and when it is illegal.

### Giving gifts to employees using public funds.

Local governments are authorized to use public funds to recognize and motivate employees. In addition to paying salaries, cities and counties are authorized to pay for fringe benefits, for incentive award programs, and for other measures that promote “the hiring and retention of capable, diligent, and honest career employees.” (G.S. 153A-92(d), -94; 160A-162(b), -164.) Under this authority, cities and counties may use public funds for a wide range of employee motivation and appreciation activities and events. This probably includes the purchase of gifts for all or some current employees, as well as gifts and receptions or other events for retiring or departing employees.

Local government managers and board members should be careful to consider the practical and perception issues that might arise when gifts are purchased with public funds. For example, taxpayers may criticize the government if the spending on gifts seems excessive. In addition, it may be difficult to determine what types of gifts employees will appreciate, and some may resent the expenditure of funds on gifts, rather than toward increases in compensation. Finally, any gift with more than a minimal value may constitute income to the employee, which raises sticky tax withholding questions.

### Giving gifts to outgoing board members.

There is no specific authority to spend public funds on gifts for board members. The board sets its compensation in the budget, and funds for a parting gift or payment could be included, along with other incidental board expenses. Beyond that, a nominal expenditure, such as for a plaque or other ceremonial token, is probably allowable as something that promotes good will and positive relations among board members and more broadly within the community. Such nominal expenses seem justifiable since the value to the individual is symbolic rather than monetary. Gifts at the end of a board member’s service that involve more than nominal expense, however, are probably illegal.

### Giving gifts to board members or employees using private funds.

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Board members, and supervisors or other employees, are free to give gifts to each other using their own private funds. Many practical questions may make this a bad idea – jealousy, perceptions of favoritism, and so on – but it is not illegal.

Giving gifts of public property to outgoing board members or employees.

Local governments lack the authority to give gifts of public property (such as iPads, or other government-issued equipment) to outgoing board members or employees. The first important point is that property used by an employee or board member does not become surplus just because that person will no longer be using it. If the property is not surplus, there is no authority to dispose of it. Even if the property *is* surplus, it can't simply be given away. The disposal of property is governed by state statutes in Article 12 of Chapter 160A (made applicable to counties under G.S. 153A-176). These laws set out mandatory procedures for disposing of property using various methods designed to recover as much as possible of the public's investment in the property. This is consistent with the constitutional requirement that public funds be used only for a public purpose, and with the prohibition on exclusive emoluments. These constitutional provisions strictly limit the ability to reward (beyond a nominal level) people who have already been compensated for the service they have provided. See, *Leete v. Warren County*, 341 N.C. 116 (1995) (invalidating additional payment to retiring county manager).

I'm aware of two specific statutes that allow property to be transferred, *for a price*, to retiring employees, or to the surviving spouse or relative of a deceased employee. G.S. 20-187.2 allows a unit to award a badge or service sash to a retiring officer or his or her surviving spouse or relative. G.S. 160A-294.1 allows a city to award a firefighter's helmet to a retired firefighter or a deceased firefighter's surviving spouse or relative. These statutes require the governing board to set a price for the sash or helmet when it is awarded, which may be less than market value. No payment is required for a badge, perhaps because its monetary value is too small to raise constitutional concerns.

Receiving gifts from vendors and contracted service providers.

State law (G.S. 133-32) prohibits board members and some employees from accepting gifts from contractors. Public officials who are involved in developing, approving, or administering contracts are prohibited from receiving anything of value from contractors who currently contract with unit, have had a contract within the past year, or anticipate bidding on a contract in the future. Advertising items or souvenirs of nominal value may be accepted. Violation of this law is a misdemeanor for the both the giver and the recipient of a more than nominal gift.

Public officials who receive these gifts may return them or donate them to charity to avoid liability. Gifts of food, commonly received during the holiday, are often distributed within the unit such that each person's benefit may be considered to be nominal. It is important, however, for public officials to educate vendors and employees about the legal restriction, which is designed to prevent favoritism in contracting.

Receiving gifts from local businesses and organizations that do not contract with the unit.

Local businesses and organizations sometimes give gifts to public officials or invite them to seasonal open house receptions or events. If they have no present, past or anticipated future contracting relationship, these organizations may legally give, and the public officials may legally receive gifts.

These rules about gift giving go beyond etiquette and public perception. Public officials must strike a balance between the laudable desire to acknowledge and reward public service and dedication, on the one hand, and the obligation to comply with state laws that are designed to promote the general public interest by protecting and preserving public funds and by maintaining objectivity and fairness in the contracting process.

## Links

- [canons.sog.unc.edu/wp-content/uploads/2013/12/MH900089574.jpg](https://canons.sog.unc.edu/wp-content/uploads/2013/12/MH900089574.jpg)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_153A/GS\\_153A-92.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-92.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_153A/GS\\_153A-94.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-94.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-162.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-162.html)



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- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-164.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-164.html)
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  - [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=20-187.2](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=20-187.2)
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