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The Acceptance of Gifts of Free Meals by Members of Congress

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Summary

Under House and Senate Rules, Members and staff may not solicit gifts for themselves, and may not accept gifts from any source except in narrowly defined circumstances expressly set out in the respective rules. There is *no* general exception to the current gift rule prohibitions for the acceptance of free “meals,” and thus meals provided by outside, private third parties to Members or staff are considered “gifts” to them, and may not be accepted unless under circumstances which meet other specific exceptions. There are a number of circumstances under which Members or staff *may* accept free meals offered by private individuals under express exceptions in the congressional rules. The most common exceptions to the gifts prohibitions are for gifts of *de minimis* value (under \$50); the exception for gifts from and between family members; gifts made on the basis of a “personal friendship”; personal hospitality at the home of an individual; or meals which are part of a permissible event attended by the Member or employee. Gifts from those who are lobbyists, foreign agents, or who otherwise have an interest in congressional business are of particular concern and require the exercise of the most caution under House and Senate Rules. The House Committee on Standards of Official Conduct has noted, for example, that under the so-called “personal friendship” exemption “where a Member or staff person is offered a gift by a lobbyist or someone else who has interests before Congress and either ... the gift is not paid for personally, or there has not been reciprocal gift giving, the official should **not** accept the gift on the basis of the personal friendship provision.”

The Rules of the House of Representatives and the Rules of the Senate, in conjunction with federal law, establish the general proposition that a Member of Congress may not solicit any “gift” from interested sources, and may not accept gifts from *any* source except under circumstances expressly permitted in the House and Senate Rules.¹

¹ House Rule XXV, clause 5(a)(1)(A); Senate Rule XXXV, clause 1(a)(1): A Member, officer or employee may not “knowingly accept a gift except as provided” in this Rule. The House and Senate Rules operate as the regulations for the acceptance of gifts which may otherwise be prohibited under federal law, at 5 U.S.C. § 7353. That law prohibits solicitation or acceptance
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The broad definition of a “gift” under congressional rules includes specifically the gift of a free meal,² and there is no *general* exemption under the House or Senate Rules for the acceptance of free meals.³ While there is no express, general exemption from the gift rules for all meals, there are a number of circumstances under which Members and staff may accept such a gift, even without regard to the \$50 *de minimis* limitation, and not be in violation of the applicable House and Senate Rules. As discussed in more detail below, Members and employees may accept gifts of meals from their family members, and when extended on the basis of personal friendship; when in connection with attendance at a political fund-raising or other campaign event sponsored by a political organization; in connection with outside, private business employment activities or employment discussions with a prospective employer; during permissible “training” events when served to all attendees as an integral part of the event; when an individual who is not a lobbyist or foreign agent provides “personal hospitality” at his or her personal or family residence; in connection with the permissible attendance at “widely attended” gatherings, including charitable events, when taken in a group setting; or in connection with the acceptance of necessary expenses for approved “fact-finding” or other “officially connected” travel expenses.

De Minimis Amount. Both the House and Senate Rules provide a *de minimis* exception for gifts from private sources, and allow for the acceptance of a gift (including the gift of a meal) if the gift has a value of less than \$50 (the gift limit is thus \$49.99).⁴ Gifts aggregating \$100 or more in a year from any one source, however, may not be accepted; and any gift of \$10 or more will be counted toward that yearly aggregate, although no specific accounting or formal record keeping for gifts of \$10 or more is expressly required by the gift rules.

¹ (...continued)

of gifts from particular prohibited sources, but allows the acceptance of such gifts when approved by one’s supervising ethics office. Since the House and Senate Rules allow in their exceptions for the *acceptance* of certain gifts, but do *not* permit a gift’s *solicitation*, such *solicitation* of gifts for oneself from outside sources interested in legislation or in one’s official duties are always prohibited by federal law. See House Committee on Standards of Official Conduct, *Gifts and Travel*, 106th Congress, 2d Sess. 8 (April 2000); Senate Select Committee on Ethics, *Senate Ethics Manual*, S. Pub. 108-1, 108th Cong., 1st Sess. at 57 (2003).

² The term “gift” is defined as a “gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of ... meals, whether provided in kind, ... payment in advance, or reimbursement after the expense has been incurred.” House Rule XXV, clause 5(a)(2)(A)); Senate Rule XXXV, clause 1(b)(1). While this discussion concerns “gifts,” it should be noted that “anything of value” accepted for oneself by a Member or staffer “for or because of” any official act done or to be done by the recipient could run afoul of the “illegal gratuities” clause of the federal bribery law, 18 U.S.C. § 201.

³ The House and Senate Rules, pursuant to changes derived from the Ethics Reform Act of 1989, had once exempted so-called “local meals,” that is, the consumption of food and beverages not in connection with overnight lodging. These exemptions were eliminated, however, in 1995.

⁴ House Rule 25, cl. 5(a)(1)(B); Senate Rule 35, cl. 1(a)(2). As to the value of a meal, a “meal” is generally a “single item consisting of all the items consumed during the meal (i.e., appetizers, main course, drinks, wine, and dessert).” See, e.g. *Senate Ethics Manual*, *supra* at 23. One may not “buy down” the value of meal by contributing enough to slip under the *de minimis* amount.

Under congressional Rules, then, a free meal may be accepted if it is under \$50 in value, but a number of free meals, each valued at \$10 or more, may not be accepted from the same source if they aggregate \$100 or more in any calendar year. With respect to frequent or repetitive gifts of *any* value, even under \$10, the ethics and standards bodies in the Senate and House both cite to the concern of the late Senator Paul Douglas, expressed in his work *Ethical Standards in Government*, that “Even small gratuities can be significant if they are repeated and come to be expected”⁵

A gift to a spouse and to other family members of the Member, officer or employee, are considered as gifts to the Member, and thus would come within the restrictions and limitations, if the gift is given “with the knowledge and acquiescence” of the Member, officer or employee, and when the Member, officer or employee “has reason to believe the gift was given because of” his or her official position.⁶ Although a gift to a spouse or child may be an imputed gift to the Member, when food or refreshments are offered simultaneously (same time and place) to both a Member, officer or employee and his or her spouse or dependent, only the food provided to the Member, officer or employee will be considered a “gift” for the purpose of figuring the value of such a gift under the Rules (that is, the amounts will not be aggregated).⁷

Changes in the Rules of the House were adopted in 2003 relative to food sent by an outside, private source to a congressional office for the consumption by the staff. This “perishable food” amendment provides that the *value* of such food sent by an outside, private source to a congressional office for the staff will be prorated among the employees sharing the items, to determine if such value is less than \$50 per staff employee, rather than having the entire amount attributable to the employing Member (as previously done).⁸ The House Committee on Standards of Official Conduct has advised offices, however: that the identity of the donor and the value of the food must be determined; to remember that the aggregate value of gifts one may accept from any one source in a calendar year is \$99.99 (of gifts of \$10 or more), and even if under \$10, frequent or “repetitive” gifts from the same source are “impermissible”; that because of the “illegal gratuity” clause of the bribery law, food must be refused entirely “if the person offering it has a direct interest in the particular legislation or other official business on which staff is working at the time”; and that gifts may *not* be solicited.⁹ In the Senate, the total value of such food delivered to a Senate office is considered a gift to the supervising Senator.¹⁰

In addition to the general exemption for gifts of less than \$50, food and refreshments may generally also be accepted under both the House and Senate Rules when they are

⁵ *Gifts and Travel, supra* at 5; *Senate Ethics Manual, supra* at 21, 23.

⁶ House Rule 25, cl. 5(a)(2)(B)(i); Senate Rule 35, cl. 1(b)(2)(A).

⁷ House Rule 25, cl. 5(a)(2)(B)(ii); Senate Rule 35, cl. 1(b)(2)(B).

⁸ House Rule 25, clause 5(a)(1)(B), H.Res. 5, 108th Congress, January 7, 2003.

⁹ Committee on Standards of Official Conduct, “Recent Gift Rule Amendment,” Memorandum for all Members, Officers and Employees (“Pink Sheets”), April 11, 2003, at 1 - 2.

¹⁰ *Senate Ethics Manual, supra* at 24.

considered of “nominal value” and when *not* served as part of a meal.¹¹ This exception would allow one to partake of refreshments, appetizers, snacks or hors d’oeuvres commonly served at receptions, parties and other such gatherings, without regard to the gift prohibition, and without the necessity of attempting to keep a running estimate of the amount and cost of refreshments one is consuming.

Relatives. One of the major categories of exemption from the strict gifts prohibitions are gifts from and between one’s relatives. The definitions of “relative” in the congressional Rules incorporate the extensive list stated in the Ethics in Government Act, and specifically includes one’s fiancé or fiancée.¹²

Personal Friendship. The House and the Senate gift bans, seeking not to unduly interfere with normal family and personal relationships, allow the receipt and exchange of gifts on the “basis of a personal friendship,” as well as those from and between family members.¹³ If a gift made on the basis of a personal friendship is to exceed \$250 in value, however, the Member, officer or employee must get a written determination from the House Committee on Standards of Official Conduct in the House, or the Senate Select Committee on Ethics in the Senate, that the exception still applies.¹⁴ In an effort not to create *too* large a potential “loophole” within the gifts rules by allowing one to merely claim that any gift-giver, lobbyist or interested party is a personal “friend,” the rules establish somewhat more objective criteria or factors to be considered in determining whether a particular gift qualifies as one which is made on the “basis of a personal friendship.” Initially, the Member, officer or employee must consider whether there has been a history of personal friendship and gift exchange with this individual, that is, has the Member also *given* gifts to this individual or have the gifts been all one-way toward the Member or staffer. Secondly, the Member or staffer should consider whether the friend has himself or herself personally paid for the particular meal in question, as opposed to having a business pay for it, or having the expense reimbursed by some other entity or person (or claiming a tax deduction for the expense). Finally, Members and employees should consider whether similar free meals were given by this individual to other Members or employees, thus indicating that such gift had not necessarily been extended merely on the basis of a “personal friendship.”¹⁵

Gifts of meals from lobbyists, or others who have particular interests in congressional legislation or work, are singled out as examples of gifts where there is a particular concern in distinguishing between gifts that have been offered and given for a business purpose rather than on the basis of a personal friendship with the Member or staffer. The House Committee on Standards of Official Conduct, for example, has noted that such gifts from a lobbyist, when not paid for personally out of the lobbyist’s own pocket, or when the Member of Congress or staffer have not themselves *given* gifts to this individual, should *not* be accepted on the basis of the “personal friendship” exemption:

¹¹ House Rule 25, cl. 5(a)(3)(U); Senate Rule 35, cl. 1(c)(22).

¹² House Rule 25, cl.5(a)(3)(C); Senate Rule 35, cl. 1(c)(3). *See* 5 U.S.C. appendix, § 109(16).

¹³ House Rule 25, cl. 5(a)(3)(D)(i); Senate Rule 35, cl. 1(c)(4)(A).

¹⁴ House Rule 25, cl. 5(a)(5); Senate Rule 35, cl. 1(e).

¹⁵ House Rule 25, cl.5(a)(3)(D)(ii)(I)-(III); Senate Rule 35, cl. 1(c)(4)(B)(i)-(iii).

Quite obviously, where the offeror is a lobbyist or someone else who has interests before Congress, Members, officers and employees have the most reason to be concerned about whether a gift is offered for a reason other than personal friendship. In that circumstance, the criteria set forth in the rule are especially helpful. For example, if the gift was paid for by a business or will be charged to a firm or a corporate credit card – as opposed to being paid for out of the offeror’s own pocket – it is likely that the gift is based on business concerns, rather than personal friendship. [footnote omitted] Likewise, if, in a relationship, all of the gifts have gone to the Member or staff person, and there has not been reciprocal gift giving, it is likely that the gifts have a business purpose. Thus, where a Member or staff person is offered a gift by a lobbyist or someone else who has interests before Congress and either of these circumstances is present (*i.e.*, the gift is not paid for personally, or there has not been reciprocal gift giving), the official should **not** accept the gift on the basis of the personal friendship provision. Unless the gift is acceptable under another provision of the gift rule, the Member or staff person should either decline the gift, or pay for it personally.¹⁶

Personal Hospitality. In addition to the exceptions for gifts from relatives and gifts made on the basis of “personal friendship,” the House and Senate gift rules also exempt from the gift prohibitions certain gifts of “personal hospitality” provided by an individual who is not a registered lobbyist nor an agent of a foreign principal.¹⁷ The personal hospitality must be provided by an individual, and not a corporation or an organization, for a non-business purpose at the personal residence or on property or facilities owned by the individual or his or her family.

Meals in Connection With Permissible Events. There are several categories of events for which Members of Congress and staff are permitted to accept free attendance, and certain other related necessary expenses, often including food and meals offered to them and other attendees in the course of such events. These include:

– *Officially connected travel.* Members and staff are permitted to accept from certain outside, third parties “necessary” travel expenses, including meals, for what is characterized as “officially connected” travel for such things as fact-finding tours, conferences, symposia, or other similar events which, while not “core” congressional functions, are “connected” with one’s official duties.¹⁸

– *Training.* Certain expenses for “training,” if such training is “in the interest of” the House or Senate, may be accepted from outside, third parties, including food “furnished to all attendees as an integral part of the training.”¹⁹

– *Widely attended events.* Members and staff are permitted to accept invitations to attend certain “widely attended” events such as a “convention, conference, symposium, forum, panel discussion, dinner, viewing, [or] reception,” including a charitable event,

¹⁶ *Gifts and Travel*, 106th Congress, 2d Sess., *supra* at 20-21.

¹⁷ House Rule 25, cl. 5(a)(3)(P); Senate Rule 35, cl. 1(c)(17).

¹⁸ Such expenses may *not* be accepted from lobbyists or from foreign agents. House Rule 25, cl. 5(b)(1)(A); Senate Rule 35, cl. 2(a)(1)).

¹⁹ House Rule 25, cl. 5(a)(3)(L); Senate Rule 35, cl. 1(c)(13).

when the Member or staffer is to participate in the event or perform an appropriate ceremonial function, or when attendance is otherwise “appropriate to the performance of the official duties or representative function” of the Member or employee. When accepting the offer of free attendance from the sponsor of an event, meals may be accepted when “furnished to all attendees as an integral part of the event,” but would not include meals taken “other than in a group setting with all or substantially all other attendees.”²⁰

– *Campaign events.* Members and staff may accept free attendance at political fundraisers and campaign events sponsored by political organizations and partake of meals at such events.²¹

– *Outside private business activities.* Members and staff may accept certain expenses, including meals, in connection with outside, private business employment activities, or employment discussions with a prospective employer, of the Member, staff or spouse, when such benefits are “customarily provided” and are not “offered or enhanced because of” the Member’s or staff’s official position.²²

– *Provided by State, local or Federal Government.* Items and expenses paid for by the Federal Government, or by State or local Governments, are not gifts from private sources and are not subject to the gift prohibitions.²³ Special, and different rules and limitations, however, must be followed concerning any gifts from *foreign* governments.²⁴

– *Other.* The House Committee on Standards of Official Conduct has noted certain other general exceptions allowing Members and staff to receive meals in conjunction with normal events or meetings with “constituent organizations,” when attending “educational events” which might not otherwise qualify either as a “widely attended” or a “training” event, and when incident to an on-site visit or tour of a business facility.²⁵ The Senate Select Committee on Ethics has also expressed permission for Members and staff to accept free attendance, and thus meals provided to attendees, for educational programs, seminars and fellowships sponsored by universities and institutions of higher education, as well as seminars, briefings and presentations on certain public policy issues when attended by the requisite number of persons from more than one Senate office; and has given a general waiver for certain meetings, sponsored by constituent groups, that also include meals.²⁶

²⁰ House Rule 25, cl. 5(a)(4); Senate Rule 35, cl. 1(d).

²¹ House Rule 25, cl. 5(a)(3)(B) and (3)(G)(iii); Senate Rule 35, cl. 1(c)(3) and (c)(7)(C).

²² House Rule 25, cl. 5(a)(3)(G)(i) and (ii); Senate Rule 35, cl. 1(c)(7)(A) and (B).

²³ House Rule 25, cl. 5(a)(3)(O); Senate Rule 35, cl. 1(c)(16).

²⁴ Gifts from foreign governments are governed by the U.S. Constitution, Article I, Section 9, cl. 8, and the Foreign Gifts and Decorations Act, *note* 5 U.S.C. § 7342, as interpreted by the House Committee on Standards of Official Conduct and the Senate Select Committee on Ethics.

²⁵ *Gifts and Travel, supra* at 29- 32.

²⁶ *Senate Ethics Manual, supra* at 35, 42.

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