

When Is a Gift a Bribe?

Vendors sometimes give sporting event tickets to governmental employees. Or maybe they take them out for a nice dinner.

So, at what point does a gift become a bribe?

As you'll see below, the answer is not always crystal clear. Even so, in governmental settings, ethical expectations are higher due to the fiduciary duty owed to the public.

Cozy Vendor Relationships

Twenty percent of the 2022 fraud cases in the Association of Certified Fraud Examiners' (ACFE) study (*ACFE's Report to the Nations*) revealed "unusually close association with a vendor" as a red flag. I've lost count of the fraud cases I've seen involving close vendor-client relationships. For example, the vendor and client might take annual family vacations together (think Aspen ski trip), with the former footing the bill. I once spoke at a conference with vendors in the audience. One of them asked, "What can vendors give?" I responded, "I can't give you a list, but I would never give cash." He wanted a list of acceptable gifts. So, here's one: planes, trains, and automobiles. Yes, I was trying to be funny, though I know of one vacation home gifted to a high-level official. Why? So, a construction company could win a bid. Some presents (like a vacation home) are obviously a bribe, but lower-cost ones are more difficult to define.

Gray Gift Decisions

You may wonder, "How can I know when a gift is okay?" There's no easy answer to this question. But consider these scenarios. A vendor offers one of the following to you:

- A sleeve of golf balls
- Takes you to play golf
- Pays your annual dues at your local country club (cost is \$25,000 annually)

I'll take the sleeve of balls and play golf, but I'm uncomfortable with the other one. Some governments have a policy of not permitting any gifts; in that case, I'd not take the sleeve of balls or free golf. Even when a gift is not intended to influence, it can create the appearance of impropriety.

Front Page Litmus Test

When there is a gray ethical decision, I always say, "Put it on the front page of the paper and see how you feel." If you're comfortable with it, you're probably okay. If not, then don't do it. Another step you might take is to ask an honest friend or your government's

legal counsel what they think, someone who has no vested interest. If you're unwilling to ask the question, your conscience is probably telling you, "This is not okay." Most vendors want to give gifts without crossing the line--they don't want to go to jail. But the line is often not defined clearly, and naming particulars can be futile. After all, how many things could be on such a list?

So, how do we know if a gift is a bribe?

Quid Pro Quo

In the context of bribery, the concept of "quid pro quo" plays a significant role. This Latin phrase means a direct exchange, where something is given with the expectation of receiving something in return. To determine if a gift can be considered a bribe, one key question is: Was the gift given with the expectation of receiving something in return? It's easier to argue that a gift is not a bribe if it's small or of low value. In such cases, it may appear more like a token of appreciation than an inducement for a particular action. However, when a vendor gives an expensive gift, it becomes much more challenging to assert that there's no expectation of something in return. Expensive gifts raise red flags and make it more likely that the present is, in fact, a bribe. So, your government should create a gift policy, defining what is acceptable and unacceptable—or it could simply say that no gifts are permissible. If your state or local laws prohibit gifts, then the policy should say so.

Communicate the Gift Policy

Give your written gift policy to new employees and discuss the importance of transparency regarding vendor gifts. Additionally, remind existing employees of the policy. You might do so in annual training classes. So, should governments require written disclosure of gifts received?

Gift Disclosure Forms

Governments might also require a signed disclosure form once a year where employees provide details of what they receive from vendors. Additionally, provide such disclosures to your compliance department if you have one. If not, consider giving these to the finance director or a designated elected official (for smaller governments). And who might you require to complete such a disclosure form? Anyone with the power to purchase, whether a person issuing a purchase order, a department head authorizing payments, or someone signing checks—anyone able to pay a vendor (or cause a vendor to be paid). Again, consult with your legal advisors about your disclosure form and processes. So, is bribery a significant threat to most governments?

Bribery is Real

ACFE fraud surveys continue to reveal that bribery is one of the leading causes of fraud. Fifty percent of the ACFE's 2022 fraud cases involved corruption (bribery is a form of corruption). Why is this so? Because it's easy for employees to receive illegal payments (or gifts) without anyone's knowledge but make no mistake: This activity adversely affects the government. How? The vendors usually pass the bribe cost to the government through inflated prices or substandard goods. Strangely enough, the vendor often sees a bribe as a cost of doing business, albeit an illegal one.

Check with Legal Counsel

Check with your legal counsel before creating policies or gift guidance since laws can vary from government to government. Violation of such laws can result in fines and imprisonment.

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