



On The Take:

When is a **gratuity**¹ not a gratuity? There are times when organizations or vendors offer gifts or free products, either to reward you for past actions, or influence you in a current or future action. The State Ethics Commission’s Advisory Opinion No. 94-16² set a limit of \$74.99 on the dollar value of any such gift – be it a “free lunch”, handsome plaque, software, hospitality at a convention, or pen and pencil set.

The Public Officers Law §73(5). It reads as follows:

No statewide elected official, state officer or employee, member of the legislature or legislative employee shall, directly or indirectly, solicit, accept or receive any gift having a value of **seventy-five dollars or more** whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.

This is not to say that a \$50 dinner, or a \$29.95 pocket calculator is an acceptable gift. You might pick up a stress-ball or other advertising gimmick at a computer convention – items which seek to prolong

¹ **Gratuity** (noun) A relatively small amount of money given for services rendered (as by a waiter); An award (as for meritorious service) given without claim or obligation.

² <http://www.dos.state.ny.us/ethc/opinions/AO94-16.htm>

your visit to a vendor’s booth – and these would have no influence on your decision to steer business their way. But a lavish meal (and you can still dine quite fine on \$74.99 – it even rhymes) is what some theologians call a “proximate occasion of sin”. Whether or not you believe in the concept of sin, you do believe in the concept of Mike Wallace and **60 Minutes**. Andy Warhol may have promised each of us 15 minutes of fame, but this would be better earned competing with Ken Jennings on **Jeopardy**.

It “could reasonably be inferred” that a sales representative intends to influence you with theatre tickets, single malt scotch or cable modem. Free sample software is more of a gray zone. As a “perk” you might receive a free working copy of an expensive computer program – with the hope that you will use it at work, judge its value, then decide to order a hundred copies for all your staff. Of course competing vendors may provide the same inducement. Such items should remain the property of your agency, even though the vendor attaches no strings to the product.

The risk you take when accepting such trial software is a competitor’s complaint when you make your final choice. There are those with inferior products who sell through intimidation. There are also those insidious boiler-room operations (now outsourced overseas) that will plague you with unsolicited copier toner, newsletter subscriptions, etc. Stand your ground against such tactics by holding yourself above suspicion. “Where there’s smoke, there’s fire.” Or so it is said. Don’t add fuel to a fire. Don’t encourage negative speculation by engaging in questionable activities.

And remember – **there is no such thing as a free lunch.**

