



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES  
ATTORNEY GENERAL

TELEPHONE  
(208) 334-2400

August 21, 1990

Fritz A. Wonderlich  
City Attorney, Twin Falls  
c/o Benoit, Alexander, Sinclair,  
Doerr, Hawood & High  
126 2nd Avenue N., P.O. Box 366  
Twin Falls, Idaho 83303-0366

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Dear Mr. Wonderlich:

This letter is in response to your telephone inquiry regarding the recently amended statutes comprising chapter 13A, title 18, Idaho Code. You expressed concern as to what conduct was prohibited due to the statutory definition of "pecuniary benefit" in Idaho Code § 18-1351(7) and its relationship to Idaho Code § 18-1356(2).

To illustrate the problem, a hypothetical situation would be a highway district's board of commissioners being provided a weekend of golf and accommodations at Sun Valley by a large construction firm which does considerable business with the district. This is the precise type of activity forbidden under Idaho Code § 18-1356(2), which governs "gifts to public servants by persons subject to their jurisdiction":

(2) Officials concerned with government contracts and pecuniary transactions. No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept or agree to

*Celebrate*  
**IDAHO**  
1890 • CENTENNIAL • 1990

Fritz Wonderlich  
Page 2  
August 21, 1990

accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction. (Emphasis added.)

Undoubtedly, the private party providing the golf holiday is an interested party within the scope of this section. Similarly, the highway district commissioners' control and discretion over the enforcement of highway district contracts bring them within the scope of this section.

The question then focuses on whether the type of benefit being bestowed upon the district commissioners is "pecuniary" in nature and within the scope of Idaho Code § 18-1356(2). "Pecuniary benefit" is defined as follows by Idaho Code § 18-1351(7), as amended:

(7) "Pecuniary benefit" is any benefit to a public official or member of his household in the form of money, property or commercial interests, the primary significance of which is economic gain. (Emphasis added.)

It is the opinion of this office that the legislature's definition of "pecuniary benefit" was intended to prohibit gifts of any sort that provide economic gain, regardless of the form such gifts might take. Thus, under the hypothetical example, the commissioners would clearly be receiving a "pecuniary benefit" from the interested contractor.

This analysis is bolstered by the language in which the statute provides for exceptions. Specifically, Idaho Code § 18-1356(5)(c) states:

(5) Exceptions. This section shall not apply to:

. . . .

(c) trivial benefits not to exceed a value of fifty dollars (\$50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

Fritz Wonderlich  
Page 3  
August 21, 1990

The legislature set the \$50 limitation upon "trivial benefits" in order to close an obvious loophole which could be abused by a subjective construction of the term "trivial." 1990 Idaho Sess. Laws, ch. 328 at 903. The fact that trivial benefits not exceeding \$50 in value are permitted supports the conclusion that benefits which have a much larger cash-equivalent value, such as a golf weekend in Sun Valley, are improper. The legislature recognized the function of private interest groups in government and the need to occasionally conduct business in social settings. The "working lunch" has been retained in the ethics legislation. However, the "trivial benefits" language of Idaho Code § 18-1356(5)(c) would be pointless if the activities discussed above were permitted under a cramped reading of "pecuniary benefits" under § 18-1356(2).

In conclusion, a "pecuniary benefit" may include goods or services purchased by a private party on behalf of a public employee. The legislature has established an exception for "trivial benefits" received. The \$50 value limitation should be strictly followed. The hypothetical example of a weekend in Sun Valley golfing and being entertained by a private interest group is absolutely contrary to the provisions of Idaho Code § 18-1351 et seq., and punishable through criminal prosecution. Idaho Code § 18-1360.

If I can be of further assistance in this matter, please do not hesitate to contact me.

Very truly yours,



Francis P. Walker  
Deputy Attorney General

FPW/st