Your thought leader in school governance

Undercurrents

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THE RECEIPT OF GIFTS BY MEMBERS OF STAFF AND OTHER DECISION-MAKERS AT SCHOOLS

There is clear evidence of growing sensitivity among governing body members, principals and staff in our schools, together with a rising antipathy from departmental officials, when it comes to issues related to what could be construed as a conflict of interests, personal enrichment or the use of gifts and favours, especially where these are seen by some as possible forms of bribery.

This level of sensitivity is hardly surprising given the exposés on state capture, unauthorized or unwarranted rewards and the like which have emerged at virtually every level of society in recent times.

The question which arises, of course, is the extent to which these can and ought to be controlled at school level. We offer some thoughts in this regard below.

SOME TECHNICALITIES AND LEGALITIES WHEN IT COMES TO GIFTS AND THE LIKE

- Both the Public Service Act and the South African Schools Act are unambiguous in their prohibition on any state employee receiving any remuneration, benefit or reward (other than that embodied in their standard conditions of service), for any activity, and whether in cash or kind, unless this has been authorized by the Head of Department in advance.
- At least one of the provinces has gone a step further, and put in place comprehensive policies on both remuneration for work outside the public service and on the acceptance of gifts by employees. While these policies naturally enough apply only to state employees, they contain concepts which can be seen as valuable pointers to be considered by schools and governing bodies as they consider their own approaches.

SOME OF THE NICETIES AROUND GIFTS AND GIFTING

Assuming that staff and others are aware of expectations around work other than that paid for by the state, (i.e. Remuneration for Work Outside of the Public Service and Remuneration via Section 38A of the South African Schools Act), we will not delve any further into these aspects at this stage. The rest of this document therefore concentrates on the acceptance (or otherwise) of gifts in their various guises.

Beware…

- Gifts, payments, favours or provisions of services or hospitality which could conceivably constitute an inducement on the receiver to provide any favours, to enter into any business transaction, or to procure from the giver, or someone with links to the giver, any product or service could all too easily be seen by some as a form of bribery and, broadly speaking, should be avoided – though, as indicated below, there are naturally exceptions to this rule.
- Small gifts can be used initially to create a mild, or even sub-conscious obligation, and be used to pave the way for a later, bigger entrapment.
- The period during which a business contract is being considered or negotiated is a particularly high-risk one, and it is then that one is most vulnerable to corrupt proposals and practices.

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- Employees and governors alike should be on particular guard against landing in a position where conflict of interest could occur.

What are gifts?

Gifts (sometimes called benefits) or services, are those that you receive or are offered (usually, but not exclusively by someone outside of your organization), and which are over and above your normal salary or other employment entitlements like medical or accommodation subsidies, bonuses or overtime.

- They will normally be proffered retrospectively, as a gesture of goodwill or an expression of thanks for an act or service already provided.
- They may be big or small, high-value or low-value, and include tangible items as well as intangibles.
  - Tangible items include (but are not limited to) cash, consumer goods, vouchers, personal items, clothing, scholarships, discounts on goods or services, entertainment, hospitality (wining, dining, accommodation) invitations or tickets to attend functions, performances or events (including major sports fixtures), and offers of trips, journeys or travel.
  - The intangibles include preferential treatment, privileged access to something, someone or somewhere, or the promise of a special favour or advantage. Although these benefits cannot be seen or touched, intangible gifts and benefits can have the same impact, and are to be treated in the same way as tangible ones.

May a staff member accept gifts?

This is very dependent on circumstances – the size of the gift, the nature thereof, the reason for the gift, the motivation for the giving, and so on. Certainly any staff member who is offered a gift should question whether the gift is being presented in order to influence him or her in any improper manner, and consider carefully the impression that the acceptance of the gift could create, as well as how it may be interpreted should it be subjected to investigation at a later stage.

- ***Small expressions of goodwill, gratitude or appreciation:***
  - Included here would be traditional presents, such as a cake of good soap, hand lotion, a pack of notelets, a box of chocolates, a tin of biscuits or a bottle of wine or whiskey so often proffered by parents to teachers at the end of the year or, less commonly, but nevertheless also, on birthdays.
  - All indications suggest that this is an acceptable practice, and that the staff member may accept such tokens of appreciation with thanks, provided the value of the gift is "small" within the context of the community served by the school.
  - Those consulted on the issue suggest that the school ought to have a policy on the acceptance of gifts, which should include a value limit below which gifts may be accepted without further ado – perhaps R50-00 maximum in a less affluent community and up to about R350-00 in more affluent schools. The final decision on this should be taken by the SGB, included in the policy or protocol, and clearly communicated to all staff.

- ***Promotional items of limited value***
  - Here one would include diaries, T-shirts, caps, pens and the like, so beloved of those manning stalls at conferences, expos and festivals.
  - Where these are handed out to visitors in general, the entire staff at the school, or a particular group of staff members (e.g. branded T-shirts to all sports coaches), and where the value of the gift falls within the limits decided upon above, there need be no further limitation on their acceptance.

- ***Gifting which goes further than the above***
  - As soon as the above parameters and limits are exceeded, warning lights begin to flash.
  - As a norm, it can be agreed that once-off or occasional invitations to lunch, dinner, sports events, social occasions or cultural activities may be accepted.
  - However, repeated invitations from the same source, or gifts which could be regarded as building towards a trend or pattern, should be considered inappropriate and politely declined.

BRIBERY AND INDUCEMENT

- If the giving or receiving are done with a view to obtaining an improper advantage over another, the gift at issue, in whatever form, should not be accepted. Some concepts in this regard are important:
  - ***bribery*** – this is the offence of making improper payments or providing other advantage to someone with a view to gaining a benefit.
  - ***to bribe*** – this is to dishonestly persuade someone to act in one's favour by a payment or other inducement.
  - ***inducement*** – the promise of some advantage held out by a person in authority or in a position to provide or implement such advantage: or something (tangible or intangible) that persuades or leads someone to do something which could provide advantage to the receiver or another.

- Any action aimed at influencing matters in such a way that an advantage is gained which would not otherwise have been gained, may be seen as a bribe and constitutes a criminal offence.
- Anyone involved in a pending or forthcoming procurement process should not accept gifts, as these gifts may be aimed at influencing the process and seen as a bribe.

SOME PROPOSED RULES OF THE GAME

- As a basic point of departure, everybody should strongly avoid:
  - Accepting a gift where he or she could be compromised, his or her judgement unduly influenced, or become bound or obligated to anyone else.
  - Accepting any gifts from any party involved with school-related quotes, tenders or tendering processes. This prohibition is equally relevant during the pre-contracting period, the contracting period and the post-contracting period alike.
  - Accepting an offer of a special personal or individual discount for the acquisition of goods or services by a contractor, supplier or consultant.
  - Accepting offers which allow the use by individuals of outlets or services not available to the general public.
  - Accepting any high-value offers, gifts, weekends away, holidays or any other benefits in cash or kind from anyone involved with the school, or doing or likely to do business with the school in any way.

THE USE OF A GIFT REGISTER

- It is required in some provinces, and is strongly recommended in all, that the school open and maintain a Gift Register order to keep a record of, and control over, the acceptance of gifts.
- The final decision will lie with the governing body, but our recommendation is that any gift which goes beyond the occasional, small expressions of appreciation or goodwill, and low-value promotional items as defined earlier in this piece, should be recorded in such a register.
- Those "items" to be recorded would thus include any and every high-value gift, commission, reward or invitation (pecuniary or otherwise) accepted by a staff member or governor or other decision-maker within the school context.
- Our suggestion is that the easiest form in which such a gift register could be maintained would be simply to file every "Notification of Gift Received" in a dedicated folder and number them consecutively as they are placed therein. An exemplar of such a form is attached.
- One would like to reach the position where the submission of such notification becomes a matter of course in the school, but until that has happened, you will probably need a dedicated and reliable "champion" to follow up and collect the forms and take responsibility for their safekeeping.
- A summarised list of gifts accepted should be tabled as a matter of course at governing body meetings, and the principal and SGB chair should have a watching brief to identify warning lights, ensure that the practice remains within acceptable bounds, and highlight the issues (and, if necessary, take action) when the bounds of acceptability appear to be in danger of being breached.
- Registers and *"Declaration of gift forms"* must be accessible for inspection, reporting and auditing purposes, and, as with other records, should be retained for a period of five years.

A PARTICULAR NO-NO

It is particularly questionable for family or members of the household or friends of anyone in a decision-making or influential position in the school to accept any gift or money or any other reward, gift, entitlement, inducement, discount or other incentive as mentioned in this document on behalf of anybody involved in the school.

AN AREA THAT SOME MAY SEE AS GREY

We are aware that some departmental officials have stated categorically that it is unacceptable for staff members—even principals—to accept from the SGB payment of the conference fee or travel and accommodation costs pertaining to attendance at a conference. We cannot accept this as a valid ruling, provided the conference is relevant to the work or professional development of the staff member concerned. By the same token, we believe that for an outside organization (the Allan Gray/Orbis Foundation and the National Education Collaboration Trust come to mind) to organize a conference of significant relevance and invite educators of standing to attend it as guests of the organization, would be entirely acceptable in terms of this document.

CONCLUDING COMMENT

Not every gift is a bribe, and not every inducement a crime; that said, it would be as well to approach any gift or offer with a good dollop of scepticism, and, if one is to err one way or the other, to err on the side of conservatism.