The Town Tea Leaves – A Holiday Gift Guide

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Link to recording

‘Tis better to give than receive ... unless you’re a municipality

New York State Constitution Article 8, Section 1
- Expressly prohibits towns from providing gifts – either in the form of money, services or loans – to private entities or individuals
- Can provide money or services to a private entity if the money serves a public purpose and only incidentally benefits the private entity
- For gift-giving purposes, this provision prohibits things like purchasing a gift basket for a private nursing home

Holiday Parties for Town Employees
- Article 8 § 1 applies, and the town cannot use public funds for purely social reasons or pay employees for reasons unrelated to the services they provide
- Town does not have to be a Grinch and can have a holiday party for employees under the right circumstances
- Rules for Holiday Parties
  o Should be held either pursuant to a collective bargaining agreement or in furtherance of a public purpose (like boosting employee morale or encouraging employee retention)
  o Public funds may not be used to purchase alcohol
  o May only pay for employees; spouses and other non-employees should either pay for themselves or not attend the event
- Leave Policies and Holiday Parties
  o General Municipal Law § 92 gives town boards authority to grant employees leave time in the form of sick leave and vacation or personal leave, among others
  o Pursuant to this authority, a town board may adopt a policy providing employees with additional paid leave time that employees can then use to attend the holiday party
o Additional leave time must be made available to all employees, whether or not they choose to attend the holiday party
o May also hold a holiday party during non-working hours; however, attendance cannot be made mandatory

Beware of the Fruit Basket - Receiving Gifts

- Town Law § 64(8) allows the town to accept gifts and donations ... HOWEVER:
- General Municipal Law § 805-a forbids municipal officers and employees from soliciting, accepting or receiving any gift with a value of $75 or more when it could reasonably be inferred that the gift is meant to influence the performance of official duties or is meant as a reward for the performance of official duties
  o For example, if a developer with an application before the ZBA sends the chair a $100 bottle of wine and they aren't friends outside of work, you're better off not accepting that gift
- $75 threshold could be lowered in local ethics code

OUR LEGAL TEAM IS GROWING! DANA CAMPBELL JOINED AOT AS A PART-TIME STAFF ATTORNEY IN SEPTEMBER 2022. DANA IS FROM THE ROCHESTER AREA. PRIOR TO JOINING THE ASSOCIATION OF TOWNS, DANA WAS A PARTNER AT NIXON PEABODY AND FOCUSED HER PRACTICE ON TELECOMMUNICATIONS. PLEASE JOIN US IN WELCOMING HER ABOARD!