OFFICE OF THE ATTORNEY GENERAL

M E M O R A N D U M

May 14, 1987

TO: Lee Reaves, Chief Examiner
Division of Municipal Corporations
Office of State Auditor

FROM: James K. Pharris
Sr. Assistant Attorney General

SUBJECT: Eating and Drinking at Public Expense

This is in response to your request, communicated in several meetings and most recently by Ken Ehlers, that we prepare a comprehensive memorandum on the general subject of food and beverage consumption at public expense, including a number of related but somewhat separate topics (such as the circumstances under which public employees are entitled to paid meals, the circumstances under which public bodies can pay for food and beverages in connection with a particular transaction, the extent to which public funds can be used for entertainment and "hosting").

I have tried to cover the subject in a fairly comprehensive way, but the subject does not admit of easy analysis, for reasons stated in the body of the memorandum. For the most part, I rely upon earlier case law and opinions to reach conclusions, only applying a little fresh paint here and there to cover matters not covered by earlier opinions or to note evolution in our thinking on these matters.

INTRODUCTION

The consumption of nourishment is perhaps the classic example of what is ordinarily to be regarded as a private, personal and not public activity. While the later Roman Empire mollified a restless citizenry with bread and circuses (a policy eventually unsuccessful in holding the Empire together), neither bread nor circuses have been regarded as the traditional responsibility of the state in contemporary times. Public employees, just like their brothers and sisters in the private sector, are compensated in the form of salary and are generally expected to select and pay for their own food and entertainment without looking to their employers for these items. Except for a long recognized (and

inconsistently carried out) exceptional responsibility for the necessary needs of the poor and the sick, the providing of food and entertainment to the general public has, again, not been thought to be a necessary or (in most cases) even an appropriate object of public expenditure.

Thus, to pay for food and drink with public money is very much the exception rather than the rule. Because the purchase of food and beverages at public expense is almost never explicitly mentioned in law, the recognized exceptions to the general rule must be searched for in the shadowy areas of implied authority or derived by extension from principles primarily relating to some other topic.

All of this makes it almost impossible to generalize about those circumstances under which it is appropriate to pay for food and drink at public expense. The question can only be answered with reference to a specific fact situation and generally only after answering the following questions:

1. Who consumed this food and drink?

2. What was the nature of the occasion for the consumption?

3. What public purpose or policy objective was served?

4. Was the consumption of food and beverages an appropriate way to carry out the legal or policy objective in question?

5. Was the expenditure of public funds for the food and beverages in question somehow inconsistent with some constitutional or statutory provision or public policy?

With that background, I will proceed first to discuss the general legal issues involved, then I will discuss the typical fact patterns which seem to emerge in this area, and finally I will suggest a form of analysis for an auditor or other interested party trying to decide whether particular expenditure of funds for food or beverages is justified.

I. LEGAL BACKGROUND

As noted earlier, there is virtually no law explicitly authorizing public bodies to pay for food and beverages with public funds. The state constitution is silent on the subject and even statutory law is rare. A typical exception is such a statute as RCW 28A.58.136, authorizing school districts to

establish lunchrooms for pupils and school district employees. Note that even this statute appears to contemplate that districts recover their costs by charging for the lunches provided. Other governmental institutions, such as hospitals operated by counties and hospital districts and jails and other correctional facilities operated by cities and counties, have implied (but rarely express) authority to supply their "guests" with food and similar necessities of life. These well known exceptions to the general rule do not extend, however, to the provision of food and beverages to institutional employees or to those not directly under the care of the institution.

Accordingly, where there is authority to provide food and beverages at public expense, it is almost never directly the authority to do that but rather is implied in the authority to do something else. For instance, when RCW 52.14.010 provides that a board of fire commissioners shall "receive necessary expenses incurred in attending meetings of the board or when otherwise engaged in district business . . ." one must infer (despite no explicit mention in the statute) that this authority includes the authority to reimburse or pay for meals for the commissioners, at least under certain circumstances. Or again, when article 8, section 8 of the state constitution and RCW 53.36.120 and .130 allow ports to spend certain funds for "promotional hosting," only the historical context of these provisions gives a clue that "promotional hosting" includes the purchase of food and drink for people who are not port employees under certain circumstances.

While there are few statutes explicitly authorizing the purchase of food and beverages at public expense, there are some which, in effect, provide procedural requirements for accounting for such expenditures. An obvious example is RCW 42.24.080 through .110, which apply to almost all municipal corporations and political subdivisions in the state and impose certain procedural requirements upon municipal corporations before they can reimburse officers and employees for certain expenses, including expenses for meals and other food items. Another example already mentioned would be RCW 53.36.120 through .150, which impose certain procedural requirements on port districts engaged in promotional hosting.

Thus, one who is considering whether or not a particular expenditure of public funds for food and beverages is appropriate must look, first, to see whether there is any statute authorizing the expenditure, expressly or impliedly ("home rule" cities and counties need only show that the expenditure relates to some valid municipal purpose and is not inconsistent with statute). Second, one must check to see if there are any statutes imposing

procedural requirements on the expenditure. Finally, one must check to see that the expenditures have been authorized by some local ordinance or policy and are consistent with such a policy. Except where a statute itself authorizes the expenditure in question, the enactment of an appropriate authorizing local legislation is a prerequisite, because expenditures of this type must be affirmately authorized by law. See James v. Seattle, 22 Wash. 654 (1900).

II. FACTUAL PATTERNS

The two most important variables in the fact patterns to be considered in this area of the law are (1) the identity of those consuming the food and beverages, and (2) the nature of the occasion for the consumption. I have organized this section of the memorandum by first considering, in broad categories, consumption by public employees, consumption by "quasi-employees," and consumption by nonemployees. Within each of these groups, I have organized the material by the typical circumstances of consumption, with comments on each category.

A. Public Employees

1. Travel Expenses

As noted earlier, the general rule is that public employees, like private parties, are responsible for supplying their own food and drink and are not expected to receive these at public expense. A long recognized exception to this general rule concerns employee travel on public business. Virtually all municipal employees are authorized to claim reimbursement for their necessary expenses in connection with such such travel, and it has long been recognized that a legitimate component of these expenses may be the cost of meals purchased during travel. RCW 42.24.090 is the general statute regarding such reimbursement.

Expense reimbursement in the case of travel is apparently based upon the notion that public employees when traveling incur extraordinary food expenses, presumably because they will not be able to purchase and prepare their own food at home but rather must (at least in most cases) eat in restaurants and other places where food is more expensive.

Although it is well established that a public employee is entitled to reimbursement for a meal consumed during official travel, there are questions which should be asked about such an expenditure. First, what was the purpose of the travel and was it really public business? Second, has the employee properly

documented (see the procedural requirements of RCW 42.24.090 or any other applicable statute) that the expense was actually incurred? Third, were the expenses consistent with the statute, ordinance or policy authorizing reimbursement (or, in a few cases, direct payment)? Finally, many statutes authorize reimbursement of only "reasonable" expenses. For a couple of examples, note RCW 54.12.080 (public utility district commissioners) and RCW 57.12.010 (water district commissioners). Or note a phrase like "actual and necessary expenses" such as in RCW 28A.58.310 (school superintendent candidate).

In my opinion, a limiting term such as "reasonable" or "necessary" was not intended to allow the state auditor or another reviewing party to substitute his or her own judgment for the judgment of the officer who had authorized the payment in question. At the same time, the words do underscore the public fiduciary responsibility that officers have in disbursing public funds. Close questions should undoubtedly be resolved by deferring to the judgment of local officers, but where a particular incurrence of expenses was either patently unnecessary or patently excessive, there is authority to criticize or question the payment, the payment level, or the method of payment selected by the municipality.

2. Non-Travel Business Expenses

While the necessity for eating meals away from home and therefore public expense while traveling on public business has long been recognized, the law has been slower to recognize the legitimacy of public payment for meals consumed at home but on "public business." State employees, for instance, are still entitled to claim reimbursement only for meals consumed in the course of official travel. See RCW 43.03.050. The statutes authorizing expense reimbursement for local governments, however, do not contain similar limitations, so that, if properly authorized by local ordinance or policy, municipal officers and employees can claim reimbursement for meals consumed on official business but not necessarily in the course of official travel.

AGLO 1974 No. 92 (cited by Ken Ehlers in his recent memorandum to me addressing this issue) illustrates the legislature's movement away from the position of requiring travel as a necessary prerequisite to reimbursement for meal expenditures. Former RCW 36.17.030 authorized county officers to "their necessary reasonable traveling expenses in the performance of their official duties . . ." (Emphasis supplied.) However, this statute was repealed in 1974, and county officials are now governed solely by RCW 42.24.090, which has no limitation to

reimbursement of travel expenses. This precise point is discussed in AGLO 1974 No. 92.

Many of the same questions can be asked about nontravel expense reimbursement as can be asked about travel expense reimbursement, of course. An officer or employee claiming such reimbursement must still be prepared to show (1) what was the occasion for incurrence of the expense, (2) what were the expenses incurred, and (3) that the expenses were incurred in the course of official business as defined and permitted in an applicable local law or policy.

Again, it is appropriate to ask whether nontravel meal expenses are reasonable and necessary. Must a city council choose the breakfast, lunch, or dinner hour for its meetings? If the council meets at, say, 7 p.m., is it reasonable and necessary for the members and/or staff of the council to eat their dinner at public expense just before the meeting? Is it really necessary for a department head to take his staff to lunch at public expense? Again, local officials should be given the broad benefit of any doubt, and are primarily answerable to their voters. In egregious circumstances, however, the auditor should consider audit criticism of expenses which appear to be excessive and unreasonable or make public comment so that the voters know what they are paying for.

It is always important of course to analyze what sort of "business" is being conducted at a meal paid for with public funds. Typically one would expect that the "business" would consist of a meeting conducted during the meal or so near just before or just after the meal as to justify treating the meal as a part of the meeting. A different kind of example would be a circumstance under which, say, a firefighter or jail employee is permitted to consume a meal at public expense because he or she is "on duty" and expected to be available throughout the meal period. This sort of expense reimbursement should be covered either by a union contract or by local policy.

3. Ceremonies and Celebrations

As of the late 20th Century, I discern a continuing public ambivalence about the place of ceremonies and celebrations, of feasts and fanfares, in American public life, and specifically in American public expenditure. The modern American loves banquets and parades as much as any other example of the species and almost seems to leap at any chance to commemorate civic events, from centennials to dam openings.

At the same time, there is a deep sense, perhaps inherited from the Puritan and agrarian strains in American history, that there is something unseemly about lavish public expenditure on ceremonies and "events." Perhaps it is nothing more than a sense of equity, that where 400,000 taxpayers are footing the bill, there is something wrong about having only 40 or 400 drinking the champagne and eating the caviar.

Again, there is very little "hard" law on the subject. The only attorney general opinion I could find significantly addressing the point is AGO 53-55 No. 314, an opinion to the Benton County prosecutor concerning the authority of Benton County to contribute funds to the McNary Dam Dedication Committee.

The conclusion of the opinion was that the county could not simply contribute money to the Committee (which was apparently a private group) but that the county could (following applicable statutory procedures) pay directly for certain dedication expenses. The significance of the opinion is to recognize that an "event" such as the dedication of a dam can be recognized and can be supported in part with public funds. But the opinion also (without citing any clear legal basis) reflects the traditional American sense that only certain dedication expenses are "appropriate" objects of public expenditure. I quote the final paragraph of the opinion.

> Finally, we deem it necessary to make certain observations as to the propriety of expending public funds for specific purposes. Under no circumstances could expenditures for personal entertainment be considered a public purpose. Neither do we believe that the expense of travel, housing and subsistence for vising dignitaries could be so considered. However, general publicity, physical improvements on the property (grandstands, etc.), public relations booths and similar items are ordinarily considered expenditures for a public purpose and these, we think, could properly be paid by the county. Each expenditure should be scrutinized by the auditing officers, to the end that they be limited to items reasonably connected with a public purpose. AGO 53-55 No. 314, p. 3.

I sense that public opinion has gradually evolved over the thirty years since the opinion was written to a more liberal attitude about the proper objects of expenditure in connection with ceremonies and celebrations. On two or three occasions, we have advised your office informally that a municipality commemorating a dedication or an unveiling can pay for the reasonable expenses

of the event, including the food and beverages consumed. The old tendency to try to draw an imaginary line between weak punch and stale cookies (which, after all, are not particularly pleasant and enjoyable) and champagne and caviar (which are very expensive, highly enjoyable, and likely to excite envy on the part of the uninvited taxpaying public) seems weaker than it was a generation ago.

How do we analyze the propriety of expenditures for public celebrations, whether municipal employees or others are the primary consumers of the celebratory cakes and ale? Only a couple of years ago, we took the position (letter of Assistant Attorney General Marjorie Schaer to the Board of Commissioners of Kittitas County Sewer District No. 1 dated October 4, 1984) that the purchase of champagne for a dedication ceremony was inappropriate and should be recovered. Yet I am inclined to think that the position we took in that letter (which I strongly shared at the time) was based upon unstated assumptions which, upon further examination, are not terribly strong. I suggest that, for purposes of analysis, we analyze "celebrations" in terms primarily of the extent to which they serve a recognized public purpose. At one end of the spectrum, the public utility district has a right to celebrate the dedication of a new hydroelectric dam. At the other end of the spectrum, the arrival of a new package of pencils in the city purchasing office would appear to be an insufficient cause to justify a celebratory dinner. Again, I think close issues should be resolved in favor of local discretion, but we can reserve the right to criticize public expenditures on events and celebrations which quite clearly serve no public purpose.

A related portion of the analysis would be to look at who is invited to attend. In this sense, ironically, I am arguing that major expenditures are more justifiable, on the whole, than smaller ones. As an example, let me go back to the hydroelectric dam dedication by a public utility district. This could be logically treated as a major event, and the public utility district could choose to purchase champagne and hors d'oeuvres for a thousand people (commissioners and staff, visiting dignitaries, but mostly interested members of the general public). Such an expenditure would appear to serve a public purpose, and we can reliably leave it to the political process (that is, the voters/ratepayers of the district might rise up in protest and choose different commissioners) to keep the process honest.

On the other hand, if the public utility district chose to limit its celebration to a quiet dinner at district expense attended

only by the commissioners and the manager (and, perhaps, their spouses), the expenditure might be much smaller in scope and yet less justifiable, because the event is not a public celebration, but essentially a private celebration, albeit of a public-related event. The political process cannot be trusted to police such an action, partly because the expenditure may be too small to notice and partly because the public might never have occasion to find out about the event.

A similar though not identical analysis applies to the more recent practice of partial public sponsorship of annual fairs and festivals (or, occasionally, of one-time events). Many of these have been going on in various communities in the state for many years and historically were primarily sponsored by private sources (except for such incidental public support as providing police and street cleaning service, etc.). Yet there has been a tendency in recent years for municipalities (and particularly cities) to want to assume some direct financial responsibility for Mud Fair or Dust Days.

Again, I think we must recognize that, if properly declared so by the appropriate local officials, such an event serves a public purpose and is a recognized municipal function. Naturally, one must look at the location and nature of the "event" and compare it to the powers and purposes of the particular political subdivision to answer all questions. Cities and counties, being general governments, probably have broader authority to sponsor local bread and circuses than, say, a diking district or a mosquito control district, where the limited statutory purposes for the municipal corporation would appear likewise to limit (in many cases practically to eliminate) any justification for sponsorship or cosponsorship of a celebratory event.

Finally, as pointed out in AGO 1953-55 No. 314--and I think this point is still very viable--a municipality's support of a local "event" or celebration may not take the form of a gratuitous contribution of public funds to a private person, committee or organization. This point was clearly established early on in Washington in Johns v. Wadsworth, 80 Wash. 352, 141 P. 892 (1914), involving the attempted appropriation of funds to a private county fair association. Thus, the expenditure of public funds on a publicly sponsored "event" is dependent upon (1) the existence of a recognizable public purpose related to the purposes for which the particular municipality in question exists, (2) proper authorization from the municipal legislative authority for public sponsorship of the event, (3) proper procedural processing of any funds provided, and (4) as noted above, some reasonable relationship between the amount of public

expenditure and the "public" nature of the event. Public expenditures will have to be either direct through city employees and purchasers or, if indirectly through private organizations, by proper contract for legitimate and measurable services rendered.

4. Conventions and Gatherings

While the practice of publicly paid for celebrations is ancient in the world at large and still somewhat questionable in the United States, the gathering of public officials with others of like kind across the state, across the nation, or around the world, is a relatively new yet firmly established tradition. As recently as 1953 (AGO 53-55 No. 73), we issued an attorney general opinion that municipal corporations could not legally reimburse an officer for expenses incurred while attending a national convention outside the state. Since that time, however, attendance at meetings and conventions has become a generally accepted practice and almost every class of municipal officers participates in an organization which conducts periodic meetings and conventions.

Attendance by Washington municipal officers at conventions is now conceded to be appropriate "business" (always assuming that the purpose of the convention is rationally related to a municipal purpose, that the attendance is properly authorized, and that any reimbursement claim is properly documented). The more difficult questions are whether Washington municipal corporations can "host" each other or their brothers and sisters from out of state. I treat this subject below in the discussion of purchase of food and beverages for "nonemployees."

5. Fringe Benefits

It is possible that certain municipal employees are legally entitled to eat and drink at public expense because they have a contractual right to do so. Many municipal statutes (see, for instance, RCW 35.23.120--appointive officers in second class cities) have broad authority to "fix compensation" of city employees and we have held on several occasions that this authority implies the power to compensate both by money and by nonmoney fringe benefits. Thus, it is conceivable (though I assume not typical) that a municipal corporation could promise to supply meals at public expense to its employees or to certain categories of employees. Ordinarily, the value of such meals would be taxable, and it is unlikely that employees would choose to be paid in meals rather than money, but anything is possible.

A somewhat more likely possibility is that contract agreements (whether established by collective bargaining or by unilateral action by the legislative body of a political subdivision) would call for the provision of meals for employees who are required to be "on duty" for extended periods of time, including meal times. Obvious examples would be police officers and firefighters, jailers and hospital workers, and certain maintenance personnel who are "on call" for extended periods of time. In all of these cases, the consumption of meals can probably be justified as an extension of the principle that a municipal corporation can pay for meals consumed in connection with the conduct of public business.

6. Coffee and Snacks

For the most part, my discussion so far has been about payment with public funds for meals. At this point, we need to say a separate word about coffee and snacks--food and beverages typically consumed between meals.

The traditional attitudes about coffee and snacks are that they are not "reasonable" or "necessary" business expenses. The assumption has been that a public employee needs three meals per day for sustenance but does not need to drink coffee or soft drinks, eat cookies or popcorn, or chew bubble gum at public expense.

In recent years there has been considerable pressure to relax this principle, because it has become increasingly accepted (arguably even expected) that at least coffee and perhaps other food and beverages be served at business meetings involving public as well as private sector employees. Public employees bridle at paying personally for these items and are always pestering to use the public treasury. Many municipalities use quasi-public funds such as vending machine income to pay for these items.

As noted below, the serving of coffee and other light refreshments at meetings involving volunteers and other "quasi-employees" can be justified as a sort of limited form of compensation for people who otherwise might be entitled to actual monetary payment. The incidental consumption by municipal employees of the same light refreshments on the same occasions can probably be overlooked (assuming it does not get out of hand) as a minor expenditure of public funds, not worthy of special attention in an audit. It is simply impractical to expect public employees to serve coffee and snacks to others at public expense and yet to refrain from indulging themselves or be expected to

make reimbursement for the small amounts they do consume.

As to those occasions where the same justification is not present--that is, meetings consisting only of public employees (whether all of the same municipal corporation or not)--there is little basis for changing the familiar principle that between-meal refreshments must be regarded as neither a reasonable nor a necessary expenditure of public funds but rather as an optional and personal responsibility of those partaking.

I am prepared to go so far as to say that municipal corporations with "home rule" authority (that is, first class and optional municipal code cities and charter counties) could declare that the consumption of coffee and refreshments by public employees during business hours is a legitimate public expense and could, by appropriate ordinances and policies, establish rules delineating the circumstances under which such a practice could be accepted. To the best of my knowledge, no home rule city or county has done so. As for those municipal corporations which do not have "home rule" authority, I am still of the opinion that legislative authorization will be required before such expenditures can be treated as an appropriate use of public funds.

B. Quasi-Employees

In the modern world, many municipal corporations conduct portions of their business not only with compensated full- and part-time city employees but also with the help of "quasi-employees"--noncompensated volunteers, advisory committee members, and others who are participating in a public business but are not on the public payroll.

Questions have arisen from time to time as to the extent of a municipal corporation to purchase meals or otherwise reimburse the expenses of these "quasi-employees." As a general matter, where a municipal corporation could have employed a party for compensation to perform some duty for the municipality, there is implied the authority to (1) reimburse that party for expenses incurred in conducting public business, and (2) provide meals or refreshments to those people in lieu of (or in some cases to supplement) monetary compensation.

The obvious cases on which these occur are those of volunteers who work on public programs without compensation and those who serve on citizens committees to advise or assist public officers and employees. While I have said that there is implied statutory authority to provide food and drink to these people at public

expense (when related to some public purpose), the municipal corporation still must be sure to (1) properly authorize the practice either by ordinance or policy or by contract, and (2) properly document the expenditures.

A somewhat different situation arises when two or more municipal corporations work together on some cooperative effort or when one municipal corporation "lends" an employee to another on a temporary basis. As a general matter, municipal corporations in those circumstances should continue to reimburse their own employees for business expenses based upon their own statutory and local legal authority. Thus, if the City of Seattle and the Port of Seattle are working together on some project, each should ordinarily expect to reimburse its own employees for business expenses. If a Port employee is temporarily on "loan" to the City, the City and the Port together should establish how the employee's business expenses will be reimbursed. If they are legitimate City expenses, the City can reimburse directly (in effect treating the person as a City employee) or can arrange to have the Port pay those expenses in the first instance and look to the City for later reimbursement.

It would, of course, generally be a violation of RCW 43.09.210 for one political subdivision to pay expenses properly attributable to another. Where the dollar amounts are small or where the administrative cost of attributing expenses to individual municipal corporations is greater than the amounts involved, municipal corporations can safely be trusted to make their own appropriate arrangements, since they generally can be counted upon to represent their individual interests.

C. Nonemployees

Sometimes a municipal corporation purchases food for its employees, sometimes for "quasi-employees," and occasionally for people who are not connected with the municipality at all. Again, the municipality must be prepared to show some legal justification for the expenditure in question. In this section of the memo, I will discuss the most common examples.

1. "Hosting" For Business Development Purposes.

The term "hosting" is often used rather loosely, and seems to some people to encompass any payment for food and beverages for nonemployees. For purposes of this memo, I will use it in a somewhat more limited sense, as the payment of food and beverages for nonemployees for trade promotion or tourist promotion purposes.

Promotional hosting was held unconstitutional by the State Supreme Court in State ex rel. O'Connell v. Port of Seattle, 65 Wn.2d 801, 399 P.2d 623 (1965). In response to the Port of Seattle decision, the people of the state amended the state constitution by adding art. 8, section 8, but this change allowed promotional hosting only for port districts. By implication, promotion hosting is "beyond the pale" as a proper expenditure for other municipal corporations, even if they have authority to engage in economic development or trade or tourist promotion.

The rationale of the Port of Seattle case was that--despite the existence of a public purpose--the purchase of meals, beverages and entertainment for trade promotion purposes without any corresponding contractual or legal obligation to do something for the port was a gratuitous transfer of public funds into private pockets (or private gullets) and thus unlawful for essentially the same reasons as Johns v. Wadsworth, supra. A small exception might be made for truly incidental purchases--such as light refreshments purchased in connection with a tourist promotion meeting. Wenatchee and Yakima, for instance, might legitimately hand out apples or other fruit for tourist promotion purposes. At least where the dollar amounts are small and directly connected to a tourist promotion effort and where the municipal corporation in question has the authority to engage in tourist promotion, I think certain local governments could successfully argue that they would have authority to make such expenditures.

2. Conventions and Meetings

A second way in which the authority of a municipality to purchase meals for nonemployees comes up is (as noted earlier) that relating to conventions and other meetings at which employees of a number of municipalities get together. The typical situation arises when, say, the National Association of Widget Commissioners decides to have its annual convention in Seattle. At previous conventions in Chicago, Philadelphia, and Miami (in states not having the same laws or the same miserly traditions as Washington), the attendees at the convention were lavishly plied with food, drink, and entertainment at the expense of the host city or of the host organization. The question then arises: why can't the local widget commissioners reciprocate with public funds?

At least as to those conventions consisting entirely of public employees, I will readily admit that there is no constitutional barrier to payment. If, say, the mayor of Gary, Indiana, attends a national league of cities convention in Seattle, he or she presumably can claim reimbursement for necessary expenses from

the home city. Thus, if Seattle pays those expenses, not the mayor but Gary, Indiana, is the beneficiary, and there is no constitutional barrier to transfers of funds to governmental bodies such as cities and other states.

However, there is no statutory authority for any class of municipal corporation in Washington to pay for food, entertainment or other expenses of out-of-state attendees at a convention in this state. I can find no implied authority either (except in the rare occasion where the out-of-state employee is actually performing a service directly for an in-state municipal corporation), because the local municipal corporations are receiving no direct benefit from the attendance of the out-of-state delegates. The indirect benefit of (1) having the convention in this state or (2) coming into contact with public officers and employees from elsewhere and discussing matters of mutual concern are too speculative to imply authority to expend local public funds. Thus, I conclude that if any local municipal corporation wants authority to pay for meals, entertainment, travel and other expenses for out-of-state attendees at conventions in this state, it should seek it from the legislature.

3. Celebrations and Ceremonies

In an earlier portion of the memorandum, I discussed the authority of some municipal corporations to sponsor ceremonies and "events" with public funds. In part, that discussion should be repeated here, because most of the people who will benefit from any food and beverages served at such "events" will be nonemployees. As noted earlier, such expenditures are not automatically improper but are permissible if there is proper legal authorization, if reasonable, and if properly documented.

Finally, I have noted on certain other occasions that there are some specific areas in which local governments might have statutory authority to provide for food and beverages at public expense. Examples would be schools, hospitals, jails and other institutions where a municipal corporation might have an actual obligation to supply residents or students with the necessities of life. Another example might be an emergency situation in which a local government might choose to provide food and other necessities to disaster victims.

III. SUMMARY AND GENERAL COMMENTS

Eating and drinking at public expense is a large subject. There are so many kinds of local governments in Washington, with so

many governing laws, and so many particular circumstances under which they might wish to pay for food and drink that it is hard to make generalizations. I suggest that one auditing a particular expenditure ask the following questions.

1. What documentation is there for this expenditure? Is the documentation sufficient to note who consumed the food and beverages, what type of food and beverages were consumed, how they were purchased and from whom, and for what purpose?

2. Is the expenditure authorized by a local policy, contract, or ordinance?

3. Is the expenditure rationally related to some public purpose and is it reasonable in its amount and in its nature?

4. Is the local ordinance or policy consistent with state law? Are there any state constitutional, statutory or public policy provisions which (despite the existence of some local policy) would preclude the expenditure in question?[1]

As noted earlier, this is an area in which our thinking has changed and may continue to change. Expenditures ruled improper only a few decades ago are now commonplace, and other expenditures which were unthinkable a few years ago are now at least "thinkable." At any point in time, reference to statutory

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1 I have not discussed in this memorandum any "line drawing" relating to the nature of the food and beverages to be provided. For instance, there is a traditional rule (incorporated into the expense reimbursement regulations in the case of state agencies) that alcoholic beverages are not a proper object of public expenditure. Local bodies may choose to adopt the same policy, although I cannot discover any general state statutory or public policy provision which would legally dictate such a distinction. In some communities coffee might be viewed as questionable purchase, while there are groups which object to the consumption of meat, sugar, or other specified types of food. As of the date of this memorandum, I can find no general statewide consensus on any of these points, so I think it had best be left to local bodies to decide what policies they might have in this area.

and legal principles must be combined with a sense of history, a sense of policy, and common sense.

Bon Appétit!

JKP:ch
Enc.