Memorandum #2020-04

TO: Local Government Finance Officials and Their Independent Auditors

FROM: Sharon Edmundson, Director, Fiscal Management Section

SUBJECT: Issuing Gift Cards and Bonuses to Local Government Employees

DATE: February 6, 2020

The May 2019 Investigative Report on the Town of Robbinsville issued by the North Carolina Office of the State Auditor asked the North Carolina Department of State Treasurer's State and Local Government Finance Division to review the legality of issuing gift cards and bonuses to employees and provide guidance to local governments. This Memorandum briefly summarizes whether, and under what circumstances, counties and cities may legally use public funds to issue gift cards and cash bonuses to current employees. Under current North Carolina law, this appears to be a permitted use of public funds.

North Carolina counties and cities have statutory authority to use public funds to pay for (and to adopt or provide for rules and regulations or ordinances concerning) fringe benefits, service awards, incentive awards, and "any other measures that promote the hiring and retention of capable, diligent, and honest career employees." (N.C. Gen. Stat. §§ 153A-92(d), 153A-94; 160A-162(b), 160A-164.)

Article I, Section 32 of the North Carolina Constitution states that "No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services." Interpretation of this provision by North Carolina courts suggests that a gift given to a current employee is "in consideration of public services" and would not be an unconstitutional emolument (payment of public funds).

If local government officials desire to use public funds for gifts to recognize or motivate employees, we highly recommend that local units adopt and follow policies, rules and regulations, or ordinances that comply with constitutional and statutory requirements. Following best practices would include requiring the elected board's approval of a policy governing all employee gifts, bonuses, and salary adjustments. In the case of local governments using a manager form of government, the board's approved policy could include giving the manager authority to allocate adjustments and/or determine gift or bonus amounts within stated percentages or ranges. In addition, officials should establish equitable, nondiscriminatory policies and rules, and implement them in like manner.

Like any other expenditure or obligation, employee gifts, bonuses, and salary adjustments must be budgeted prior to the obligation being incurred.

Employee gifts may constitute taxable income to the employee and be subject to tax withholding laws. Local units are urged to consult their legal and tax advisors in order to comply with all applicable laws.

We encourage elected officials and local government managers and administrators to consider the issues of employee morale and public perception when developing a policy or rule involving gifts to employees.

Further discussion on this topic can be found in this blog post authored by Frayda Bluestein of the UNC School of Government: https://canons.sog.unc.edu/giving-and-receiving-gifts/

An example of a state agency's comprehensive gift policy can be found on the UNC-Charlotte website: https://legal.uncc.edu/policies/up-602.11 Please note this policy includes provisions specific to the university's requirements and portions of the policy will not be applicable to local governments.

This Memorandum is for informational purposes only and should not be relied upon as legal or tax advice being given to any individual unit of local government.

Please contact us with any questions or concerns at (919) 814-4299.