

## COUNCIL WORKSHOP ITEM

**ITEM:** An Ordinance Implementing the Provisions of the State Officials and Employees Ethics Act in the Village of Downers Grove  
**DATE:** May 4, 2004  
**PREPARED BY:** Enza Petrarca, Village Attorney  
**PURPOSE:** To comply with statutory mandate to adopt ordinance regulating political activities and the making or accepting of gifts in a manner no less restrictive than the provisions of the Act.

### DISCUSSION:

This ordinance is in response to sweeping ethics reform passed by the Illinois General Assembly in late 2003 called the State Officials and Employees Ethics Act. This Act is a comprehensive rewrite and revision of all state laws regulating ethical conduct, political activities and the making or accepting of gifts. The Act is applicable only to State officers and employees but it requires local governments to adopt ordinances regulating the same things in a manner no less restrictive than the Act. This ordinance adopts the state law by reference and makes it applicable to Village officers and employees. I have attached copies of the relevant portions of the State law for your review.

### ATTACHMENT:

AN ORDINANCE IMPLEMENTING THE PROVISIONS OF THE STATE OFFICIALS AND EMPLOYEES ETHICS ACT (5 ILCS 430/1-1 ET SEQ.) IN THE VILLAGE OF DOWNERS GROVE

### RECOMMENDATION:

It is requested that the Village Council consider this matter at their workshop meeting of May 11, 2004.

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**STATE OFFICIALS AND EMPLOYEES ETHICS ACT**  
**(5 ILCS 430/1-1 ET SEQ.)**  
**Selected Sections from the Act**

*Selected sections of the Act have been attached for your reference. They are difficult to interpret as worded, and it must be remembered that "state employee" or other state referenced terms need to be converted into local government terms. The Act was written to apply to the state employees and officials and only applied to local governments through Section 70-5, which requires local ordinances that can be no less restrictive. It is **NOT** recommended that you attach these selected sections of the Act to your ordinance. They are being sent to you so that you know their content.*

**ARTICLE 70. GOVERNMENTAL ENTITIES**

**5 ILCS 430/70-5**

**§ 70-5. Adoption by governmental entities.**

(a) Within 6 months after the effective date of this Act, each governmental entity shall adopt an ordinance or resolution that regulates, in a manner no less restrictive than Section 5-15 and Article 10 of this Act, (i) the political activities of officers and employees of the governmental entity and (ii) the soliciting and accepting of gifts by and the offering and making of gifts to officers and employees of the governmental entity.

(b) Within 3 months after the effective date of this amendatory Act of the 93rd General Assembly, the Attorney General shall develop model ordinances and resolutions for the purpose of this Article. The Attorney General shall advise governmental entities on their contents and adoption.

(c) As used in this Article, (i) an "officer" means an elected or appointed official; regardless of whether the official is compensated, and (ii) an "employee" means a full-time, part-time, or contractual employee.

**ARTICLE 5. ETHICAL CONDUCT**

**5 ILCS 430/5-15**

**§ 5-15. Prohibited political activities.**

(a) State employees shall not intentionally perform any prohibited political activity during any compensated time (other than vacation, personal, or compensatory time off). State employees shall not intentionally misappropriate any State property or resources by

engaging in any prohibited political activity for the benefit of any campaign for elective office or any political organization.

(b) At no time shall any executive or legislative branch constitutional officer or any official, director, supervisor, or State employee intentionally misappropriate the services of any State employee by requiring that State employee to perform any prohibited political activity (i) as part of that employee's State duties, (ii) as a condition of State employment, or (iii) during any time off that is compensated by the State (such as vacation, personal, or compensatory time off).

(c) A State employee shall not be required at any time to participate in any prohibited political activity in consideration for that State employee being awarded any additional compensation or employee benefit, in the form of a salary adjustment, bonus, compensatory time off, continued employment, or otherwise.

(d) A State employee shall not be awarded any additional compensation or employee benefit, in the form of a salary adjustment, bonus, compensatory time off, continued employment, or otherwise, in consideration for the State employee's participation in any prohibited political activity.

(e) Nothing in this Section prohibits activities that are otherwise appropriate for a State employee to engage in as a part of his or her official State employment duties or activities that are undertaken by a State employee on a voluntary basis as permitted by law.

(f) No person either (i) in a position that is subject to recognized merit principles of public employment or (ii) in a position the salary for which is paid in whole or in part by federal funds and that is subject to the Federal Standards for a Merit System of Personnel Administration applicable to grant-in-aid programs, shall be denied or deprived of State employment or tenure solely because he or she is a member or an officer of a political committee, of a political party, or of a political organization or club.

## **ARTICLE 10. GIFT BAN**

### **5 ILCS 430/10-10**

#### **§ 10-10. Gift ban.**

Except as otherwise provided in this Article, no officer, member, or State employee shall intentionally solicit or accept any gift from any prohibited source or in violation of any federal or State statute, rule, or regulation. This ban applies to and includes the spouse of and immediate family living with the officer, member, or State employee. No prohibited source shall intentionally offer or make a gift that violates this Section.

**5 ILCS 430/10-15**

**§ 10-15. Gift ban; exceptions.**

The restriction in Section 10-10 does not apply to the following:

- (1) Opportunities, benefits, and services that are available on the same conditions as for the general public.
- (2) Anything for which the officer, member, or State employee pays the market value.
- (3) Any (i) contribution that is lawfully made under the Election Code or under this Act or (ii) activities associated with a fundraising event in support of a political organization or candidate.
- (4) Educational materials and missions. This exception may be further defined by rules adopted by the appropriate ethics commission or by the Auditor General for the Auditor General and employees of the Office of the Auditor General.
- (5) Travel expenses for a meeting to discuss State business. This exception may be further defined by rules adopted by the appropriate ethics commission or by the Auditor General for the Auditor General and employees of the Office of the Auditor General.
- (6) A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of the individual's spouse and the individual's fiance or fiancée.
- (7) Anything provided by an individual on the basis of a personal friendship unless the member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the member, officer, or employee and not because of the personal friendship.

In determining whether a gift is provided on the basis of personal friendship, the member, officer, or employee shall consider the circumstances under which the gift was offered, such as:

- (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals;

(ii) whether to the actual knowledge of the member, officer, or employee the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and

(iii) whether to the actual knowledge of the member, officer, or employee the individual who gave the gift also at the same time gave the same or similar gifts to other members, officers, or employees.

(8) Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared or (ii) catered. For the purposes of this Section, "catered" means food or refreshments that are purchased ready to eat and delivered by any means.

(9) Food, refreshments, lodging, transportation, and other benefits resulting from the outside business or employment activities (or outside activities that are not connected to the duties of the officer, member, or employee as an office holder or employee) of the officer, member, or employee, or the spouse of the officer, member, or employee, if the benefits have not been offered or enhanced because of the official position or employment of the officer, member, or employee, and are customarily provided to others in similar circumstances.

(10) Intra-governmental and inter-governmental gifts. For the purpose of this Act, "intra-governmental gift" means any gift given to a member, officer, or employee of a State agency from another member, officer, or employee of the same State agency; and "inter-governmental gift" means any gift given to a member, officer, or employee of a State agency, by a member, officer, or employee of another State agency, of a federal agency, or of any governmental entity.

(11) Bequests, inheritances, and other transfers at death.

(12) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.

Each of the exceptions listed in this Section is mutually exclusive and independent of one another.

## **5 ILCS 430/10-30**

### **§ 10-30. Gift ban; disposition of gifts.**

A member, officer, or employee does not violate this Act if the member, officer, or employee promptly takes reasonable action to return the prohibited gift to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501 (c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, renumbered, or succeeded.

## **5 ILCS 430/10-40**

### **§ 10-40. Gift ban; further restrictions.**

A State agency may adopt or maintain policies that are more restrictive than those set forth in this Article and may continue to follow any existing policies, statutes, or regulations that are more restrictive or are in addition to those set forth in this Article.

## **ARTICLE 50. PENALTIES**

### **5 ILCS 430/50-5**

#### **§ 50-5. Penalties.**

- (a) A person is guilty of a Class A misdemeanor if that person intentionally violates any provision of Section 5-15, 5-30, 5-40, or 5-45 or Article 15.
- (b) A person who intentionally violates any provision of Section 5-20, 5-35, 5- 50, or 5-55 is guilty of a business offense subject to a fine of at least \$1,001 and up to \$5,000.
- (c) A person who intentionally violates any provision of Article 10 is guilty of a business offense and subject to a fine of at least \$1,001 and up to \$5,000.
- (d) Any person who intentionally makes a false report alleging a violation of any provision of this Act to an ethics commission, an inspector general, the State Police, a State's Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor.
- (e) An ethics commission may levy an administrative fine of up to \$5,000 against any person who violates this Act, who intentionally obstructs or interferes with an investigation conducted under this Act by an inspector general, or who intentionally makes a false, frivolous, or bad faith allegation.
- (f) In addition to any other penalty that may apply, whether criminal or civil, a State employee who intentionally violates any provision of Section 5-15, 5- 20, 5-30, 5-35, 5-40, or 5-50, Article 10, Article 15, or Section 20-90 or 25- 90 is subject to discipline or discharge by the appropriate ultimate jurisdictional authority.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE IMPLEMENTING THE PROVISIONS OF THE STATE OFFICIALS AND EMPLOYEES ETHICS ACT (5 ILCS 430/1-1 ET SEQ.) IN THE VILLAGE OF DOWNERS GROVE**

**WHEREAS**, the Illinois General Assembly has enacted the State Officials and Employees Ethics Act, 5 ILCS 430/1-1 et seq., (“Act”) which is a comprehensive revision of the State statutes regulating ethical conduct, political activities and the solicitation and acceptance of gifts by State officials and employees; and

**WHEREAS**, pursuant to Section 70-5 of the Act (5 ILCS 430/70-5), all units of local government and school districts are required to adopt an ordinance or resolution regulating the political activities of, and the solicitation and acceptance of gifts by, their respective officers and employees, “in a manner no less restrictive” than the provisions of the Act, on or before May 19, 2004; and

**WHEREAS**, the Village desires to come into compliance with the provisions of the Act;

**NOW, THEREFORE, BE IT ORDAINED** by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by **shading**/underline; deletions by ~~strikeout~~):

**Section 1. That Section 1.30 is hereby amended to read as follows:**

**1.30 State Officials and Employees Ethics Act, Adopted.**

~~\_\_\_\_\_ Gift Ban Act.~~

~~\_\_\_\_\_ (a) The State Gift Ban Act (5 ILCS 425 et seq.) is hereby adopted as required by Section 83 of the Act (5 ILCS 425/83).~~

~~\_\_\_\_\_ (b) The solicitation or the acceptance of gifts prohibited to be solicited or accepted under the Act is prohibited by any elected or appointed official or any employee of the Village.~~

~~\_\_\_\_\_ (c) To the extent authorized by law and to the extent required by Section 35 of the Act (5 ILCS 425/35), the Village Attorney is appointed to serve as the "Ethics Officer" of the Village. The Ethics Officer's duties shall be as provided in Section 35 of the Act.~~

~~\_\_\_\_\_ (d) All complaints for violations of the Act and this Ordinance shall be filed with the State Legislative Ethics Commission (created by Section 45(a)(6) of the Act).~~

~~\_\_\_\_\_ (e) Any amendment to the State Gift Ban Act (5 ILCS 425/1 et seq.) that becomes effective after the passage of this Ordinance shall be incorporated into this Ordinance by reference and shall be~~

applicable to the solicitation and acceptance of gifts. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Ordinance by reference without formal action by the corporate authorities of the Village.

(f) If the Illinois Supreme Court declares the State Gift Ban Act (5 ILCS 425/1 et seq.) unconstitutional in its entirety, then this Ordinance shall be repealed as of the date that the Supreme Court's decision becomes final and not subject to any further appeals or rehearings. The Ordinance shall be deemed repealed without further action by the corporate authorities of the Village if the Act is found unconstitutional by the Illinois Supreme Court. If the Illinois Supreme Court declares part of the State Gift Ban Act (5 ILCS 425/1 et seq.) unconstitutional but upholds the constitutionality of the remainder of the Act or does not address the remainder of the Act, then the remainder of the Act as adopted by this Ordinance shall remain in full force and effect; however, that part of this Ordinance relating to the part of the Act found unconstitutional shall be deemed repealed without further action by the corporate authorities of the Village.

a. The regulations of Sections 5-15 (5 ILCS 430/5-15) and Article 10 (5 ILCS 430/10-10 through 10-40) of the State Officials and Employees Ethics Act, 5 ILCS 430/1-1 et seq., (hereinafter referred to as the "Act" in this Section) are hereby adopted by reference and made applicable to the officers and employees of the Village to the extent required by 5 ILCS 430/70-5.

b. The solicitation or acceptance of gifts prohibited to be solicited or accepted under the Act, by any officer or any employee of the Village, is hereby prohibited.

c. The offering or making of gifts prohibited to be offered or made to an officer or employee of the Village under the Act, is hereby prohibited.

d. The participation in political activities prohibited under the Act, by any officer or employee of the Village, is hereby prohibited.

e. For purposes of this Section, the terms "officer" and "employee" shall be defined as set forth in 5 ILCS 430/70-5(c).

f. The penalties for violations of this Section shall be the same as those penalties set forth in 5 ILCS 430/50-5 for similar violations of the Act to the extent allowed by law.

g. This Section does not repeal or otherwise amend or modify any existing ordinances or policies which regulate the conduct of Village officers and employees. To the extent that any such existing ordinances or policies are less restrictive than this Section, however, the provisions of this Section shall prevail in accordance with the provisions of 5 ILCS 430/70-5(a).

h. Any amendment to the Act that becomes effective after the effective date of this Section shall be incorporated into this Section by reference and shall be applicable to the solicitation, acceptance, offering and making of gifts and to prohibited political activities. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Section by reference without formal action by the corporate authorities of the Village.

i. If the Illinois Supreme Court declares the Act unconstitutional in its entirety, then this Section shall be repealed as of the date that the Illinois Supreme Court's decision becomes final and not subject to any further appeals or rehearings. This Section shall be deemed repealed without further action by the Corporate Authorities of the Village if the Act is found unconstitutional by the Illinois Supreme Court.

j. If the Illinois Supreme Court declares part of the Act unconstitutional but upholds the constitutionality of the remainder of the Act, or does not address the remainder of the Act, then the remainder of the Act as adopted by this Section shall remain in full force and effect; however, that part of this Section relating to the part of the Act found unconstitutional shall be deemed repealed without further action by the Corporate Authorities of the Village.

k. The Village Attorney shall be designated the Downers Grove Ethics Officer. It shall be the responsibility of the Ethics Officer to provide guidance to the officers and employees of the Village concerning the interpretation of and compliance with the provisions of this Ordinance and State law.

**Section 2.** That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are

hereby repealed.

**Section 3.** That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

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Mayor

Passed:

Published:

Attest:

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Village Clerk