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GRANT WOODS  
ATTORNEY GENERAL

March 7, 1997

Mr. Keith Kelly  
Director  
Arizona Department of Agriculture  
1688 West Adams  
Phoenix, AZ 85007

Re: I97-003 (R96-027)

Dear Director Kelly:

You have requested an opinion on whether the Arizona Department of Agriculture ("Department"), as part of an employee recognition program, can purchase awards and other items to recognize outstanding employee achievement. We conclude that the Department can institute such a program, provided that the awards purchased are of nominal value.

#### Background

The Department wishes to purchase awards for certain employees as part of an employee recognition program. Awards would be given in recognition of merit, length of service, and retirement from state service. We understand that the proposed awards are of nominal value, and include plaques, pen and pencil sets featuring the Department's logo, and other such mementos.

#### Analysis

State officers have only the authority that is expressly or impliedly granted by statute. *Haggard v. Industrial Comm'n*, 71 Ariz. 91, 99, 223 P.2d 915, 920 (1950). Pursuant to Arizona Revised Statutes Annotated ("A.R.S.") § 3-107, the Director of the Department has the general responsibility for the administration of the Department and is specifically responsible for the employment of Department staff. A.R.S. § 3-107(A)(10). The use of Department funds to recognize and encourage outstanding employee performance and length of service would appear to be a valid exercise of the Director's discretion, implied from this specific statutory authority.

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The Director's discretion, however, is limited by Article IX, Section 7 of the Arizona Constitution. This provision states:

Neither the State, nor any county, city, town, municipality, or other subdivision of the State shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the State by operation or provision of law.

The purpose of this provision, commonly known as the Gift Clause, is to prevent governmental bodies from depleting the public treasury by giving advantages to special interests or engaging in non-public enterprises. *Kromko v. Arizona Bd. of Regents*, 149 Ariz. 319, 320-21, 718 P.2d 478, 479-80 (1986); *Wistuber v. Paradise Valley Unified Sch. Dist.*, 141 Ariz. 346, 349, 687 P.2d 354, 357 (1984). Gift Clause prohibitions are not limited to the grant of public money; any donation or grant, by subsidy or otherwise, is prohibited. *City of Tempe v. Pilot Properties, Inc.*, 22 Ariz. App. 356, 527 P.2d 515 (1974).

To determine if there is a Gift Clause violation, Arizona courts apply the rule set forth in *Wistuber*, 141 Ariz. at 348-49, 687 P.2d at 356-57:

In *Wistuber*, the supreme court established the rule that a use of public money or property will not violate the Gift Clause if, taking a "panoptic" view of the transaction in question, a court concludes that (1) the use is for a public purpose, and (2) the value of the public money or property is not so much greater than the value of the benefit received by the public that the exchange of the one for the other is disproportionate. 141 Ariz. at 349, 687 P.2d at 357. See *Arizona Center*, 172 Ariz. at 367, 837 Ariz. at 169 (applying the *Wistuber* rule to receipt of consideration by the dispensing public entity). A use of public funds or property that meets both these criteria will not contravene the Gift Clause even though particular persons or organizations benefit specially from such use. See *Industrial Dev. Auth. of Pinal County v. Nelson*, 109 Ariz. 368, 373, 509 P.2d 705, 710 (1973).

*Maricopa County v. State of Arizona*, 220 Ariz. Adv. Rep. 77, 79 (App. 1996). Thus, under this authority, the expenditure of public funds to recognize and to motivate superior job performance or length of service by state employees does not violate the Gift Clause if giving the awards serves a public purpose and the value of the awards is not disproportionate to the value that the public derives from the Department's giving of such awards.

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Rewarding exemplary or long-term service by employees provides certain manifest benefits to the State. Recognizing outstanding job performance or a career milestone encourages further efforts by not only the recipient, but also from other employees. Such recognition may encourage efficiency and boost morale, and may decrease the rate of employee turnover. Recently, the Governor's Task Force on Rewards and Recognition concluded that state employee recognition programs improve the image and morale of state employees. Governor's Task Force on Rewards and Recognition, Final Report, November 25, 1992. The Task Force also concluded that funds expended on employee recognition "are saved later," presumably because of the encouragement of high levels of performance and long-term service. *Id.* Thus, we conclude that an employee awards program serves a public purpose.

To meet the second test set forth in *Wistuber*, the value of employee awards must be nominal or the award risks running afoul of the Gift Clause. The *Wistuber* court emphasized that even when the State receives valuable consideration, the Gift Clause "may still be violated if the value to be received by the public is far exceeded by the consideration being paid by the public." 141 Ariz. at 349, 687 P.2d at 357. While recognition awards do provide a benefit to the State, it is difficult to quantify the additional benefit gained by the awards because employees already owe their employment services to the State. Thus, prudence dictates that recognition awards are appropriate only if the value is nominal.

Our conclusion that nominal expenditures of public funds to promote a public purpose do not violate the Gift Clause is consistent with our earlier opinions. We previously opined that a school board may promote the public purpose of academic achievement by savings bond awards, provided the cost of the awards was nominal. Ariz. Att'y Gen. Op. I90-072. Similarly, we concluded that the maintenance of state park trails is a direct benefit to the public and that therefore giving maintenance volunteers a certificate and a souvenir patch paid for with a nominal amount of state funds did not violate the Gift Clause. Ariz. Att'y Gen. Op. I77-199.<sup>1</sup>

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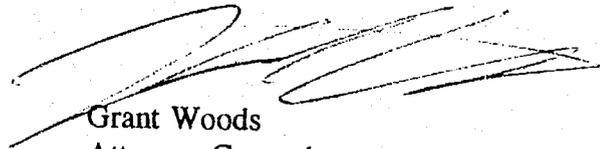
<sup>1</sup>Although we opined in 1954 that the State Hospital could not purchase pins for its employees in recognition of their length of service, our analysis and conclusion were not based on the Gift Clause. Ariz. Att'y Gen. Op. 54-124-L. Rather, the opinion concluded that the hospital could not make such purchases because the appropriation intended to be used was restricted to operational expenses "necessary for the running of the State Hospital to the exclusion of such items as personal services . . . ." *Id.* at 1 (emphasis added). Therefore, our conclusion was not based upon the Gift Clause, but instead upon the threshold issue of a legislative limitation on the expenditure of a particular appropriation. Similarly, in the instant matter, the Department must have available funds that are not restricted to use for another purpose in order to disburse funds for employee awards.

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Conclusion

A state employee awards program recognizing achievement, length of service, and retirement from state service provides a benefit to the public by encouraging efficiency and morale. Further, the value of this benefit would not be far exceeded by the expenditure of public funds, provided that the awards are of nominal value. Therefore, we conclude that the Department can institute an employee recognition program, and expend a nominal amount of public funds on plaques, pen and pencil sets bearing the Department's logo, and other such mementos, without violating the Gift Clause.

Sincerely,



Grant Woods  
Attorney General