



To: Chief Legal Counsel, Fiscal Officers of State Departments, Agencies, Boards, and Commissions

From: Quentin Potter, Chief Financial Officer 

Date: July 7, 2008

Subject: Governor's Executive Order 2007-09S, Limits on the Purchase of Food and Meals

First, on behalf of the Governor's Office, OBM and DAS let me thank you for your efforts in complying with the Governor's Executive Order 2007-09S. It is clear that the Order has been effective in reducing food costs within state agencies by millions of dollars. It is also clear that the Order is well understood and in almost all instances is being strictly enforced by state agencies in both spirit and action.

The purpose of this memorandum is to reinforce two areas of the Executive Order, which are now included in the updated Q&A document also attached:

- The EO does not permit the reimbursement to individuals or state agencies for lunches or dinners at certain events. There have been a growing number of requests for reimbursement that have been denied because they are for food at luncheons, award ceremonies, and/or banquet dinners. The Executive Order does not include these types of reimbursements as a permitted expenditure, and therefore, any reimbursement for such expense will be denied.
- The Executive Order permits, at 4.c.iv., use of federal funds "only if there is specific authority from the providing entity to use the federal funds to cover food expenses." There have been instances where this provision has not been interpreted correctly, sometimes resulting in a violation of the Executive Order. The following information defines 4.c.iv. of the Executive Order 2007-09S so that future violations are avoided.

The Executive Order, at 4.c.iv., is intended to provide a limited exemption from the Order that otherwise prohibits the purchase of food. It is narrowly defined such that a vast majority of federal funds do not qualify. The intent of this provision is to only allow federal funds if "there is specific authority". To be clear, this means that the specific authority must be contained in express terms in the conditions of the grant from the authorizing federal agency.

An example of specific authority exists for the Legal Rights Commission at 42CFR51.23: *REQUIREMENTS APPLICABLE TO THE PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS PROGRAM*, which in part reads: "(d) *Reimbursement of expenses. (1) Allotments may be used to pay for all or a part of the expenses incurred by members of the advisory council in order to participate in its activities. Expenses may include transportation costs, parking, **meals**, hotel costs, per diem expenses,*

stipends or subsistence allowances, and the cost of day care or child care (or its equivalent for the child's travel and subsistence expenses) for their dependents with mental illness or developmental disabilities."

The standard that needs to be met is not one of federal "permissibility" but of specific federal authority. Specific authority does **not** include, and therefore food expense **cannot** be made based on any of the following:

- General federal guidance from the federal government such as OMB Circular A-87 or general provisions contained in the Codes of Federal Regulation.
- Receiving a letter from a federal official that writes providing "permission" for such purchases of food or indicating that the cost is reimbursable.
- Grants where the state agency has submitted a grant budget indicating that grant money will be used for the purchase of food or meals.
- Or any other form of statement, that indicates food and meals are "allowable" under the grant, other than express terms in the grant.

In all such cases outlined above, the federal grant is considered discretionary. Discretionary federal funds fall under the Order's prohibition which includes all public funds including federal funds.

Meals may continue to be reimbursed for state travel approved by supervisors and conducted in accordance with OBM travel rules. Also, the Executive Order does not restrict non-state entities that have received funds from the state for operations at the local level.

Effective immediately, employees who violate, or allow other employees to violate EO 2007-09S shall be disciplined up to and including termination.

If there are any questions regarding the application of any of the provisions in the Executive Order, please refer them to me at quentin.potter@das.state.oh.us or call me at 614.644.9653.

C: Kent Markus, Governor's Chief Legal Counsel
Jan Allen, Cabinet Secretary to Governor Strickland