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Announcement by the *Bayerisches Staatsministerium der Finanzen und für Heimat* (Bavarian state ministry of finance and regional identity) on the *Verwaltungsvorschriften zum Beamtenrecht* (administrative regulation on laws on public servants – *VV-BeamtR*) dated 13 July 2009 (*FMBI*. p. 190, *StAnz.* no. 35), last amended by the official notification of 17 September 2021 (Bavarian Ministerial Gazette (*BayMBI.*) no. 718, no. 728)

3. Prohibition of the Acceptance of Gratification or Gifts by Employees of the Free State of Bavaria

3.1 Legal situation regarding public servants

3.1.1 General provisions

3.1.1.1

¹*Beamte* (public servants) must avoid giving any impression of being susceptible to taking personal advantages while carrying out their official duties. ²According to Section 42 of the *Beamtenstatusgesetz* (public servant status act – *BeamtStG*) public servants may only accept gratification or gifts in connection with their office with the approval of the competent authority, even after their employment with *Beamte* status has ended.

3.1.1.2

¹Any infringement of this provision by *Beamte* (public servants) constitutes a breach of duty (Section 47 (1) of the *BeamtStG*). ²Pursuant to Section 47 (2) sentence (1) of the *BeamtStG*, it is considered a breach of duty if retired or former public servants with income from pensions or benefits that are classified as *Versorgung* disobey the prohibition of accepting gratification or gifts with regard to their former office.

3.1.2 Legal consequences

3.1.2.1 Imprisonment or fine

¹*Beamte* (public servants) who accept, demand or accept the promise of an advantage in connection with acts that are related to their office and are not, as such, contrary to duty, become liable to prosecution due to the acceptance of benefits while carrying out official duties, which according to Section 331 of the German Criminal Code (*StGB*) is punishable by a fine or imprisonment of up to three years. ²If the act for which the public servant accepts, demands, or accepts the promise of an advantage is in some way contrary to duty, this constitutes corruption, for which Section 332 of the *StGB* stipulates imprisonment of between six months and five years; any attempt is also punishable.

3.1.2.2 Further legal consequences

Further legal consequences are stipulated in addition to fines or imprisonment, such as, for example, the objects obtained through the illegal act becoming the property of the state (confiscation, Sections 73 et seq. of the *StGB*).

¹If *Beamte* (public servants) are sentenced to imprisonment of one year or longer for accepting benefits or for corruption, then by act of law their *Beamte* status is revoked when the verdict comes into effect (Section 24 of the *BeamtStG*). ²This also applies if they are sentenced to imprisonment of at least six months for corruption, insofar as the act was performed in connection with the duties of their main office. ³If public servants have retired after committing the act, they lose their rights as retired public servants with the verdict coming into effect (Section 80 of the *Bayerisches Beamtenversorgungsgesetz* (Bavarian act governing pensions and benefits for *Beamte* (public servants) – *BayBeamtVG*)).

If a lesser penalty is imposed, disciplinary proceedings are usually carried out, potentially leading to removal from office for public servants and to the denial of pension payments for retired public servants.

Furthermore, public servants are held liable for the damage incurred due to their illegal and culpable act (Section 48 of the *BeamtStG*).

3.1.3

The following explains Section 42 of the *BeamtStG* in more detail:

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3.1.3.1

'Gratification' or 'gifts' within the meaning of Section 42 of the *BeamStG* are all non-paid benefits *Beamte* (public servants) are not lawfully entitled to and that objectively improve their material or immaterial situation (advantage).

A benefit is also deemed to be unpaid if services or goods are offered in return but are disproportionate in relation to the value of the service or goods offered to the public servant.

Such an advantage can lie in

- money payments,
- the provision of vouchers or objects (e.g. construction machines, vehicles) for private use,
- special discounts in private business interactions,
- the concession of rebates not generally granted to all members of the public service or general professional group that the public servant in question belongs to,
- the payment of disproportionately high compensation for private secondary employment – including authorised employment (e.g. expert reports, compiling accounting records),
- provision of free means of travel (holidays),
- provision of hospitality/catering,
- provision of accommodation,
- inclusion in a will and
- any other benefits of any kind.

It does not matter whether the benefit was granted directly or by a third party commissioned by the granter.

¹It has no bearing on the applicability of Section 42 of the *BeamStG* whether the public servant benefits directly or indirectly, for example through benefits granted to the public servant's family. ²The passing on of benefits to third parties, e.g. relatives, acquaintances, other employees or social institutions, does not 'justify' their acceptance; these cases, too, are subject to the approval of the competent authority.

3.1.3.2

¹A benefit is deemed to be granted 'with regard to their office' within the meaning of Section 42 of the *BeamStG* if the granter is guided in their actions by the fact that the respective *Beamter/Beamtin* (public servant) holds or has held a certain office. ²There need be no relation to any specific official act. ³The 'office' also includes all additional offices and any additional duties carried out at the supervisor's request, suggestion or instigation, or in connection with any secondary employment in connection with their official duties.

¹Benefits granted exclusively with regard to the public servant's relations within the private sphere are not deemed to be granted 'with regard to their office'. ²However, such relations must not be associated with expectations regarding their official duties. ³Public servants who become aware of such expectations being associated with personal relations may no longer accept benefits in this context. ⁴The obligation to inform their supervisor of attempts to exert influence on their official duties detailed in Point 3.1.3.3 also applies in this case.

3.1.3.3

¹Benefits subject to approval according to Section 42 of the *BeamStG* that are not to be deemed as tacitly approved according to Point 3.1.3.5 may only be accepted after obtaining the approval of the competent authority. ²If approval cannot be obtained in time, *Beamte* (public servants) may temporarily accept the benefit by way of exception but must seek approval without delay. ³If they are in doubt as to whether Section 42 of the *BeamStG* applies to the acceptance of a benefit or whether there is tacit approval, they must apply for approval pursuant to Section 42 of the *BeamStG*. ⁴Furthermore, they are obliged to inform their supervisor of any attempts to exert influence on their official duties through offering gifts or gratification.

3.1.3.4

¹Approval for the acceptance of a benefit may only be given if the circumstances of the case do not raise

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concerns that the acceptance could impede the objectivity of the *Beamter/Beamtin* (public servant) in carrying out their duties or could create the impression of bias in third parties who learn of the benefit. ²Approval may not be given particularly in situations in which an intention on the granter's part to influence the official duties becomes apparent or if there are doubts in this respect. ³Approval can be given on the condition that the benefit be passed on to social facilities, the employer, or another body, institution or foundation under public law; as a rule it will be advisable to inform the granter that the benefit is being passed on. ⁴Approval should be given in writing.

Approval by the relevant authority does not, however, rule out a possible criminal nature of the act if the benefit was demanded by the public servant or if it constitutes compensation for past or future acts contrary to duty.

3.1.3.5

The acceptance of gifts of low value as well as gifts from the colleagues of the *Beamter/Beamtin* (public servant) (e.g. on the occasion of an anniversary) within the normal scope of such gifts may generally be regarded as having tacit approval.

3.1.3.6

Subject to the provision in Point 3.1.3.8, the same applies to usual and appropriate provision of hospitality/catering at events of a general nature that *Beamte* (public servants) participate in as part of their official duties, on behalf of the employer, or which they participate in as a result of the social obligations imposed on them in the course of their official duties, e.g. inaugurations or discharges of public officials, official receptions, social events that serve the cultivation of official interests, anniversaries, cornerstone ceremonies, roofing ceremonies, dedications, exhibition openings, factory tours, and meetings of bodies of economic ventures that the public authorities are involved in.

3.1.3.7

Social representation of a public authority is limited to the authority's management and the employees whom it tasks with such duties.

3.1.3.8

¹Partaking in hospitality/catering as part of or on the occasion of official acts, meetings, viewings, or similar, that serve the preparation or execution of certain measures on the part of the administration may also be regarded as tacitly approved if they are based on rules of social conduct and politeness and which *Beamte* (public servants) cannot abstain from without committing a breach of etiquette.

²This also includes the acceptance of benefits that facilitate or expedite the execution of official business (e.g. picking up public servants at the railway station with a car).

3.2 Legal situation regarding employees without *Beamte* (public servant) status and trainees

3.2.1

¹Tariff employees of the public service (as opposed to public servants with *Beamte* status) may also only accept gratification or gifts with regard to their official duties with the approval of their employer; offers to that effect must be reported to the employer without delay and unrequested (cf. Section 3 (3) of the Collective Bargaining Agreement for the Public Service of the States – *TV-L*). ²The same applies to persons in training, for whom it is prohibited by legal regulations in collective bargaining agreements to accept gratification and gifts. ³Breaches of these duties can constitute important reasons for instant dismissal of the employee.

3.2.2

¹Inasmuch as the official duties of employees of the public service are concerned with public administration tasks, employees of the public service have the same status with regard to penal law as public servants. ²If they accept, demand or accept the promise of benefits in exchange for official acts, they are therefore punished according to Sections 331 and 332 of the German Criminal Code (*StGB*), the same as public servants. ³The same status with regard to penal law also applies to employees of the public service

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employed according to Section 1 of the Act on Obligations of Public Servants (*VerpflG*) or granted the same status according to Section 2 of the *VerpflG*; cf. Declaration of the Bavarian Ministry of Finance of 19 February 1975 Regarding the Implementation of the Obligation Law (*FMBI* p. 110, *StAnz* No. 9, last amended by the declaration of 29 December 1980, *FMBI* 1981 p. 56, *StAnz* 1981 No. 1/2).

3.2.3

The information under Point 3.1.2.2 on confiscation and liability also applies to employees without *Beamte* status and trainees.

3.2.4

The provisions of Point 3.1.3 apply accordingly in all matters governed by Section 3 (3) of the *TV-L* and related provisions.

3.3 Duties of the supervisor

3.3.1

¹*Beamte* (public servants), tariff employees, and trainees of the Free State of Bavaria are to be informed of their duties resulting from Section 42 of the *BeamtStG* or the relevant provisions from legally binding collective bargaining agreements. ²It is the responsibility of the supervisors to ensure that employees are informed of these duties at regular intervals.

3.3.2

¹Supervisors are to attempt to prevent any violations of Section 42 of the *BeamtStG* and Sections 331 to 334 of the *StGB* by employing appropriate organisation and personnel policies (e.g. personnel rotation, "two-person rule", unannounced checks). ²Employees whose financial situation is not stable are not to be employed in procurement or in posts in which they are in particular danger of exposure to undue influence from third parties.

3.4 Supplementary provisions

3.4.1

In coordination with the *Bayerisches Staatsministerium der Finanzen und für Heimat* (Bavarian state ministry of finance and regional identity), the highest administrative authorities may make supplementary provisions, especially in order to provide for special circumstances in their sectors or in individual administrative branches.

3.4.2

The highest administrative authorities are advised to order employees in certain areas of responsibility which are thought to be subject to particular risk (e.g. allocation, procurement) to report benefits received from the persons with whose matters they are concerned in writing.

Declaration

I hereby confirm that I have received a copy of and have knowledge of the above information sheet.

Place, date

Signature