



The Red Envelope

Ethical dilemmas can come in all sorts of packages

BY MICHAEL F. YOSHIBA

In order to have good luck and fortune and to combat evil spirits, Chinese tradition calls for red envelopes or red packets to be passed out around the Chinese New Year's celebrations. Red envelopes almost always contain money.

THE DILEMMA

In the early 1990's, I was a right of way agent assigned to an agency's RAP (Relocation Assistance Program) Department. My agency was set to construct a public works project, which required the acquisition of several properties, including the full take of a shopping center. The shopping center was in my assigned area, so I reviewed the files and scheduled the initial RAP presentations.

The shopping center had several retail tenants, including a 20,000 square foot Asian-food market that specialized in hard to find products. The market was owned and operated by Johnny and Sally, Chinese immigrants from Vietnam, who had five years remaining on their 10-year lease. Johnny and Sally shared their immigration story and American dream aspirations with me, emphasizing their hard work, honesty and perseverance. They had started out in this country by working at a small corner store in their community, saved enough money to buy that store from the previous owner, and eventually purchased the market. They turned what was once

a typical neighborhood supermarket into one primarily filled with Asian specialty food items that catered to a growing immigrant population.

I introduced the owners to the program's benefits, the claims reimbursement process, and offered to assist them in finding a new location for their business, assuring them that I would help them maximize their relocation benefits.

At the end of the presentation, I shook hands with the owners and moved toward the door. But before I could leave, Johnny reached into his jacket pocket and handed me a red envelope. He proudly declared, "It is customary and polite in my culture to give red envelopes to friends and family during the season surrounding the Chinese New Year. This helps to make sure that we both will have good luck this coming year." Unfamiliar with the custom of red envelopes, I placed it in my briefcase, thanked Johnny for his hospitality and got into my car.

Shortly after, an uncomfortable feeling overtook me. Was there actually something in the red envelope? I pulled it from my briefcase and opened it, revealing my worst professional nightmare – three, crisp \$100 bills! What were Johnny's intentions? Do I knock on the door and hand back the red envelope? Would that be insulting? Was this an illegal solicitation or bribe? I quickly realized I was in the middle of a



Michael is a shareholder in the Eminent Domain and Litigation Departments of the Los Angeles law firm, Richards, Watson & Gershon. He represents public entities and property owners in both litigation and advisory capacities through all phases of the pre-condemnation and condemnation process. Contact Michael at myoshiba@rwglaw.com

truly awkward clash of cultural, ethical and professional expectations.

I immediately called my office to advise my supervisor of the situation and to request guidance. Together, we decided that the best solution was to purchase a cashier's check for \$300, and to mail it via certified mail, along with a brief note indicating that agents cannot accept gifts, whether substantial or insignificant. I also made sure to note the incident in my parcel diary. Once the market submitted their RAP claims for reimbursement, the case file was closed. Johnny made no further mention of the red envelope.

CONDEMNATION PROCEEDING

A condemnation lawsuit proceeded alongside the right of way RAP process. The lawsuit found that Johnny and Sally disagreed with the agency over the amount of just compensation. The agency and the market conducted discovery, which included deposing me as the RAP agent. The case proceeded to trial, and I was made to testify at trial concerning my interactions and interviews with Johnny and his representations about his market's financial condition. The attorneys had no reason to

know about the red envelope situation, and I was not asked (nor did I volunteer) about that information during trial testimony.

The jury awarded a large damage amount to Johnny and Sally based in large part on Johnny's trial testimony. He was found by the jury to be honest, believable and credible. The jury verdict was significantly higher than the Agency's damage estimate. Would the jury verdict have been different if they had learned about the red envelope?

RIGHT OF WAY AND THE LAW

This situation highlights an ongoing problem regarding the nature and scope of appropriate communications between right of way agents and legal counsel. Knowing the other's job might be as important as knowing your own.

More times than not, the work of right of way agents is purposefully excluded when agencies plan, design and construct public projects. Agents are often retained as consultants, but only after the project is fully designed and construction bid packages are being prepared. Attorneys for the public agencies suffer the same fate as right of way agents and are also seldom

asked to provide input in the early stages of a public project.

It is unusual when agency attorneys are able to work actively and directly with the right of way agents during the early stages of planning for public projects. And attorneys rarely seek to interact with right of way agents when preparing for a condemnation trial. But the red envelope situation highlights why better communication is ultimately more cost effective. There was no reason for the attorney to assume that the owner had acted inappropriately by giving me a red envelope. And similarly, I had no reason to question whether the red envelope incident would be used in the condemnation case by my agency's attorneys. In the end, we could have been more effective if we had collaborated and shared our knowledge.

Would you have done something different as the right of way agent or as the attorney in this situation? I invite you to share your opinion and experiences at magazine@irwaonline.org. In upcoming issues of Right of Way Magazine, I will feature the interactions, and sometimes distractions, occurring within right of way and the legal profession. ☘



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