



Ethical Times

ETHICS LIGHTS THE WAY TO GOOD GOVERNMENT

'Tis the Season! Holiday Gift-Giving and Potential Conflicts of Interest

INSIDE

Holiday Gift-Giving	1
The Conflicts of Interest Board	2
COIB Bulletin Board	3

'Tis the season to be mindful of the Conflicts of Interest Board's gift rules

*(For more information on "Gifts," visit the **Publications** page or the **FAQ's** page at "Gifts and Honoraria," on the Board's Web site, nyc.gov/ethics.)*

Myth: City employees may not celebrate the holiday season with colleagues by exchanging gifts or attending parties. City employees may think that they cannot extend holiday cheer into the workplace, but this is a myth.

City employees may celebrate the season with their colleagues, but they must be careful, however, to follow the City's conflicts of interest law. This means that they cannot give or receive gifts or accept a holiday party invitation when it may appear that the gift or invitation could influence a City official.

The general rule is that City employees may not accept gifts valued at \$50 or more from persons or firms that are engaged in business dealings with or even intend to engage in business dealings with the City. A gift does not only mean a present; it also means meals and, in

some cases, travel expenses. Additionally, City employees must be especially careful not to create the appearance that they are accepting or giving gifts for financial gain or personal advantage. This applies even if the gift or meal is under \$50.

So, if you are a City employee, what does this really mean?

Generally, City employees may exchange gifts with one another so long as the value of the gift is minimal and it is not an attempt to gain a personal advantage. An employee may give a subordinate or supervisor an inexpensive

The NYC Conflicts of Interest Board will provide the full text of any document reported in this issue.

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The Conflicts of Interest Board: The Ethics Board for the City of New York

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The Conflicts of Interest Board is the ethics board for the City of New York and was created by the 1988 Charter revision as the successor to the former Board of Ethics, which had been in operation since 1959. The Conflicts of Interest Board is the independent, non-mayoral City agency charged with interpreting and enforcing the conflicts of interest law, found in Chapter 68 of the New York City Charter, and the City's financial disclosure law, set forth in section 12-110 of the New York City Administrative Code.

The Mayor, with the advice and consent of the City Council, appoints the Board's five members to staggered, six-year terms. Headed by an Executive Director, the Board's staff is divided into six units: Legal Advice, Training and Education, Financial Disclosure, Enforcement, Administration, and MIS. With limited exceptions, specifically spelled out in Chapter

68, the records of the Board are confidential.

The Board considers cases brought before it, issues opinions and orders, and imposes penalties for violation of the conflicts of interest law or financial disclosure law. On a daily basis, staff attorneys provide oral and written legal advice on those laws and prosecute violations.

Through November of this year, the Board answered 2,274 telephone requests for advice, received 645 written requests for advice, and issued 444 written opinions, consisting of 300 staff letters, 119 waivers and "(b)(2)" letters, and 25 Board letters, orders, and formal advisory opinions. An attorney staff letter responds to a written request about the legality or propriety of an activity for which there is precedent. A Board letter provides advice on a matter that has been decided by the full five-member Board. A formal advisory opinion expresses the view of the Board on new

questions or novel issues and is intended to provide sound and helpful advice regarding unprecedented situations. An order or waiver letter or (b)(2) letter of the Board permits activities that otherwise would be prohibited. A (b)(2) letter permits certain limited use of City time and resources for the activity. By law, only orders, waivers, (b)(2) letters, and formal advisory opinions are public; and under the Charter a formal advisory opinion must contain "such deletions as may be necessary to prevent disclosure of the identity of any public servant or other involved party." The Board's advisory opinions are available on Lexis and Westlaw, as well as on the Internet, at www.citylaw.org.

In enforcement, through November, the Board received 189 complaints, disposed of 155 cases, and imposed six fines, ranging from \$800 to \$8,000. Possible violations of the Charter come to the attention of the Board in a number of ways, including complaints, referrals from agencies, referrals from the Department of Investigation ("DOI"), and the media. Under the

desk calendar, but not a cashmere scarf.

Remember: Any time you give a gift to a fellow City employee it may create the appearance of a conflict. You must always be careful to think before you give.

Holiday parties are another way to celebrate the season.

Many City employees have contact with persons or firms that do business with the City. Are City employees allowed to accept holiday invitations from these people and firms?

There are a number of factors that should be taken into account when a City employee decides whether to attend a holiday party. Since the gift rule applies to meals and parties, the employee must find out what type of party is being held. If it is a black-tie dinner dance at a fancy hotel, for example, clearly the value of the meal would be more than \$50 and

the employee must decline. If, however, the party is a small gathering at a local catering hall where the food is a six-foot hero, the value of the meal would likely be under \$50 and the City employee could probably accept the invitation.

One other factor that City employees should consider, no matter what the monetary value of the invitation, is whether there would be the appearance of impropriety. Thus, if there is a holiday party invitation from the XYZ Corp. sitting on your desk right next to a contract with XYZ waiting for approval, you probably should not accept the invitation. If, however, you have worked with XYZ in the past and you have no business with them now and none on the horizon, you might be allowed to accept the invitation.

Some agencies have their own rules on gifts that

are stricter than the City conflicts of interest law. You should check your own agency's rules before giving or accepting a gift.

City employees should feel free to enjoy the holidays, as long as they follow the few simple rules discussed in this article. Always use common sense when exchanging gifts or accepting holiday invitations and be careful to consider what appearance exchanging gifts or accepting invitations may have. If you have any questions about what may or may not be appropriate for the holiday season, or if you need advice concerning any conflict of interest, contact the Conflicts of Interest Board at (212) 442-1400. All inquiries and communications will be kept confidential.

COIB Bulletin Board

The Conflicts of Interest Board's [Annual Report](#) for 2001 is published exclusively this year on the Board's Web site (nyc.gov/ethics). You may download a copy, in PDF, from the Board's **Publications** page.

Test Your Knowledge of New York City Ethics Law On-Line!

With its **Ethics Quiz**, the Board's Web site (nyc.gov/ethics) now offers interactive training. Learn or review conflicts of interest law situations by taking the ethics quiz. Help Oscar McFly, your average City guy, get through his ethically challenging day by deciding what he should or should not do when confronted with a conflict between his personal interests and responsibilities as a City employee.

All Conflicts of Interest Board [Advisory Opinions](#) (AO's) are now available in full-text searchable form on the Web site of the Center for New York City Law hosted by New York Law School. Since its creation in 1989, the Board has issued 197 advisory opinions, from 89-1 to 2002-1.

To review any AO, go to the City Law home page (www.citylaw.org) and select "advanced search," which links to the "New York City Administrative Decisions" page. There, select [Conflicts of Interest Board](#), and type "Advisory Opinions" in the [search request](#) box to retrieve the index of all AO's.

Or, go to the Conflicts of Interest Board's home page (nyc.gov/ethics), click on **Publications**, which takes you to the Board's Publications page where you will find a direct link to the "New York City Administrative Decisions" page on the City Law Web site.

Either way, it's quick and easy to review all 197 AO's, which can be downloaded and printed from your desk.



NYC CONFLICTS OF INTEREST BOARD

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Charter, the Board's enforcement cases are investigated by DOI, which issues a confidential report to the Board. Indeed, by law, enforcement proceedings are completely confidential unless and until the Board issues a final order finding that a public servant violated Chapter 68 or the public servant enters into a negotiated disposition by agreement. A summary of the Board's enforcement cases may be found on the publications page of the Board's website – <http://nyc.gov/ethics>.

The Training and Education Unit conducts interactive classes in the conflicts of interest law, free of charge, for any City agency that requests them. The Board is also a certified Continuing Legal Education ("CLE") provider and conducts training classes for attorneys, who receive CLE credit. Through November of this year, the Board conducted 247 training classes at 38 agencies, including 101 classes at the Department of Education. As a result of budget cuts, the Board's extensive library of publications is no longer available in hard copy, but may be downloaded from the publications page of the Board's website.

Finally, the Financial Disclosure Unit administers the City's Financial Disclosure Law for the 12,000 City employees who file annual financial disclosure forms with the Board. By law, the Board retains these re-

ports for six years before destroying them. Therefore, at any one time, the Board has about 72,000 reports on file, the filer's portion of which is available for public inspection. Each year, public servants who file their reports late pay about \$30,000 in late filing fines. Those who fail to file their reports, or who file them late but fail to pay the late fine, face penalties up to \$10,000 after a trial at the Office of Administrative Trials and Hearings and an order by the five-member Board. Since 1989 the Board has collected over \$410,000 in late fines.

The Board has often said that its primary purpose is to improve both the reality and the perception of integrity in City government by preventing conflicts of interest before they occur. The focus is thus on prevention, not punishment. For that reason, the Board encourages public servants to contact it by telephone, e-mail, or letter for legal advice on the propriety of their actions under the City's conflicts of interest law. The Board similarly encourages agencies to contact the Board (Les Taub, Director of Training and Education – taub@coib.nyc.gov) to arrange for Chapter 68 briefings, including CLE classes. To report a possible violation of the conflicts of interest law, one may call either the DOI hotline (212-825-5959) or the Inspector General for one's agency or the Board at 212-442-1400. All calls are confidential.

For additional information, see the Board's website at <http://nyc.gov/ethics>.