



GIETS AND HONORARIA

**By
Wayne G. Hawley
General Counsel**

A. Introduction

Public servants sometimes receive items of value or compensation from private individuals or entities who do business with the City. In many cases these "gifts and honoraria" create a conflict of interest with respect to the public servant's performance of his or her official duties. As a result, guidelines have been established to assist public servants in identifying which gifts and honoraria may be accepted. Following is an outline of the applicable sections of Chapter 68 of the New York City Charter, the Conflicts of Interest Board's Valuable Gift Rule, the City's honoraria guidelines, relevant advisory opinions, and enforcement case summaries.

B. Prohibited Gifts

1. What is a Gift?

Charter § 2604(b)(5) provides that no public servant shall accept any valuable gift, as defined in the Board's Rules, from a person or firm which the public servant knows is engaged in business dealings with the City, *except* gifts which are customary on family or social occasions. If a public servant receives such a gift, he or she must return the gift to the donor or, if that is impractical, report receipt of the gift to the inspector general of the Department of Investigation assigned to the public servant's agency, who shall determine the appropriate disposition of the gift.

"Valuable gift" is defined as any gift to a public servant with a value of \$50 or more in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form.¹ In Advisory Opinion Number 96-3, the Board held that a public servant may not avoid the restrictions of the Valuable Gift Rule by accepting a gift worth more than \$50 and then paying the donor the difference between the actual value of the gift and \$50. Thus, a public servant may not accept a gift over \$50, even if the public servant offers to pay for the portion of the gift which exceeds \$50.

Two or more gifts to a public servant are deemed to be a single gift for purposes of the Valuable Gift Rule if they are given to the public servant within a twelve-month period under one or

more of the following circumstances: (1) they are given by the same person; and /or (2) they are given by persons who the public servant knows or should know are (i) relatives or domestic partners of one another or (ii) are directors, trustees, or employees of the same firm or affiliated firms.² For example, a gift by one employee of a corporation in June and a gift by another employee of the corporation the following April are aggregated for purposes of determining whether the recipient of the gifts has violated the Valuable Gift Rule. The terms “relative,” “affiliated,” “firm,” and “domestic partner” are defined in the Valuable Gift Rule.

The Board has made clear, with respect to the “knowledge” element of the gift rule, not only that public servants may not accept valuable gifts from those whom they *should have known* had City business, but has stated that public servants have a duty to make a reasonable inquiry about the presence or absence of such business before accepting valuable gifts.³

2. Gifts that Conflict with Official Duties

Separate and apart from the gifts provision discussed above, solicitation of a gift and in some instances acceptance of a gift, even one under \$50 or one from a person or firm having no business dealings with the City, may violate the Charter’s ban on use of public office for private gain or the “catch-all” provision on engaging in conduct that conflicts with one’s official duties.

For example, Samuel Harvey, a Community Board member, solicited money from a local church, which had applied to the Community Board to obtain a City-owned vacant lot. Admitting that he violated Charter § 2604(b)(3) prohibiting use of his position to obtain financial gain, Harvey agreed to pay a fine to the Board.⁴ So, too, in Advisory Opinion Number 95-5, a fraternal association whose membership consists solely of City employees was advised that its members could not approach local merchants to solicit discounts because such solicitation would have been using their City positions to obtain special discounts which were not available to non-City employees or to all City employees.

By contrast, in Advisory Opinion Number 95-14, employees in a branch office of a City agency asked whether they could accept an offer of special banking privileges and incentives from a local bank. The privileges and incentives were also offered to other businesses and organizations located in the same geographic area as the branch office. The Board determined that the City employees could take advantage of this offer because it did not target City employees, and, in accepting the offer, the City employees would merely have been taking advantage of a business incentive offered to both City employees and private businesses.

Public servants must also avoid the appearance that a gift was received solely because of the public servant’s official City position, even if the gift was under \$50 or was given by a person or firm having no business dealings with the City. For example, in Advisory Opinion Number 92-10, an elected official requested an opinion as to whether he could accept the invitation of a firm which has no business dealings with the City to attend an event sponsored by the firm at a resort outside of

the state. The Board concluded that, in the absence of a governmental purpose, the elected official's acceptance of the trip might create the appearance that he received a valuable gift solely because of his official position.

In another advisory opinion (Number 92-23), an elected official asked whether he could accept from a common carrier two free tickets to an out-of-state destination. The tickets were presented to the official at a community event sponsored by a number of business organizations. The Board concluded that acceptance of the tickets could create the appearance that the elected official had received a valuable gift because of his official position, without promoting any governmental purpose.

In Advisory Opinion Number 94-12, a high-level public servant was advised that he must return a ceremonial sword presented to him by a restaurant and entertainment center after a ribbon cutting ceremony which he attended in his official capacity when the firm opened its sales and information center in Manhattan. The Board held that acceptance of the sword could create the appearance that the public servant received a valuable gift solely because of his official City position.

On the other hand, in Advisory Opinion Number 92-14, a not-for-profit trade association established scholarships to be awarded to children of employees of the New York City, Nassau County, and Suffolk County Police and Fire Departments. Some of the members of the trade association were subject to regulation by the Fire Department. Since precautions were taken to ensure that the scholarships were awarded based on objective criteria so as to avoid the appearance that the trade association was seeking to improperly influence the children's parents in the performance of their official duties, the Board held that it was not a violation of Chapter 68 for these children to compete for the scholarships.

C. Permitted Gifts

Subject to the restrictions in Charter §§ 2604(b)(2) and (b)(3), a public servant may accept gifts from persons or firms doing business with the City in certain circumstances.

1. Family and Social Occasions

Under Charter § 2604(b)(5) and Board Rules § 1-01(c), a public servant may accept gifts that are customary on family or social occasions from someone engaged in business dealings with the City, provided that (1) the reason for the gift is the family or personal relationship rather than the business dealings and (2) receipt of the gift would not result in an *appearance* of a conflict, specifically, an appearance of using one's office for private gain or giving preferential treatment to any person or entity or losing independence or impartiality or accepting gifts or favors for performing official duties.

In *Matter of Morello*,⁵ a City employee's personal friendship with gift givers (who were

principals of a vendor to the City and the vendor's subcontractor) did not insulate that employee from liability under section 2604(b)(5) for receiving valuable gifts. The City employee admitted that the controlling factor in his dealings with the gift givers was not personal friendship, but rather the business dealings with the City. Morello, a former Battalion Chief with the New York City Fire Department, accepted valuable gifts consisting of the use of a ski condo, meals, and Broadway tickets from the principals of the vendor and the subcontractor. Admitting his violation of section 2604(b)(5), Morello paid a \$6,000 fine to the Conflicts of Interest Board.

2. Awards and Plaques

Under Board Rules § 1-01(d), a public servant may accept awards or plaques when they are publicly presented in recognition of public service and are valued at less than \$150.

3. Meals and Refreshments

Under Board Rules § 1-01(e), a public servant may accept free meals or refreshments in the course of City business when offered during a meeting the public servant is attending for official reasons; or when offered at a company cafeteria or club where there is no public price structure and individual payment is impractical; or when a business meeting continues through normal meal hours in a restaurant and refusal to participate and/or individual payment is impractical; or when the free meals are provided at a meeting held at an out-of-the-way location, alternative facilities are unavailable, and individual payment is impractical; or when it is the customary business practice to hold a meeting over meals and for one party to pay for the other and payment by the public servant would be inappropriate, provided that (i) selection of the restaurant and meal conforms to customary business practice and (ii) the public servant, except in the case of an elected official, reports acceptance of the meals to his or her agency head on a monthly basis or to the deputy mayor if the public servant is an agency head; or when the public servant would not have otherwise purchased food or refreshments if not placed in such a situation while representing the interests of the City.

4. Attendance at Functions or Annual Events

Under Board Rules § 1-01(f), a public servant may accept meals while serving as a panelist or speaker in a professional or educational program, if the meal is available to all panelists. A public servant may also be present at a professional or educational program as a guest of the sponsoring organization; may be a guest at functions sponsored or encouraged by the City as a matter of City policy; may attend an annual public affair of an organization composed of representatives of business, labor, professions, news media, or organizations of a civic, charitable, or community nature, when invited by the sponsoring organization, *unless* the civic, charitable, or community organization has a business dealings with, or matters before, the public servant's agency; and may be a guest at any function or occasion when the employee's agency head, or a deputy mayor if the public servant is an agency head, gives written approval in advance, or within a reasonable time thereafter, that attendance of the public servant is in the interests of the City. (Effective January 14, 2001, "contracts with the public servant's agency" was changed to "business dealings, or matters before, the public servant's agency," as indicated above.)

In Advisory Opinion Number 94-23, a high-level public servant requested an opinion as to whether he could accept an invitation to attend an annual sporting event sponsored by a trade association. Although the association did not have business dealings with the City, several of its member firms conducted business with various City agencies, including the public servant's own agency. The Board determined that the public servant could attend the sporting event, since the public servant had been invited to attend the event by the association and since the association itself did not have any contracts or other business dealings with the public servant's agency.

Under Board Rules § 1-01(g), elected officials and members of their staffs may attend any function given by an organization composed of representatives of business, labor, professions, or news media, or organizations of a civic, charitable, or community nature, when invited by the sponsoring organization.

In Advisory Opinion Number 2000-4, the Board addressed a number of questions raised concerning gifts of tickets. The Board determined (1) that it would not violate Chapter 68 for an elected official or designated member of his or her staff to accept a gift of a ticket to an event, even where the sponsoring organization is funded by the elected official's office, regardless of the price of the ticket, **when attending in his or her official capacity** and when the conditions of Board Rules Section 1-01(f)(5) or 1-01(g) are met; (2) that in circumstances where the elected official or designated member of his or her staff has permissibly accepted a gift of a ticket to an event for his or her official use, it would likewise not violate Chapter 68 to accept **one** complimentary guest ticket, regardless of its value; (3) that it **would** violate Chapter 68 for a staff member of an elected official to receive for his or her **personal use** a gift of a ticket to an event, or gifts from the same donor of tickets to events over a 12 month period, with an aggregate value of \$50.00 or more, where the value is determined by their price to the public, **not** their price to the sponsoring organization; (4) that it **would** violate Chapter 68 for an elected official's office to accept a gift of a block of tickets with an aggregate value of \$50.00 or more to be distributed to staff for their personal use, regardless of the value of the individual tickets, unless there was a **City** purpose for the gift; (5) that it would not violate Chapter 68 for members of an elected official's staff to accept an offer to purchase with their own funds, for their personal use, tickets to events, where access to those tickets is limited and where they are provided access because of their public office, provided that, as noted above, the public servant did not affirmatively seek to purchase tickets, in which case, depending on the circumstances, such solicitation might violate Section 2604(b)(3), so that the public servant who does not first inquire of the Board acts at his or her own peril; and (6) that it would not violate Chapter 68 for an elected official's office to accept the gift of a block of tickets to a free event for the personal use of the office's staff, where access to such tickets is otherwise difficult and where the offer is made to the elected official's office because it is a public office, again provided, as noted above, that the public servant did not affirmatively seek the tickets, in which case, depending on the circumstances, such solicitation might violate Section 2604(b)(3), so that the public servant who does not first inquire of the Board acts at his or her own peril.

5. Payment for Travel-Related Expenses

Under Board Rules § 1-01(h), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City when the trip is for a City purpose and could properly be paid for with City funds; the travel arrangements are appropriate to the City purpose; and the trip is no longer than necessary to accomplish the City business. For public servants other than elected officials, the trip should be approved in writing and in advance by the agency head or by the deputy mayor if the public servant is an agency head.

In Advisory Opinion Number 92-19, the Acting Director of the Mayor's Office of Film, Theatre and Broadcasting asked the Board whether she could attend the 1992 Cannes Film Festival at the expense of three private entities. Two of the entities had business dealings with the City, and the other did not. The purpose of the trip was to encourage the production of films in New York City, which would generate several million dollars in economic activity. The Board held that the public servant could accept payment from the entities for this trip as a gift to the City.

6. Gifts to the City or for a City Purpose

The Board has held that, under particular circumstances, as set out by the Board, City agencies, as distinct from individual public servants, may accept gifts from private entities which are engaged in business dealings with the City. Thus, in Advisory Opinion Number 92-21, two City agencies sought the Board's opinion as to the propriety of soliciting or accepting gifts from the private sector to support agency programs and initiatives. The Board generally favors contributions to the City, but requires safeguards. Donors should be informed that giving gifts will not affect the bidding process or serve as a *quid pro quo*. Solicitation should be done by general appeal. Further, specific entities should not be targeted. Finally, "donation" staff should be separate from officials who make decisions on agency contracts.

In Advisory Opinion Number 95-27, the Board determined that a community board could solicit and accept donations from individuals and firms, provided that such fundraising efforts complied with the conditions imposed on agencies generally. Additionally, the Board opined that the community board should not solicit or accept donations from individuals, firms, or organizations which had matters pending before the community board; or which had matters where the community board's involvement was imminent; or where a fundraising solicitation would likely be perceived as a promise of special treatment in return for a contribution.

In Advisory Opinion Number 92-29, a public servant and his wife were involved in a serious motor vehicle accident. The employees of the public servant's agency wished to organize a fundraising dinner to solicit contributions from private firms that were engaged in a trade falling within the agency's jurisdiction. The Board held that funds could be raised from the private firms, but the funds should be collected by a third party not connected to the agency, the identities of the donors should not be revealed to the public servant or anyone at the agency, and a fundraising dinner should not be held.

In Advisory Opinion Number 92-33, a business entrepreneur offered a City agency a gift of entertainment opportunities at a facility owned or controlled by the donor. The gift would be awarded as part of an employee incentive program. The donor had extensive business dealings with the City and was involved in a project proposed for construction within the City. As a result, the donor and the agency were involved in extensive and controversial negotiations concerning the project. The Board held that the proposed gift would be *prohibited* under Chapter 68. Acceptance of the gift could create the appearance that the agency's future decisions on the donor's construction project were influenced by the donor's generosity.

In Advisory Opinion Number 94-4, a high-level public servant requested an opinion as to whether he could accept, as a gift to the City, a notebook computer given to him by a company which has business dealings with the City. The Board held that the public servant could accept the computer on behalf of the City because it was given to him during a conference he attended for official reasons, all conference attendees were given the same computer, and the gift could be of general use to the City. However, the agency was directed to send a letter to the donor stating that acceptance of the gift would not result in any preferential treatment for the company in its business dealings with the City.

In Advisory Opinion Number 94-9, two public servants were advised by the Board that they could accept, as gifts to the City, prizes they had won in random drawings which they had entered while attending conferences as part of their official duties. The Board noted that acceptance of such prizes as gifts to the City was not prohibited by Chapter 68, provided that the drawings were random (*i.e.*, open to all participants at the conference); the entrants were not comprised entirely of City employees; and the donor was put on notice, in writing, that acceptance of the prize would not result in preferential treatment for the donor in any present or future dealings with the City.

In Advisory Opinion No. 2002-1, on the subject of Mayor Bloomberg's personal financial interests, the Board noted that the *donor* of a gift to the City will not have "business dealings with the City" within the meaning of Chapter 68, except in unusual cases like the gift of an untested product. There, where Bloomberg L.P. had given several "Bloomberg terminals" to the City, with an accompanying pledge not to use the fact of that gift in its promotional material, the Board determined that the gift did not constitute business dealings.

Finally, in a comprehensive 24-page opinion, the Board in Advisory Opinion No. 2003-4 determined that, subject to certain safeguards, elected officials and indeed all public servants could solicit gifts to the City and to those not-for-profits corporations closely affiliated with City agencies and offices which had been "pre-cleared" by the Board. The safeguards imposed on such "fundraising for the City" are the following: 1) that a City official may not engage in direct, targeted solicitation of any prospective donor who the official knows or should know has a specific matter either currently pending or about to be pending before the City official or his or her agency and where it is within the legal authority or duties of the soliciting official to make, affect, or direct the outcome of the matter; 2) that all solicitations must make clear that the donor will receive no special access to City officials or preferential treatment as a result of a donation; and 3) that each City agency or office must twice a year file a public report with the Board setting forth certain

information concerning the gifts received during the reporting period, including the identity of the donor and the nature and approximate value of the gift received.

D. Compensation and Gratuities from Non-City Sources

Charter § 2604(b)(13) provides that no public servant shall receive compensation, except from the City, for performing any official duty or accept or receive any gratuity from any person whose interests may be affected by the public servant's official actions.

In 2001, two officials of the Department of Buildings were prosecuted for accepting gifts from expeditors. In *Hilton*, the defendant pleaded guilty to a misdemeanor violation of Chapter 68. In *Cox*, the defendant was convicted of the misdemeanor of receiving unlawful gratuities and of two felony counts of filing a false instrument, the instrument being his City financial disclosure form in which he failed to list the gifts.

In Advisory Opinion Number 95-28, a public servant requested an opinion as to whether he could accept an award of a watch, given to him in recognition of an act of heroism he performed in the course of his official duties. Since the award was made after the public servant had performed his act of heroism, he could not have been influenced by the incentive of an award in performing his official duties. In addition, the nature of the public servant's position was such that he would not have been able to use his position for the private advantage of anyone at the watch company, which had no business dealings with the City. Finally, neither the company nor its officials directly benefited from the public servant's actions. Thus, under the particular circumstances of the case, the Board determined that the public servant could accept this award.

E. Honoraria Guidelines

By memorandum dated August 11, 1989, the Mayor's Office established the following guidelines on acceptance of honoraria by City managers.

A City manager should not accept an honorarium or expenses for an appearance before any group when it might appear that the group or one of its members might receive favorable treatment as a consequence. For example, a public servant should not accept an honorarium from an organization that does business with the public servant's agency. Furthermore, a City manager should not accept an honorarium when it is not reasonably related to the services requested.

A City manager should not accept requests for paid speaking engagements so often that there is an appearance that the public servant is neglecting his or her official duties. He or she should not accept honoraria and expenses each calendar year in excess of 20% of his or her annual salary.

Senior City managers are encouraged to represent their agencies before civic, business, and other groups. A City manager, however, may not accept honoraria for speeches or appearances

made as part of his or her official duties. For example, no honorarium should be accepted if a manager speaks to a group on a matter related to the operations of his or her agency.

When a City manager makes a public appearance as part of his or her official duties, he or she may accept payment, on behalf of the City, for the reasonable and necessary expenses incurred as a result of the public appearance. The trip and acceptance of payment for expenses should be approved in advance and in writing by the head of the public servant's agency or by a deputy mayor.

The Conflicts of Interest Board should be consulted if the City manager is uncertain as to the propriety of accepting an honorarium and/or expenses for a particular speaking engagement.

The foregoing guidelines do not apply to teaching or lecturing, which, however, are nonetheless subject to Chapter 68 of the Charter. These matters are discussed in Chapter 4 ("Outside Activities").

In Advisory Opinion Number 91-4, an elected official asked whether it would be a violation of Chapter 68 to accept a \$500 honorarium for speaking at a meeting sponsored by a firm which, at the time of the speech, did not have business dealings with the City. The topic of the speech was related to the official's City duties, and the honorarium was sent a year after the elected official made the speech. By this time, the firm had numerous business dealings with several City agencies. The Board held that the elected official should not accept the honorarium to avoid creating the appearance that the honorarium was offered as a *quid pro quo* in return for the firm's getting City business.

In Advisory Opinion Number 94-29, employees of the Department of Health ("DOH") asked whether they could request that honoraria they receive for their speaking engagements or personal appearances be contributed directly to a particular not-for-profit corporation which works with DOH on many projects. The Board noted that City managers are generally prohibited from accepting honoraria from firms which have business dealings with the City or when they deliver speeches or make personal appearances as part of their official jobs. However, the Board determined that the employees in this case could request that the honoraria they were offered for speaking engagements or personal appearances be contributed directly to the not-for-profit, provided that the employees did not solicit payment of the honoraria; the amounts offered were reasonable and customary for similar speaking engagements and appearances; and the employees acted in accordance with the Board's guidelines concerning the solicitation of gifts, outlined in Advisory Opinion Number 92-21, as discussed above.

F. Additional Gift Rules

It must be emphasized that City agencies may have rules that are stricter than the rules set forth in Chapter 68 or general City guidelines, such as the Honoraria Guidelines. Agency rules, however, may not be less strict than those promulgated by the Board. Stricter agency rules are particularly common in the area of gifts and are encouraged. If an agency has rules which are

stricter than those of Chapter 68, the agency's rules apply.⁶

Furthermore, nothing in the Board's Valuable Gift Rule shall be deemed to authorize a public servant to act in violation of any applicable federal, state, or local law, rule, or regulation, including, but not limited to, the New York State Penal Law and Mayoral Executive Orders. Thus, for example, Mayoral Executive Order Number 16 of 1978, as amended, may require a public servant to report gifts and offers of gifts to the agency's inspector general, whether or not the gift is accepted or returned.

¹ Rules of the Conflicts of Interest Board ("Board Rules"), Vol. 12, Title 53, RULES OF THE CITY OF NEW YORK § 1-01(a).

² Board Rules § 1-01(a).

³ *Acceptance of Valuable Gift (Safir)*, COIB Case No. 99-115.

⁴ *Matter of Harvey*, COIB Case No. 97-368.

⁵ COIB Case No. 97-247.

⁶ See Board Rules § 1-01(j).

FOR ADDITIONAL INFORMATION, CONTACT

NEW YORK CITY CONFLICTS OF INTEREST BOARD
2 LAFAYETTE STREET, SUITE 1010
NEW YORK, NY 10007
212-442-1400 (TDD 212-442-1443)

OR VISIT THE BOARD'S WEB SITE AT

<http://nyc.gov/ethics>