

*Ethics lights the
way to good gov-
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The Ethical Times

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Quinn Haisley, Editor



Gifts Between City Employees

By
Phil Weitzman

Question: *I am good friends with a coworker at my City agency who is going through a rough time, and I would like to get him a nice gift to cheer him up. However, thanks to the Board's Valuable Gift Rule, I can only get my coworker a gift worth less than \$50, right?*

Answer: Good for you for knowing the Board's Valuable Gift Rule! If only your question were as easy as that, this column would be very short. But despite its name, the Valuable Gift Rule does not address your situation. In fact, this rule only prohibits City employees from accepting gifts worth \$50 or more from *entities doing or seeking to do business with the City*. Examples of such entities include private firms, not-for-profits, or lobbyists. City employees are not 'entities doing or seeking to do business with the City,' hence the \$50 Valuable Gift rule does not apply to your question.

However, there are conflicts of interest concerns if the person you want to give a gift to is your *boss* and not your coworker. First, it might seem that the Conflicts of Interest Law prohibition against financial relationships between supervisors and subordinates could come into play. However, gifts in themselves do not create the type of 'financial relationship' prohibited by this rule, as opposed to classic examples of financial relationships such as loans, co-ownership of a business or home, or selling goods or services.

Even so, there is one rule that could come into play *if* your friend is your supervisor, and that is the provision which says that City employees are not allowed to 'use their positions' to benefit themselves, their family members, or their financial associates. Because of all the power supervisors have over subordinates' work, there is significant risk that supervisors could use their positions to pressure subordinates for gifts.

To address this issue, the Board recently published guidance explaining that supervisors should only accept gifts from subordinates on the occasion of special life events, such as a wedding or the birth of a child. Even on those special occasions, the gift from the subordinate must be appropriate to the event (no diamond jewelry for the boss's baby shower), and it must be clear that the gift was given because of the event and not the supervisor's position (a supervisor who threatens bad evaluations for anyone who brings cheap gifts to his wedding is *not* off the hook).

For more frequent events, like birthdays or holidays, the Board says that "superiors may accept gifts of smaller value, in essence gifts where the 'thought of giving' has greater value than the gift itself." This means the boss can still participate in a Secret Santa gift exchange or accept a birthday cake from the office staff, although the office should probably follow the standard best practice of setting reasonable limits on gift values, capping the allowable donation where a collection is taking place, and not identifying who gave and who did not. And, as with any collection, participation should be voluntary, which means bosses should not be organizing collections for their own celebrations, so that no feels pressured to participate.

There's one last issue to discuss: what about gifts *from* the boss? Since subordinates have little if any leverage to pressure their bosses for gifts, the Board has held that gifts from a superior to a subordinate are unlikely to pose a conflicts of interest concern. So, if you are lucky enough to have a boss who wants to take her subordinates out for a group dinner, enjoy the meal! That being said, unusually frequent or extravagant giving on the boss' part could create at least the appearance of impropriety – for instance, by appearing to compromise subordinates' primary loyalty to the City. Supervisors should consult the Board for advice if they have any questions about what level of giving would be appropriate.

So, returning to your original question, if your friend is simply your coworker, the Conflicts of Interest Law poses no restrictions on your gift. If your friend *is* your boss, I doubt 'going through a rough time' would qualify as a life event that could justify a gift of any significant value, so buy a card instead. And if you supervise your friend, the law poses *almost* no restrictions, but be sensitive to any appearance of impropriety that could arise from excessive or unusual giving, and reach out for more advice if you're not sure what is OK.

To get more advice on this or any other Conflicts-of-Interest-related topic, please call the Conflicts of Interest Board at 212-442-1400 and ask for the "attorney of the day." All calls are confidential, and you can also call anonymously.

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Recent Enforcement Cases

▶ The Board and FDNY concluded a joint settlement with a Deputy Chief and the head of Haz-Mat Operations at FDNY who admitted to violating two separate provisions of the City's conflicts of interest law. First, the Deputy Chief admitted that he had accepted gifts from Lion Apparel, Inc., the manufacturer of a specialized protective suit worn by FDNY firefighters, in the form of meals and drinks on 17 occasions between June 2010 and April 2012, the total value of which was \$875.67. Second, the Deputy Chief admitted that he had solicited from Lion, a firm with which he regularly dealt as part of his official FDNY duties, a charitable donation for his sons' baseball team. Lion donated \$500. For these violations, the Deputy Chief agreed to pay a \$7,000 fine, \$5,500 of which was paid to the Board and \$1,500 to FDNY.

▶ The Board and FDNY concluded a joint settlement with a Lieutenant in the Haz-Mat Operations Unit at FDNY who admitted that he had accepted gifts from Lion Apparel, Inc., the manufacturer of a specialized protective suit worn by FDNY firefighters, in the form of meals and drinks on 14 occasions between May 2010 and May 2013, the total value of which was \$598. For these violations, the Lieutenant agreed to pay a \$750 fine to the Board and a \$750 fine to FDNY and forfeit 6 days of annual leave, valued at \$1,897.80, for a total financial penalty of \$3,397.80.

▶ The Board released a settlement it reached with the Senior Director of the Process and Information Management Department at NYCHA who admitted that, in September 2001, her husband on her behalf asked one of her subordinates to help with the installation of a new roof at her home and that, in October 2001, that subor-

dinate helped with the roof installation for approximately five and one-half hours, without being compensated. The Senior Director agreed to pay a \$1,250 fine for her violation.

▶ The Board and DHS jointly concluded a settlement with a Fraud Investigator who became involved in a motor vehicle accident while driving a DHS vehicle without authorization. The Fraud Investigator was off-duty at the time and was not authorized to drive the vehicle for personal purposes. As a penalty, the Fraud Investigator agreed to fully reimburse the agency for the cost to repair the damage to the vehicle—\$2,502.54—and to pay a \$500 fine to the Board.

▶ The Board and the Comptroller's Office concluded a settlement with the Director of the Community Action Center to resolve an agency disciplinary action that included two violations of the City's conflicts of interest law. First, the Director acknowledged that she had used her City position to address and resolve complaints on behalf of her block association, for which she was an active member and then its President. Second, the Director acknowledged that she had used an excessive amount of City time and City resources, including her Comptroller's Office computer and e-mail account, to perform work for a variety of not-for-profit organizations, such as the block association. For these violations and other conduct that does not implicate the City's conflicts of interest law, the Director agreed to retire from the Comptroller's Office on August 5, 2014, and forfeit annual leave valued at \$4,852.

Congratulations! to the winner of the Conflict of Interest Board's June Public Service Puzzler contest:

Andrea Fagin, an Assistant to the Agency Chief Contracting Officer at DCAS.

You can read Ms. Fagin's bio and get the details for the March Public Service Puzzler by clicking [here](#).

*Interested in more information?
Get in touch with COIB's Training & Education Unit to arrange a class in Chapter 68 for you and your staff.
Contact Alex Kipp, Director of Training, at kipp@coib.nyc.gov*

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