

Lobbyist Gift Restrictions in Chapter 68: Relevant Law and Board Rules

§2607. Gifts by lobbyists.

Complaints made pursuant to subchapter three of chapter two of title three of the administrative code shall be made, received, investigated and adjudicated in a manner consistent with investigation and adjudication of conflicts of interest pursuant to this chapter and chapter thirty-four.

RULES OF THE CITY OF NEW YORK

TITLE 53

§ 1-16 Prohibited Gifts From Lobbyists and Exceptions Thereto.

(a) Pursuant to Administrative Code § 3-225, no person require to be listed on a statement of registration pursuant to § 3-213(c)(1) of the Administrative Code shall offer or give a gift to any public servant.

(b) For purposes of this section:

(1) the persons required to be listed on a statement of registration pursuant to § 3-213(c)(1) of the Administrative Code include (i) the lobbyist, (ii) the spouse or domestic partner of the lobbyist, (iii) the unemancipated children of the lobbyist, and (iv) if the lobbyist in an organization, the officers or employees of such lobbyist who engage in any lobbying activities or who are employed in such lobbyist's division that engages in lobbying activities and the spouse or domestic partner and unemancipated children of such officers or employees;

(2) the term "lobbyist" shall have the same meaning as used in § 3-211 of the Administrative Code;

(3) the term "offer" shall include every (i) attempt or offer to give a gift, or (ii) attempt or offer to arrange for the making of a gift;

(4) The term "give" shall include every (i) tender of a gift, or (ii) action as an agent in the making of a gift, or (iii) arrangement for the making of a gift;

(5) the term "gift" shall include any gift which has any value whatsoever, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form.

(c) For purposes of Administrative Code § 3-225 and this section, the following gifts shall not be prohibited:

(1) *de minimis* promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an organization's name, logo, or message in a manner which promotes the organization's cause;

(2) gifts that are customary on family or social occasions from a family member or close personal friend, when it can be shown under all relevant circumstances that it is the family or personal relationship rather than the lobbying activity that is the controlling factor and the public servant's receipt of the gift would not result in or create the appearance of:

(i) using his or her office for private gain;

(ii) giving preferential treatment to any person or entity;

(iii) losing independence or impartiality; or

(iv) accepting gifts or favors for performing official duties;

(3) awards, plaques, and other similar items which are publicly presented in recognition of public service, provided that the item or items have no substantial resale value;

(4) free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances;

(i) when offered during a meeting which the public servant is attending for official reasons;

(ii) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical

(iii) when a meeting the public servant is attending for official

reasons begins in a business setting but continues through normal meal hours in a restaurant, and refusal to participate and/or individual payment would be impractical;

(iv) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical; or,

(v) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City;

(5) meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;

(6) invitation to attendance at professional or educational programs as a guest of the sponsoring organization;

(7) invitation to attendance at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;

(8) invitation to attendance at a 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;

(9) invitation to attendance by a public servant who is an elected official, a member of the elected official's staff authorized by the elected official, or a member of the central staff for the council authorized by the speaker of the council at a function given by 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;

(10) travel-related expenses from a private entity which is offered or given as a gift to the City rather than to the public servant, so long as: (i) the trip is for a City purpose and therefore could properly be paid for with City fund; (ii) the travel arrangements are appropriate for that purpose; and (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose;

(d) Nothing in this section shall be deemed to authorize a person required to be listed on a statement of registration pursuant to § 3-213(c)(1) of the Administrative Code to offer or give a gift to any public servant in violation of any other applicable federal, state or local law, rule or regulation, including but not limited to the New York State Lobbying Act.

Regulation of Lobbying

§ 3-211 of the Administrative Code

§ 3-211 **Definitions.** Whenever used in this subchapter, the following words and phrases shall be construed as defined in this section:

(a) The term "lobbyist" shall mean every person or organization retained, employed or designated by any client to engage in lobbying. The term "lobbyist" shall not include any officer or employee of the city of New York, the State of New York, any political subdivision of the State, or any public corporation, agency or commission, or the United States when discharging his or her official duties.

(b) The term "client" shall mean every person or organization who retains, employs or designates any person or organization to carry on lobbying activities on behalf of such client.

(c) (1) The term "lobbying" or "lobbying activities" shall mean any attempt to influence:

- (i) the passage or defeat of any local law or resolution by the city council,
- (ii) the approval or disapproval of any local law or resolution by the mayor,

(iii) any determination made by an elected city official or an officer or employee of the city with respect to the procurement of goods, services or construction, including the preparation of contract specifications, or the solicitation, award or administration of a contract, or with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies,

(iv) any determination made by the mayor, the city council, the city planning commission, a borough president, a borough board or a community board with respect to zoning or the use, development or improvement of real property subject to city regulation,

(v) any determination made by an elected city official or an officer or employee of the city with respect to the terms of the acquisition or disposition by the city of any interest in real property, with respect to a license or permit for the use of real property of or by the city, or with respect to a franchise, concession or revocable consent,

(vi) the adoption, amendment or rejection by an agency of any rule having the force and effect of law,

(vii) the outcome of any rate making proceeding before an agency, or

(viii) any determination of a board or commission.

(2) The definition of the term "lobbying" or "lobbying activities" shall not apply to any determination in an adjudicatory proceeding.

(3) The following person and organizations shall be deemed not to be engaged in "lobbying activities":

(i) persons engaged in advising clients, rendering opinions and drafting, in relation to proposed legislation, resolutions, rules, rates, or other proposed legislative, executive or administrative action, where such persons do not themselves engage in an attempt to influence such action;

(ii) newspapers and other periodicals and radio and television stations, and owners and employees thereof, provided that their activities are limited to the publication or broadcast of news items, editorials or other comment, or paid advertisements;

(iii) persons who participate as witnesses, attorneys or other representatives in public rule making or rate making proceedings of an

agency, with respect to all participation by such persons which is part of the public record thereof and all preparation by such persons for such participation;

(iv) persons who appear before an agency in an adjudicatory proceeding;

(v) persons who prepare or submit a response to a request for information or comments by the city council or one of its committees, the mayor, or other elected city official or an agency;

(vi) (A) contractors or prospective contractors who communicate with or appear before city contracting officers or employees in the regular course of procurement planning, contract development, the contractor selection process, the administration of a contract, or the audit of a contract, when such communications or appearances are made by such contractors or prospective contractors personally, or through;

1. such officers and employees of the contractors or prospective contractors who are charged with the performance of functions relating to contracts;

2. subcontractors or prospective subcontractors who are or will be engaged in the delivery of goods, services or construction pursuant to the contract of such officers and employees of the subcontractor or prospective subcontractor who are charged with the performance of functions relating to contracts; or

3. persons who provide technical or professional services, as defined in clause (B) of this subparagraph, on behalf of such contractor, prospective contractor, subcontractor or prospective subcontractor.

(B) For the purposes of clause (A) of this subparagraph:

1. "technical services" shall be limited to advice and analysis directly applying any engineering, scientific, or other similar technical discipline;

2. "professional services" shall be limited to advice and analysis directly applying any legal, accounting or other similar professional discipline in connection with the following elements of the procurement process only: dispute resolution, vendor protests, responsiveness, and responsibility determinations, determinations of prequalification, suspensions, debarments, objections to registration pursuant to section 328 of the charter, contract interpretation, negotiation of contract terms after the

award of a contract, defaults, the termination of contracts and audit of contracts. Any person who provides professional services pursuant to this subparagraph in connection with elements of the procurement process not specified above in this item, whether prior to, in connection with or after the award of a contract, shall be deemed to be engaged in lobbying activities, unless such person is deemed not to be engaged in lobbying activities, under another provision of this paragraph; and

3. "city contracting officers or employees" shall not include elected officials or deputies of elected officials or any person not duly authorized to enter into and administer contracts and make determinations with respect thereto; and

(vii) persons or organizations who advertise the availability of goods or services with fliers, leaflets or other advertising circulars.

(d) The term "organization" shall include any corporation, company, foundation, association, labor organization, firm, partnership, society, or joint stock company.

(e) The term "compensation" shall mean any salary, fee, gift, payment, subscription, loan, advance or any other thing of value paid, owed, given or promised by the client to the lobbyist for the purpose of lobbying.

(f) The term "expenditure" shall mean any expenses incurred by or reimbursed to the lobbyist for lobbying.