



# CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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## **Gifts**

### **Labor Union Conventions**

Charter Sections: 2604(b)(2), (b)(3), (b)(5), (b)(13), and (b)(14)

### **Advisory Opinion No. 2006-3**

The head of a City agency (the "Agency") has requested an opinion from the Conflicts of Interest Board ("the Board") concerning the implications of the conflicts of interest provisions of Chapter 68 of the City Charter for employees of the Agency attending certain labor union conventions. Specifically, the Agency head has sought advice on the issue of whether, and if so, when, Agency personnel may attend union conventions and accept complimentary meals, lodging, and other benefits without violating any provision of Chapter 68.

### **Background**

Many Agency employees are invited each year to attend the periodic conventions of the several labor unions that represent Agency employees. These conventions last up to a few days and are sometimes held in resort areas outside the City. The host unions have no dealings with

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the City other than their roles in representing City employees in the collective bargaining process.

Invitations to these conventions are issued by the unions to numerous City employees, including members of the host union, as well as other Agency employees, both unionized and non-unionized. The host union generally offers free hotel accommodations and meals, but typically does not pay for travel expenses.

The Agency authorizes several of its employees to attend these conventions on City time. These employees typically make presentations at the conventions on topics of concern to union members, topics within the area of responsibility of the presenting employees. The larger number of Agency employees, both union members and non-union members, attend the conventions on their own time.

Representatives of various vendors, including those that have contracts with the Agency, as well as others that contract with the host union, attend the conventions, where they make presentations, display and demonstrate products and services that may be of interest to the Agency and its employees, and provide funding for events that are part of the convention agenda and are open to all convention attendees. In addition, the vendors often staff booths at the conventions where they provide not only information concerning their products and services, but also free promotional hats, pins, t-shirts, coffee mugs, and the like.

The Agency head has requested the Board's advice in particular concerning the following:

1. Whether Agency employees may attend, at the union's expense, a convention held by their own union on their own time.

2. Whether Agency employees who are not members of the sponsoring union, and may indeed be the superiors or subordinates of the members of the host union, may attend a union convention, again on their own time but at union expense.
3. Whether Agency employees (union or non-union) may attend a union convention, at union expense, as part of their official duties on City time.
4. Whether Agency employees (union or non-union) who do attend a union convention may attend a cocktail party, dinner, or similar event sponsored by a City vendor.
5. Whether Agency employees, while attending a union convention, may accept free items such as t-shirts, coffee mugs, and the like offered by City vendors.

#### Relevant Law

Charter Section 2604(b)(2) prohibits a public servant from engaging in any business, or having any private interest, which conflicts with the proper discharge of his or her official duties.

Charter Section 2604(b)(3) prohibits a public servant from using his or her City position for his or her private advantage, or the private advantage of any person or firm with which he or she is associated.

Charter Section 2604(b)(5) prohibits a public servant from accepting a valuable gift from any person or firm which such public servant knows is or intends to become engaged in business dealings with the City (the “valuable gift rule”).

Board Rules Section 1-01(a) defines “valuable gift” as a gift with a value of \$50.00 or more, whether in the form of money, service, loan, travel, **entertainment, hospitality**, thing or

promise, or in any other form. Two or more gifts to a public servant shall be considered a single gift 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.

Board Rules Section 1-01(h) provides, however, that a public servant may accept payment of travel-related expenses, even from persons or entities doing or interested in doing business with the City, when (1) the trip is for a City purpose, and therefore could properly be paid for with City funds, (2) the travel arrangements are appropriate to that purpose, and (3) the trip is no longer than reasonably necessary to accomplish the business which is its purpose. It is recommended that such travel and such payment of expenses be approved in advance, and in writing, by the public servant's agency head.

In addition, Board Rules Section 1-01(f)(5) provides that a public servant may be a guest at any function or occasion where the attendance of the public servant has been approved in writing as in the interests of the City, in advance where practicable or within a reasonable time thereafter, by the employee's agency head or by a deputy mayor if the public servant is an agency head.

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

Charter Section 2604(b)(14) prohibits public servants from entering into business or financial relationships with their City superiors or subordinates.

## Discussion

### I. Attendance by a Union Member at His or Her Own Union's Convention

The provision of hospitality clearly falls within the definition of a valuable gift, which would be prohibited if given by an entity doing business with the City. See Board Rules Section 1-01(a). However, it is the Board's conclusion that a union's role as an agent of its City employee members for collective bargaining with the City does not, standing alone, constitute "business dealings with the City", for the purposes of Chapter 68. Thus, the provision of such benefits by one's union would not violate the valuable gift rule of Charter Section 2604(b)(5), even if the amount of the benefit exceeds \$50, since this provision prohibits only gifts from persons or firms engaged in such dealings. Accordingly, assuming the union does not have, and is not seeking, any other business dealings with the City, there is nothing in the conflicts of interest law or rules that would prohibit a City employee from attending his or her own union's conventions on his or her own time, even if that City employee receives free food and accommodation from the union.

### II. Attendance by City Employees at Conventions of Unions of Which They Are Not Members

As noted above, the Board has determined that a union's collective bargaining role, standing alone, does not constitute business dealings with the City. Thus, again as noted above, assuming the union is not doing or seeking to do any other business with the City, there is nothing in the conflicts of interest law or rules that would prohibit a City employee from attending the convention held by a union of which he or she is not a member, on his or her own time, and accepting free food and accommodation from that union.

Furthermore, the Board determines that such attendance, and the attendant complimentary invitation, are also permissible where the host union represents City employees who are the superiors or subordinates of the invitee. While Charter Section 2604(b)(14) forbids business or financial relationships between superiors and subordinates, the Board has never determined that a gift from one City employee (or his or her union) to another constitutes a “business or financial relationship.” That said, the Board nevertheless has viewed gifts between superiors and subordinates as possibly implicating the prohibitions against misuse of City office set forth in Charter Sections 2604(b)(2) and (b)(3), and thus examines such gifts (especially gifts from subordinates to superiors, where the possibility of coercion, whether actual or perceived, is greater) to determine whether the gift is reasonable under the circumstances. Here, absent any showing of coercion or other unusual circumstances, it is the Board’s view that attendance at the convention of a union representing a City employee’s superiors or subordinates, as a guest of that union, is not unreasonable and will accordingly not violate Chapter 68.

### III. Attendance at a Union Convention on City Time

It is permissible under Chapter 68 for any employee, union member or not, whom the Agency has authorized to attend a conference on City time, in connection with that person’s official duties, to attend at the expense of the host union. Because such attendance could be paid for by City funds, it is consistent with Board Rules for the agency head to approve such attendance on City time and also to approve the acceptance of free meals and lodging from the union, provided that the employee’s City duties to be performed at the conventions are delineated, and provided further that the travel arrangements, including meals and lodging, are

appropriate for the purpose of the trip and that the trip is no longer than reasonably necessary to accomplish its City purpose. See Board Rules Section 1-01(h).

#### IV. Attendance at Convention Events Sponsored by City Vendors

As noted above, it is not uncommon for certain vendors to make presentations at union conventions and to host cocktail receptions and dinners, open to all convention attendees as part of the convention program. Attendance by an Agency employee at a convention cocktail reception or dinner *which is part of the regular agenda for the convention* and is open to all attendees is viewed by the Board as a gift from the host union, not a gift by the vendor to individually targeted employees. Thus, if attending the convention is permissible under the guidelines set forth above, attendance at such events would not violate the valuable gifts prohibition of Chapter 68.

In contrast, it **would violate** Charter Section 2604(b)(5) for a City employee to accept an invitation from a vendor, extended to specific convention attendees, to attend, for example, a private dinner or golf outing worth more than \$50 particularly (but not only) if the event is held outside the regular convention agenda and/or away from the convention facilities.<sup>1</sup> The Board cautions that even if the employee in question has no dealings with the vendor as part of his or her City job, the employee who accepts such an invitation will have violated Charter Section 2604(b)(5) and Board Rules Section 1-01(a). Often the employee will not be able to

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<sup>1</sup> See, similarly, Opinion No. 61 (2005-06) of the New York Temporary State Commission on Lobbying, looking at events held during the time of national political conventions and underwritten by private sector sponsors and distinguishing between, on the one hand, attendance at events which are “part of the official program of the national convention” and, on the other, attendance at events which are not part of the program. The Commission explicitly rejected an argument that because the private sponsor of the latter sort of event could simply have made a contribution of the amount in question to the political party, which in turn could have paid for the event as part of the convention program, attendance at the off- agenda event would also fall within the exception to the gift ban.

determine in advance the per person price of the dinner (which will include food and beverage) or golf outing. In such case, the sensible course for the employee to follow would be to decline the invitation.

V. Other Gifts from Vendors to Employee

Acceptance of complimentary items offered at vendor booths, such as hats, t-shirts, and coffee mugs, will not violate Chapter 68, *provided* the **total** value received by an employee from any one vendor during any twelve-month period does not exceed \$50. Thus, acceptance of six t-shirts worth \$10 each from six different vendors with booths at a convention would not violate the law, because the value of the gift from **each** vendor would not exceed \$50. Conversely, if the employee is taken out to lunch three times during the course of the convention by the same vendor and the price of each lunch is \$20, or if the employee receives three \$20 t-shirts from the same vendor, the employee would have violated Chapter 68.

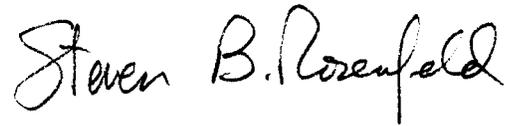
However, this advice is subject to the caveat that **no gift of any value** should be accepted if it is conditioned, expressly or by implication, upon the promise of future official action by the employee, or is given to reward the employee for having taken a particular course of official conduct. Such gifts may violate not only the Charter's prohibition against the receipt of gratuities for doing one's City job (see Charter Section 2604(b)(13)), but also various provisions of the State Penal Law. Indeed, even the offer of such a gift or gratuity must be reported to the Department of Investigation.

Summary

In summary, except in the special circumstances noted in paragraph 6 below,

1. City employees may attend their own union's conventions, on their own time, and receive free food and accommodation paid for by that union.
2. City employees may attend a convention of a union of which they are not members, on their own time, and receive free food and accommodation paid for by that union.
3. City employees who attend a union convention in connection with their official duties may attend the convention on City time and receive free food and accommodation paid for by that union, provided they have received prior approval from their Agency head or the Agency head's designee and otherwise meet the requirements of Board Rules Section 1-01(h) as to length of stay and appropriateness of the accommodations and meals.
4. City employees who attend union conventions may attend cocktail parties, dinners, and similar events which are part of the regular agenda of the convention and are open to all attendees, even if those events are sponsored by City vendors.
5. City employees may not accept any gift worth \$50.00 or more, or a series of gifts during any twelve-month period with a cumulative value of \$50.00 or more, from a City vendor while attending these conventions, including in particular invitations to private dinners or recreational events which are not part of the convention program, and also including the aggregate value of gifts of such items as hats, t-shirts, and coffee mugs.

6. Notwithstanding the foregoing, at no time may any City employee accept any benefit, no matter the value, in exchange for taking, or refraining from taking, some future action in his or her official capacity, or as a reward for having taken, or having refrained from taking, some official action.



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