



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

2 Lafayette Street, Suite 1010

New York, New York 10007

(212) 442-1400

Fax: (212) 442-1407 TDD: (212) 442-1443

Steven B. Rosenfeld
Chair-Board Member

Monica Blum
Board Member

Angela Mariana Freyre
Board Member

Andrew Irving
Board Member

Burton Lehman
Board Member

Mark Davies
Executive Director

Wayne G. Hawley
*Deputy Executive Director
& General Counsel*

Julia Davis
*Director of Financial
Disclosure & Litigation
Counsel*

Carolyn Lisa Miller
Director of Enforcement

Alexander Kipp
*Director of Training &
Education*

Ute O'Malley
*Director of
Administration*

Derick Yu
*Director of Information
Technology*

Receipt of Prizes and Awards

Charter Sections: 2604(b)(5), 2604(b)(13), 2604(e)

Board Rules: 1-01(a), 1-01(d)

Advisory Opinions: 95-28, 2005-1

Advisory Opinion No. 2010-2

The Conflicts of Interest Board (the "Board") received an inquiry from a City employee, asking whether he could accept the cash award associated with winning the Frederick O'Reilly Hayes Prize (the "Hayes Prize"). The Hayes Prize is one of several programs that make cash awards to City employees in recognition of their work for the City. The Board determined, pursuant to its waiver authority in Charter Section 2604(e), that it would not conflict with the purposes and interests of the City for the employee to accept this cash award and accordingly advised that he could accept it. The Board has also received a waiver request from Mayor Bloomberg regarding three other privately funded public service awards, each awarded for more than thirty years, stating his belief that these awards further the City's interests by recognizing its employees for their hard work and dedication. These awards are the Alfred P. Sloan Public

Visit our home page at <http://nyc.gov/ethics>

Service Award, the Isaac Liberman Public Service Award, and the E. Virgil Conway College Scholarship. Because the Board anticipates receiving similar requests in the future, the Board issues this public opinion to set forth the criteria it will apply in considering such requests.

I. Background

- 1) **Frederick O'Reilly Hayes Prize**: Established in 2005 by a group of private individuals, the Hayes Prize is designed to enhance the attractiveness of public service careers by recognizing innovative contributions to the delivery of public services by emerging leaders in New York City government. The Hayes Prize is awarded annually to an individual or team of up to four individuals and carries a cash award of up to \$7,500 for an individual and \$15,000 for a team. The Prize is named for the late Fred Hayes, who had a long career serving in and consulting to government, including service in the federal Office of Economic Opportunity and as Mayor Lindsay's first Budget Director. Since 2008, the Hayes Prize has been awarded, in partnership with the New York City Department of Administrative Services ("DCAS"), by a self-perpetuating committee composed of a representative of City government, former recipients of the Hayes Prize, and former colleagues of Fred Hayes. Recipients, who are nominated by individuals with knowledge of their work, have included employees of the Economic Development Corporation, the Department of Education, the Police Department, and the Department of Parks and Recreation.

Funding for the cash awards comes from annual fundraising conducted by and among former colleagues of Mr. Hayes. These individuals, who make up the prize committee, are people now in leadership positions in diverse fields, including health care, management consulting, publishing, philanthropy, and academia. The Fund for the City of New York (the “Fund”), a not-for-profit organization established in 1968 by the Ford Foundation to improve the quality of life of all New Yorkers, acts as the fiscal agent for the funds raised for the prize and pays the cash prize, but the Fund is not involved in the selection of the Hayes Prize recipients and does not contribute to the cash awards. The Fund has business dealings with the City.

- 2) **Alfred P. Sloan Public Service Award:** Since 1973, the Fund for the City of New York (again, the “Fund”) has recognized civil servants for extraordinary commitment to public service. In 1985, the Alfred P. Sloan Foundation (the “Foundation”) began to support the Fund’s efforts by including this award as part of its civic program, and the award has since been known as the Sloan Public Service Award. Founded in 1934, the Foundation is a philanthropic non-profit institution. The Foundation does not engage in business dealings with the City. Recipients of the Sloan Award are chosen by an independent panel of City residents selected for their standing in the community and knowledge of City government. Prize winners in the recent years have received a \$7,500 cash award. In recent years, public servants from such agencies as the Department of Education, the Office of the Chief Medical Examiner, and the Department of Sanitation have received the Sloan

Award in recognition of their outstanding work on behalf of the City of New York.

- 3) Isaac Liberman Public Service Award:** Established in 1958, the Isaac Liberman Public Service Award (the “Liberman Award”) of the Hundred Year Association of New York (the “Association”) recognizes City employees for dedication beyond their job description, improving efficiency and quality of City services, and enhancing the prestige of the City in the public eye. The Liberman Award is accompanied by a cash prize of between \$1,000 and \$6,000. Recipients must earn less than \$81,000 annually, and nominations must be endorsed by the nominee’s agency head. DCAS receives all nominations, reviews them for eligibility, and evaluates them. Winners are selected by a committee consisting of the DCAS Commissioner, two other City agency heads, and representatives of the Association. The Liberman Award is named for the founder of the Association, which is a broad-based membership organization of the City’s business, professional, educational, religious, and charitable organizations that are at least one hundred years old; the membership consists of a wide array of City businesses, professions, and non-profit institutions. The Association does not engage in business dealings with the City. The Liberman Awards are funded by the Association’s member organizations. In recent years, recipients have included employees of the Department of Health and Mental Hygiene and the Department of Small Business Services.

- 4) **E. Virgil Conway College Scholarship:** In 1971, the Hundred Year Association of New York (again, the “Association”) established the E. Virgil Conway College Scholarship program (the “Conway Scholarships”) to help academically qualified children of career City employees obtain a college education. Winners are selected based on scholastic achievement, leadership, commitment, and a record of school and community service. The Conway Scholarships range from \$1,000 to \$6,000. To be eligible, the child’s parent must be a permanent civil service employee and have a gross family income below \$110,000. DCAS receives all nominations and reviews them for eligibility; winners are selected by the same individuals who select the recipients of the Lieberman Award. Like the Lieberman Award, the Conway Scholarships are funded by the Association’s member organizations.

II. Relevant Law

Charter Section 2604(b)(5) states in relevant part that “[n]o public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city....”

Section 1-01(a) of the Rules of the Board states in relevant part that “[f]or the purposes of Charter Section 2604(b)(5), a ‘valuable gift’ means any gift to a public servant which has 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....”

Section 1-01(d) of the Rules of the Board states that “[f]or the purposes of Charter Section 2604(b)(5), a public servant may accept 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.*” (Emphasis added.)

Charter Section 2604(b)(13) states that “[n]o 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 action.”

Charter Section 2604(e) provides, however, that a public servant may hold a position or engage in conduct otherwise prohibited by Chapter 68 if the Board determines, after receiving the written approval of the head of the agency or agencies involved, that such position or conduct does not involve a conflict with the purposes and interests of the City.

In previous advisory opinions, the Board has discussed the application of these Charter sections to the receipt by public servants of prizes or awards in recognition of their City service and to payments to City employees from third parties for performing their City work.

In Advisory Opinion No. 95-28, the Board determined that it would not violate Chapter 68 for a public servant to accept an unsolicited award of a watch, given to him by a private watch company that *did not do business with the City*, in recognition of an act of heroism that he performed in the course of his official duties. The Board first noted that Charter Section 2604(b)(5), the ban on accepting valuable gifts from those doing business with the City, was not violated, since the watch company did not do business with the

City. Regarding Charter Section 2604(b)(13), the Board went on to note that “since neither the Company nor its officials benefited from the public servant’s official actions, the watch could not be considered ‘compensation’ or a ‘gratuity’ in violation of this section.” *See* Advisory Opinion No. 95-28 at 4.

In Advisory Opinion No. 2005-1, the Board considered the payment to certain City employees of a portion of their regular compensation for performing their City jobs from not-for-profit organizations closely affiliated with their City agencies. There, the Board determined that it *would* violate Charter Section 2604(b)(13), absent a waiver from the Board, “for City employees to receive compensation from any person or entity other than the City for performing their City work, whether such compensation is denominated overtime pay, a salary supplement, a bonus, or payment for consulting work.” *Id.* at 9. The Board noted, however, that its precedents stood for “the proposition that even conduct that appears on its face to be clearly prohibited by Charter Section 2604(b)(13), namely, the subsidizing of a City employee’s salary by a private entity, may in appropriate cases, on the written application of the agency head, be waived by the Board under the authority of Charter Section 2604(e),” the Board’s waiver authority. *Id.* at 5.

The Board stated in Advisory Opinion No. 2005-1 that it would consider applications for such waivers on a case-by-case basis, and would be inclined to grant such applications where the payment is from a not-for-profit closely affiliated with the employee’s City agency that “exists primarily (or exclusively) to provide support for the agency’s programs for the benefit of the public at large.” *Id.* at 7. Moreover, to support such a waiver, it must be shown that the payment is for “City work” performed at the direction of the agency head. Nevertheless, the Board cautioned, such waivers would not

be “routinely or easily granted”; rather, the Board would look to insure that such payments were being made to advance the City’s interests and not the personal or political interests of the City employee, the agency head, or the paying entity. *Id.* at 6-8. Thus, the Board listed several circumstances in which the Board would be less likely to grant such waivers, because they presented a conflict with the proper discharge of the public servant’s official duties, in violation of Charter Section 2604(b)(2). Among those were situations where, although ostensibly organized as an “affiliated” not-for-profit, the paying entity is in reality promoting private interests, not the purposes and interests of the City, or where the activities for which the public servant is being paid by the not-for-profit are not really “City work” but rather further other interests, such as (but not limited to) the public servant’s own political aspirations or those of the agency head. *Id.* at 8.

These considerations likewise informed the Board’s determination regarding the acceptance of the cash awards described above.

III. Discussion

As cash prizes worth several thousand dollars, the Hayes Prize, the Sloan and Liberman Awards, and the Conway Scholarships would clearly be prohibited “valuable gifts” within the meaning of Charter Section 2604(b)(5) and Board Rules Section 1-01(a) if they were determined to be given by a person who or firm that is engaged in business dealings with City. However, the Board need not determine whether these cash awards violate the “valuable gift” prohibition because it is the Board’s view that a public servant’s acceptance *from anyone* of a cash prize for performing his or her public duties would, absent a waiver from the Board, violate the Charter Section 2604(b)(13)

prohibition against accepting “compensation except from the [C]ity for performing any official duty.” Thus, receipt of any of these cash awards based upon outstanding performance of the prize-winner’s City service is permissible only with a waiver from the Board pursuant to Charter Section 2604(e).

In evaluating such waiver applications, the Board will look to see whether the prize in question “appears to be for the purpose of securing any private advantage” or is instead a disinterested effort to recognize and promote excellence in public service. *See* Opinion No. 2005-1 at 6. Consistent with that Opinion, the Board will consider the totality of the circumstances in evaluating the award or prize in question, including the following:

- The identity and nature of the person or entity presenting the award – in particular, whether the presenter is a firm, or an association of firms, that maintains business dealings with or matters before the City, especially if they are dealings with or matters before the recipient’s own agency.
- The identities of the recipients of the award, for example, whether the award appears to be targeted to a particular small group of City employees rather than to a broad range of City workers.
- The involvement of the City, whether by DCAS or the employing City agency, in the administration of the award and/or selection of the award recipients.
- The amount of the prize, including whether the amount varies depending on the identity of the recipient.

- The history of the prize, that is, whether there is a track record of apparent disinterested promotion of excellence in public service.

In granting a waiver to permit the City employee to accept the Hayes Prize, the Board noted that, in giving the required written approval, the public servant's agency head had stated his belief that the public servant's receipt of the Prize promoted the work of his City agency, that the Prize is supported by individuals from a diversity of professions who are by all appearances united only in their affection for their former mentor and colleague Fred Hayes and in their desire to promote public service, and that the Prize has been conferred on public servants from a wide range of City agencies. In addition, the City, through DCAS, the City agency responsible for promoting development of the City's workforce, is involved in the administration and selection process. Based on all of these factors, the Board determined that the Hayes Prize does not promote any private advantage of either the grantors of the Prize or its recipients, but rather seeks to promote the public good. The Board therefore determined that the public servant's receipt of this particular cash award would not conflict with the purposes and interests of the City.

Having determined that public servants must have waivers from the Board in order to accept cash prizes for performing City service, but having determined to grant such a waiver to this recipient of the Hayes Prize, the Board recognized that it would be a waste of the Board's and agencies' resources to require individualized waiver applications each time the Hayes Prize is awarded, provided that the facts upon which the Board based its decision remain substantially unchanged. Accordingly, the Board has

determined that individualized waiver applications will not be required each year for future recipients of the Hayes Prize, so long as the material facts regarding that Prize remain as set forth above.¹

Similarly, the Sloan and Liberman Awards and the Conway Scholarships are long-established awards that, like the Hayes Prize, have been presented by entities without ties to any particular donor firm or industry to employees from many different agencies of City government. The entities funding these awards have no City business dealings. Like the Hayes Prize, these awards appear not to be motivated by a desire to gain City business or otherwise receive any private advantage from the City, but rather by a disinterested desire to promote excellence in City service. Thus, based on the written application and approval of the Mayor, the Board determines that public servants may accept the Sloan and Liberman Awards and the Conway Scholarships without making individual waiver applications to the Board, again so long as the material facts regarding those prizes remain as set forth above.

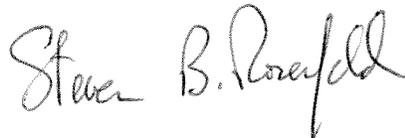
The Board would anticipate approving future requests for clearance of similar awards meeting the criteria set forth in this Advisory Opinion, and thus granting waivers to permit public servants to accept them, without requiring individualized applications with respect to future recipients. However, public servants offered cash awards for their public service that have not been pre-approved by the Board in this manner may not accept these prizes without making an individualized waiver application to the Board,

¹ Thus, for example, if DCAS (or an equivalent City agency) were no longer involved in the administration and selection of recipients of the Hayes Prize, then an individualized waiver application for a public servant's receipt of that award would again be necessary.

which the Board will consider on a case-by-case basis, applying the criteria set forth in this Opinion.

IV. Conclusion

A public servant may not accept a cash award in recognition of or in reward for his or her City service, absent a waiver from the Board, applying the criteria set forth in this Advisory Opinion. Waiver applications will, however, no longer be necessary for the Frederick O'Reilly Hayes Prize, the Alfred P. Sloan Public Service Award, the Isaac Liberman Public Service Award, or the E. Virgil Conway College Scholarship, provided that the facts surrounding the funding and awarding of these awards remain substantially as described above. The Board will consider waiver requests with respect to other cash prizes and awards on a case-by-case basis, on written application of the proposed recipient's agency head, and may in the future exempt other awards from the requirement of individualized waiver applications.



Steven B. Rosenfeld
Chair

Monica Blum
Angela Mariana Freyre
Andrew Irving
Burton Lehman

Dated: December 15, 2010