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Gifts Travel

Charter Sections: 2603(c)(2), 2604(b)(3), 2604(b)(5), 2606(b)

Opinions Cited: 92-10, 92-23, 2000-4

Advisory Opinion No. 2011-2

The Conflicts of Interest Board (the "Board") has recently received a number of requests for advice from high-ranking public servants asking whether, consistent with Chapter 68 of the City Charter, the City's conflicts of interest law, they may accept from a non-City source payment for the airfare and other expenses associated with proposed travel, most frequently travel abroad, represented to be undertaken for a "City purpose." Because the Board anticipates similar questions in the future, and because such expenses-paid travel by public servants is often a matter of public interest, the Board publishes this Opinion setting forth its advice in these matters.

We first set forth the relevant City Charter provisions and Board rules and summarize two prior Board opinions.

I. Relevant Law

Charter Section 2604(b)(3) prohibits a public servant from using or attempting to use “his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.”

Charter Section 2604(b)(5) provides 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, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.”

Section 1-01(a) of the Rules of the Board (codified as Title 53 of the Rules of the City of New York) defines “valuable gift,” as used in Section 2604(b)(5), as “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.” (Emphasis added.)

Board Rules Section 1-01(h) provides as follows:

- (1) For the purposes of Charter §2604(b)(5), a public servant’s acceptance of travel-related expenses from a private entity can be considered a gift to the City rather than to the public servant, when:
 - (i) the trip is for a City purpose and therefore could properly be paid for with City funds;
 - (ii) the travel arrangements are appropriate to that purpose; and
 - (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.
- (2) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefor be approved in advance and in

writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor.¹

In Advisory Opinion No. 92-10, an elected official requested an opinion as to whether he could accept the invitation of a firm that had no business dealings with the City to attend an event sponsored by the firm at a resort outside of New York State. Even though Section 2604(b)(5) was not applicable because the donor did not do business with the City, 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 violation of Charter Section 2604(b)(3).

In Advisory Opinion No. 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. Again citing Charter Section 2604(b)(3), 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.

II. Facts

The several requests for advice covered by this Opinion typically involved proposed trips to be taken by members of the City Council, other elected officials, or high-ranking appointed officials such as agency heads or senior employees of the Mayor's Office. With few exceptions, the trips – even those to far-off countries such as China and Israel – were of a week or less in duration. In some of these cases, the New York official

¹ Rule 1-01(h), adopted by the Board in 1990 in the first year of its existence, is modeled, virtually verbatim, on Advisory Opinion No. 651A (1989) of the Board of Ethics, the Board's predecessor entity.

had been invited to participate, as a speaker, panelist, or attendee, in a scheduled conference or symposium in the destination city or country – or to speak at or otherwise participate in a commemorative event – that was in some way related to the official's area of responsibility in City government. In many other cases, the New York public servant had been invited to join a delegation composed of public officials from other jurisdictions, or a combination of public officials and representatives of non-governmental organizations and/or private enterprises. In a very few cases, the New York official was intended to be the sole guest of the sponsoring entity or organization.

The detailed itineraries that, at the Board's request, now routinely accompany these requests for advice often (but not always) show the planned time abroad to be devoted to attendance at events surrounding a scheduled conference or commemoration, or to be filled with a mix of, on the one hand, attendance at substantive meetings with government officials in the host country and with representatives of the business community, academia, and the press, and/or inspections of local public or social service facilities, and, on the other hand, stops at sites of cultural and historic significance that would be on the agenda of most tourists.

The non-City entities offering to pay for these trips have ranged from foreign national and local governments, to American and foreign ethnic and cultural organizations interested in fostering closer relationships between the host countries and various major ethnic communities in New York, to the sponsors of the conferences or symposia to which the City official has been invited. Covered expenses typically include coach-class airfare, transport from place to place in the destination city or country, accommodations at first-

class hotels, and meals during the stay abroad, often including luncheons and dinners hosted by local organizations.

III. Discussion

A public servant's acceptance of a complimentary trip clearly constitutes a gift. If the payment for the complimentary trip is to be made by a person or firm engaged in business dealings with the City, Charter Section 2604(b)(5), and the above-quoted Board rules adopted thereunder, are expressly applicable. That Section expressly prohibits public servants from accepting trips from such persons or firms, with certain narrowly delineated exceptions, the relevant exception here being whether the trip can fairly be considered a "gift to the City" under the specific criteria set forth in Board Rules Section 1-01(h). Moreover, the Board has long held that acceptance of gifts of travel even from donors who do *not* engage in business dealings with the City may violate Charter Section 2604(b)(3)'s prohibition against use of one's position for personal gain or privilege if there is no apparent City purpose and "if the public servant is receiving the gift only because of his or her City position." *See COIB v. Markowitz*, COIB Case No. 2009-181 (2011) (*citing* Advisory Opinion Nos. 92-10 and 92-23, *supra*). Thus, when a public servant is offered a gift of travel, whether or not from a person or firm with City business dealings, the public servant risks violating Chapter 68 if he or she accepts the gift without first seeking the Board's advice.

In the cases summarized in this Advisory Opinion, the public servant represented that the proposed trip would serve a City purpose – in essence that the trip was a business trip and not a personal vacation – and supported that representation by presenting the Board with a detailed itinerary purporting to show that City purpose. In responding to

these requests for advice, whether or not the prospective donor of the trip had City business dealings, the Board's advice turned on Board Rules Section 1-01(h), which recognizes that in certain circumstances such offers may be accepted as permissible gifts to the City, rather than rejected as impermissible gifts to the public servant personally.

The first question to be asked in applying Rule 1-01(h) is whether "the trip is for a City purpose and therefore could properly be paid for with City funds." In many cases, the finding of a City purpose is not difficult. Thus, when City officials travel (as many high-ranking officials do with some frequency) to out-of-town (and, sometimes, out-of-country) conferences or commemorative events, to speak about City initiatives in which they have been involved and/or to attend sessions related to City concerns under their jurisdiction, such activities are clearly part of their official duties, and the cost of such trips could properly be (and sometimes actually is) paid for with City funds. These trips typically involve travel of little more than one or two days' duration, to and from a single city, namely, the site of a conference or event attended by numerous other individuals from a wide range of organizations and jurisdictions. In such cases, the trip's City purpose appears clear and the Board will approve payment from a non-City source, so long as the remaining requirements of Rule 1-01(h) are satisfied: the trip "is no longer than reasonably necessary to accomplish the business which is its purpose" (*i.e.*, it does not extend beyond the scheduled duration of the conference or event) and "the travel arrangements are appropriate to the purpose" (*i.e.*, the City official will be using the same class of travel and hotel accommodations as other attendees at the conference or event).

Other cases, however, including some of the proposed overseas trips described above, have presented the Board with more difficulty in determining whether Board Rules

Section 1-01(h) is fully satisfied. Unlike the trips to conferences, this out-of-country travel often involves an itinerary of four or more days' duration, featuring a series of stops at different locations throughout a particular country or region. As noted above, the itineraries typically mix appropriate substantive meetings with local government, business, and other leaders or visits to government or social service centers with activities indistinguishable from those that would mark any pleasure trip to the area.

In asserting the required "City purpose" for such tours, the traveling City officials cite such purposes as increasing their own knowledge and awareness of constituents' cultures, learning how other countries and cities deal with common municipal problems, exchanging ideas with other people dealing with such problems, and promoting commercial, civic, and cultural ties between New York City and the country in question.

In determining whether such overseas trips do in fact have a City purpose (and thus could properly be paid for with City funds, were they available), the Board has expected, and will continue to expect, that the written requests for advice contain at least the following:

- A detailed itinerary of the trip, including as complete a description as possible of all scheduled activities, and the anticipated travel and hotel accommodations, which will help the Board determine not only whether the trip has a City purpose but also whether its length and travel arrangements are appropriate to that purpose;
- An identification of the trip's sponsor and its reasons for offering to pay for the trip, including a description of any business dealings that the sponsor has with the City;

- A statement of the trip's City purpose, which must be reflected in the presented itinerary; and
- A statement of the cost of the trip to be borne by the trip's sponsor, again helpful to the Board in judging whether the travel arrangements are appropriate.

Finally, while Rule 1-01(h) simply *recommends* that appointed officials receive the prior, written approval of such travel from their agency head (or, in the case of agency heads, from the deputy mayor who oversees the agency), the Board expects to receive that written approval as part of the traveling official's request for its advice and will consider the presence or absence of such approval in reaching its determination of whether the trip serves a City purpose.

Based on its review of these materials, the Board will approve payment of the expenses of a public servant's trip only if the Board is satisfied (1) that the actual purpose of the trip is in fact the represented City purpose, and that the stated purpose is such that City funds could have been used to pay for the trip; (2) that the represented City purpose is reflected in the proposed itinerary; (3) that the activities shown on the itinerary that are in furtherance of that City purpose predominate over visits to typical tourist sites; and (4) as with the conference-related trips, that the length of the trip and the travel and hotel accommodations to be paid for are appropriate to the stated City purpose. But the Board has, and will, withhold its approval of payment for a trip where it appears from all of the submitted materials that the purported City purpose is simply a pretext for a paid vacation or the burnishing of a political image.

It is also important to note that the Board's approval of non-City payment for such trips is limited to the *costs to be incurred by the City official himself or herself*. The Board

has consistently held that the proposed underwriting by a third party of overseas travel by a public servant's guest (*e.g.*, a spouse) does *not* further any City purpose. As the Board stated in *Markowitz, supra*, “[p]aying for the company of one’s spouse on business trips abroad is plainly not an expense that can be paid for with City funds.” Thus, if public servants invited on such trips wish to be accompanied by family members or guests, they or their guests should expect to pay the guests’ full expenses.²

Finally, because the consideration of requests for advice regarding proposed travel may require the Board’s staff to pose follow-up questions, and time may be needed for deliberation, the Board *must* receive these requests for advice well in advance of the scheduled departure date. Under no circumstances will the Board answer such requests after the departure date, since the Board may render advice “only with respect to proposed *future* conduct.” *See* Charter Section 2603(c)(2) (emphasis added). If the Board’s advice has not been obtained prior to departure, the traveling official assumes the risk that his or her acceptance of a gift of travel may not conform to Chapter 68. If it does not, the official faces potential penalties up to \$25,000 per violation. *See* Charter Section 2606(b).³

IV. Conclusion

A public servant may accept a gift to cover the expenses of the public servant’s own travel (but not that of a spouse or guest) where the criteria of Board Rules Section 1-01(h) are satisfied, namely, that the trip is for a City purpose and might therefore be paid

² In contrast, the Board *has* approved public servants’ accepting *one* free “guest ticket” to one-time events *within the City* to which the public servant is invited in his or her official capacity, and where bringing a guest is customary. *See* Advisory Opinion 2000-4 at 11. Accepting such a free ticket to a local event is a far cry from accepting a free trip abroad for an accompanying spouse or guest.

³ Separate and apart from the requirements of the conflicts of interest provisions of Charter Chapter 68, Administrative Code Section 12-110(d)(8)(b) requires public servants who file annual financial disclosure reports with the Board to include in their reports payments or reimbursements of travel-related expenses of \$1,000 or more that are provided by non-governmental sources.

for with City funds, that the trip is no longer than is reasonably necessary for its City purpose, and that the travel arrangements are appropriate to the City purpose. Public servants who seek the Board's advice as to whether their acceptance of a gift of travel, especially travel abroad, will conform to the provisions of the City's conflicts of interest law must do so well in advance of their scheduled departure date. These requests for the Board's advice should include a detailed itinerary of the trip, reflecting the trip's City purpose; the identity of the trip's sponsor, including a description of any business dealings that the sponsor has with the City; a statement of the City purpose(s) of the trip; and a statement of the cost of the trip to be paid for by the non-City source. Finally, while Rule 1-01(h) simply *recommends* that appointed officials receive the prior, written approval of their travel from their agency head (or, in the case of agency heads, from their deputy mayor), the Board expects to receive that written approval as part of the official's request for advice, and will consider the presence or absence of such approval in reaching its determination of whether the trip serves a City purpose.



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