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Gifts: Raffle Prizes

Charter Sections: 2604(b)(3), 2604(b)(5), 2604(b)(13)

Opinions Cited: 94-9, 2010-2, 2011-2

Advisory Opinion No. 2012-3

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A public servant attended, in his official capacity, a dinner hosted by a professional association whose membership included some of his City colleagues as well as public employees from other jurisdictions who perform similar governmental functions. He received a complimentary ticket to the dinner from his City agency. The association hosting the dinner had no apparent business dealings with the City. At the dinner the public servant purchased, with his own personal funds, tickets to a raffle drawing. He won one of the raffle prizes, an iPad, the value of which clearly exceeded the \$50 “valuable gift” limit under the Board’s rules pertaining to gifts from persons or firms doing business with the City. The public servant sought the Board’s advice as to whether he could accept this prize for his personal use consistent with the conflicts of interest provisions of Chapter 68 of the City Charter.

The Board advised the public servant that, under the particular circumstances presented, he could accept the iPad for his personal use.

Because this advice represented a departure from some previous advice given to public servants in similar circumstances, the Board issues this Opinion to explain that result.

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) 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....”

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.”

In its Advisory Opinion No. 94-9, the Board advised that it would violate both Charter Section 2604(b)(3) and Section 2604(b)(5) for a public servant to accept for his personal use a \$100 compact disc player he won in a drawing he entered at a conference attended in his official

capacity. The drawing was conducted, and the prize was awarded, by a private firm that sponsored a booth at the conference. This firm had no City business dealings at the time of the drawing, but planned to respond to a request for proposals that the public servant's City agency would be issuing. The Board held that because it was "likely that the company which awarded him the compact disc player will bid on an RFP which will be issued by his agency . . . it would violate [the "valuable gift" rule] for him to accept the prize for his personal use." A.O. 94-9 at 3-4. However, the Board *also* concluded that, apart from the donor's intent to seek City business, it would violate Charter Section 2604(b)(3) for the public servant to accept the prize for personal use, because "[i]f a public servant attends a conference as part of his or her official duties and then personally accepts a prize won in a raffle at the conference, this could create a perception that the public servant is obtaining a personal gain as a result of his or her official position." *Id.* at 5. The Board advised that the gift could, however, be accepted as a "gift to the City" for use by the winner's agency. *Id.*

That reasoning informed several subsequent rulings by the Board. Thus, in several private advice letters prior to the instant case, the Board told public servants they could not accept, for their personal use (rather than as a gift to the City), prizes won in raffles or drawings at events they attended in their official capacities. Similarly, in Advisory Opinion No. 2010-2, considering several well-publicized programs that make cash awards to City employees in recognition of their work for the City, the Board determined 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.'" A.O. 2010-2 at 8-9. And in Advisory Opinion No. 2011-2, the Board reiterated its "long held" view that gifts of travel, even from

donors who do *not* engage in business dealings with the City, would violate Charter Section 2604(b)(3)...if there is no apparent City purpose [for the travel] and ‘if the public servant is receiving the gift only because of his or her City position.’” A.O. 2011-2 at 5.

Discussion

In the instant case, because the professional association that was offering the raffle prize did not have, and was not seeking, any City business, the “valuable gift” rule of Charter Section 2604(b)(5) was not at issue. Nor did the facts implicate Charter Section 2604(b)(13), which prohibits the acceptance of compensation other than from the City for performing one’s City duties, because there was no suggestion that the iPad was in any way awarded for the performance of the public servant’s City work; he had bought the raffle ticket with his personal funds, and the fact that he was a City public servant played no part in his winning.

Nevertheless, strict application of the conclusion reached in Opinion No. 94-9 would suggest that acceptance of the iPad by the public servant here for his personal use would, like acceptance of the CD player in that case, constitute a use of his City position in violation of Section 2604(b)(3). In both cases, the public servant was attending an event as a representative of his City agency, entered a seemingly random drawing, and won. Thus, it might appear in both cases that, because the public servants were present at the events only because they were City employees, they were, in the words of Opinion No. 2011-2, receiving the gift only because of their City positions.

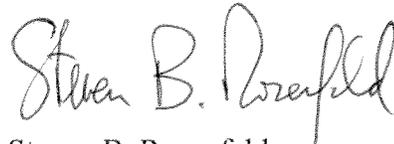
Upon reflection in the instant case, the Board concluded that prohibiting this public servant from accepting the iPad he won in a raffle he entered with his own money would take the reasoning of these Opinions too far. The fact that the public servant was present at the dinner in

his official capacity was not the reason he won the raffle prize; he purchased the raffle tickets with his personal funds. Nor was there any suggestion here that the professional association, in awarding the raffle prize, had any interest in the fact that the winner held a City position, or that it was in any way motivated by a desire to influence him in the exercise of his official duties. The members of the association who attended the dinner and were offered the opportunity to purchase raffle tickets were professional peers of the City employee, including public employees from other jurisdictions; neither the association nor its members had any economic interest in the work performed by the City employee who won the raffle. The Board accordingly concluded, based on the totality of the circumstances, that to accept the iPad for the public servant's own personal use would not be an impermissible "use of City position" in violation of Charter Section 2604(b)(3).

In future cases involving raffles, drawings and similar random prizes – *i.e., prizes that are not awarded in recognition of the recipient's performance of official duties* – the Board will permit the prize winner to accept the prize for personal use, so long as it appears, as it did in the instant case, that the public servant entered the raffle, or became eligible to win, by using personal funds where purchase of a raffle ticket is involved, and so long as it appears that the winner is not selected because of his or her City position. In particular, the Board will look closely, as it did here, to determine whether the prize donor has any economic interest in the work of the prize recipient. Moreover, the Board will continue to apply the "valuable gift" rule of Charter Section 2604(b)(5) to prohibit acceptance of prizes with a value of \$50.00 or more awarded by persons or firms that are, or are interested in, doing business with the City; public servants who win raffles or other prizes in such cases should therefore seek the Board's advice before accepting them.

Conclusion

It would not violate the conflicts of interest provisions of Chapter 68 of the City Charter for a City employee to accept for personal use a raffle prize won at an event attended as a representative of a City agency, so long as the donor of the prize is not doing, or interested in doing, business with the City, and provided that the public servant purchased the raffle tickets with personal funds, or otherwise became eligible to win for reasons unrelated to the employee's City position.



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