



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

Andrew Irving
Board Member

Burton Lehman
Board Member

Erika Thomas-Yuille
Board Member

Gifts of Admission to Sporting and Entertainment Events

Charter Sections: 2604(b)(5)

Opinions Cited: 2000-4, 2007-3

Advisory Opinion No. 2012-4

Mark Davies
Executive Director

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

Julia Davis
*Special Counsel &
Director of Financial
Disclosure*

Carolyn Lisa Miller
Director of Enforcement

Alex Kipp
*Director of Training &
Education*

Varuni Bhagwant
*Director of
Administration*

Derick Yu
*Director of Information
Technology*

In its Advisory Opinions Nos. 2000-4 and 2007-3, the Board addressed in considerable detail the receipt by City officials, and then the gift by lobbyists, of complimentary tickets to certain widely attended cultural events and fundraising functions. More recently, and with particular frequency in the last several months, the Board has received a number of requests for advice about the giving and accepting of free admission to popular sporting and entertainment events -- including one of the City's most prominent annual events, the United States Open Tennis Championships. In order to summarize the Board's responses to these requests for advice and to set forth the standards by which such offers of complimentary attendance to sporting and entertainment events will be evaluated, the Board issues this Advisory Opinion.

Background

Charter Section 2604(b)(5) prohibits public servants from receiving “any valuable gift, as defined by rule of the board” from persons or firms who have or are seeking business dealings with the City. Pursuant to this Charter mandate, the Board in 1990 adopted its Rule 1-01 (“Valuable Gifts”), which defines a “valuable gift” to be “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.” Rule 1-01(a) (emphasis added). Rule 1-01 also sets forth a number of circumstances in which the acceptance of gifts with a value of \$50.00 or more will be permissible, including, in Sections 1-01(f) and (g), complimentary attendance at certain events and functions. Thus, insofar as relevant here, Section 1-01(f) of the Board’s Rules permits a public servant to:

(4) attend 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, provided that this exception does not apply when the invitation is from an organization which has business dealings, as defined in Charter Section 2601(8), with, or a matter before, the public servant's agency;

or to:

(5) 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.

And Board Rules Section 1-01(g) provides that a public servant who is an elected official or a member of the elected official’s staff authorized by the elected official may attend 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.

In 2006, Local Law No. 16 added the proscription that lobbyists may not give gifts of *any value* to public servants of the City and assigned to the Board the responsibility for adopting rules defining prohibited gifts from lobbyists and exceptions thereto, directing that to the extent practicable such rules should be consistent with the Board’s rules and opinions on the receipt of valuable gifts by public servants. See Administrative Code Section 3-228. The Board accordingly adopted its Rule 1-16 (“Prohibited Gifts from Lobbyists and Exceptions Thereto”), effective January 26, 2007, which delineates circumstances in which gifts by lobbyists to public servants will not be prohibited, including, in particular, Sections 1-16(c)(8) and (9), permitting lobbyists to offer to public servants complimentary attendance at certain public events and functions, generally under the same circumstances as outlined in Board Rules Sections 1-01(f) and (g) set forth above. In addition to following the mandate of Local Law 16 to conform Rule 1-16 to its Rule 1-01 to the fullest extent possible, the Board has also striven to be consistent in interpreting the valuable gift ban of Charter Section 2604(b)(5) and the lobbyist gift ban of Administrative Code Section 3-225. See, e.g., Opinion No. 2007-3 at 5. And the Board has done likewise in giving the advice summarized in this Opinion regarding public servants’ free attendance at sporting and other entertainment events.

The starting point for such advice is the emphatic observation in both Opinion No. 2000-4 and Opinion No. 2007-3 that gifts of complimentary attendance to public events and functions may be given by lobbyists and accepted by public servants only where the public servant in

question is attending the event *in his or her official capacity*. See Opinion No. 2000-4 at 9 (“in all cases...the public servant...must of course be undertaking the activity in question **in the course of his or her official duties**”) (emphasis in original); Opinion No. 2007-3 at 10 (“unless a nexus exists between the public servant’s duties and the [event], ...providing free admission to a public servant for [the event] **would violate**” the law) (emphasis in original).

Advisory Opinion No. 2007-3 focused on public officials’ free attendance at fundraising events such as gala dinners, and exhibit openings, hosted by not-for-profit cultural organizations that were also registered as lobbyists. The Board wrote that it would be permissible for the sponsoring organizations to provide two complimentary tickets to such events to a public servant who would be attending “in his or her official capacity,” where attending such events would “provide[] City officials with the opportunity to learn more about the host organization and its unique issues and needs.” (Advisory Opinion No. 2007-3 at 10.) Although that Opinion thus did *not* involve offers of free attendance at popular sporting or entertainment events, the Board foreshadowed the questions presented here, noting in *dicta* the following:[P]ublic servants, even elected officials, are not entitled to receive complimentary tickets to any and every cultural event, performance, or sporting event in the City. For example, it is not, in the Board’s view, part of the official duties of most public servants to attend plays or mid-season football, baseball, or basketball games. It may, however, be part of the official duties of certain high-ranking officials to attend such special events as World Series games, the Tony and Grammy Awards, or Broadway opening nights that focus national attention on New York City and promote commerce and tourism. It may also be part of the official duties of a very small number of City employees (for example, a program officer at the Department of Cultural Affairs) to attend a certain number of “ordinary” performances or events of City-funded arts or cultural institutions, in order to assess the programming which City taxpayers are helping to underwrite.

(Advisory Opinion No. 2007-3 at 11.)

Having thus anticipated the question, the Board now provides specific guidance on when acceptance of complimentary attendance to sporting and other entertainment events is permissible.

Discussion

The Board was charged by Charter Section 2604(b)(5) to adopt the relevant rules specifying what would constitute prohibited “valuable gifts” that public servants may not receive and by Administrative Code Section 3-228 with specifying by rule what would constitute gifts that lobbyists may not offer to public servants. The question of gifts of complimentary attendance at sporting and other entertainment events thus calls for the Board to interpret its own rules. More particularly, it calls for interpretation of the exceptions set forth, as noted above, in Board Rules Sections 1-01(f) and (g) and 1-16(c)(8) and (9) on attendance at public affairs or functions. In this regard, the Board historically has taken a broad view of what kinds of events might qualify as “public affairs” or “functions or occasions” under the language of these rules. Likewise, it has adopted a generous interpretation of the phrase “organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature” in considering the organizations sponsoring such events. However, as noted above, the Board has consistently required that public servants may accept complimentary attendance to such events *only* when they are attending in their official capacities – *i.e.*, when there is some demonstrable nexus between the nature or location of the event and the public servant’s official duties.

This “official duties” requirement is especially relevant when considering public officials’ free attendance at popular sports events, concerts, Broadway plays, and the like – events for which tickets are often hard to come by and for which New Yorkers and visitors to the City often pay hundreds of dollars for a single admission. These are entertainment events, attendance at which is presumably as much a pleasure for public servants as for the others who attend. The Board will therefore look for objective evidence that public servants who purport to be attending such events in the course of their official duties are serving the public in some meaningful way.

In this regard, it is instructive to examine the approach of the State of New York to this issue. The operative State provision is Section 1-c(j) of the Legislative Law, which defines what constitutes a prohibited “gift” and the exceptions thereto. The relevant exception, set forth at Section 1-c(j)(ii), permits “complimentary attendance...[to] a widely attended event...[which] shall mean an event...which is related to the attendee’s duties or responsibilities or which allows the public official to perform a ceremonial function appropriate to his or her position.” As interpreted by the New York State Commission on Public Integrity (the “CPI”) ¹ in its Advisory Opinion No. 08-1, dated March 25, 2008, “events at which the activities are substantially recreational in nature shall not be considered to be for a public purpose or related to a State employee’s official duties.” *Id.* at n. 18. In order for complimentary attendance at entertainment or recreational events to satisfy the requirement of Section 1-c(j)(ii), the CPI required that the government official must be performing a “ceremonial function appropriate to his or her

¹ The Public Integrity Reform Act of 2011 (Ch. 399 of the Laws of 2011) established the Joint Commission on Public Ethics (“JCOPE”), which replaced the CPI, among other things. The Act, however, did not revoke or rescind advisory opinions issued by the CPI.

position.” Applying that decision, the CPI, on December 9, 2010, issued a Decision and Notice of Civil Assessment (the “Decision”) that imposed a \$62,125 fine on Governor David Paterson for, among other things, accepting from the New York Yankees a free ticket to Game One of the 2009 World Series at Yankee Stadium. In finding that Governor Paterson violated the law by accepting a free ticket to attend this game, the CPI determined that “the Governor did not perform a ceremonial function.” The Decision noted that Governor Paterson did not participate in the pre-game opening ceremonies and was not recognized during the public address announcement that identified the public officials in attendance. The Decision rejected Governor Paterson’s contention that attendance at such “high profile” events was part of his duties. See Decision at 12-13.

Similarly, the New York State Legislative Ethics Commission (the “LEC”), which provides advice to members and employees of the Legislature about compliance with the State’s ethics laws, issued its Generic Advice for Legislative Members, dated February 9, 2010, interpreting the “widely attended events” exception of Legislative Law Section 1-c(j)(ii). In that advisory, the LEC noted that attendance at events such as legislative receptions is within the scope of a legislator’s responsibilities, but distinguished these events “from those that serve predominantly as entertainment.” For entertainment events, absent a ceremonial role that would satisfy the requirement of the Legislative Law, “an invitation that would involve only viewing a professional sporting event, movie or show would not likely be acceptable under the widely attended event exemption.” In short, like the CPI, the LEC views a ceremonial role appropriate to the public official’s position to be necessary for the public official to accept a gift of complimentary tickets to a sporting or other entertainment event. Applying that standard in

August 2012, the LEC, it was widely reported, ruled that State legislators could *not* accept complimentary tickets to the 2012 US Open Tennis Championships. Sally Goldenberg, Advantage out: 'Open' shut to pols, New York Post, Aug. 13, 2012; Editorial, A Freebie Too Far, The New York Times, Aug. 15, 2012.

In evaluating the recent requests for advice about invitations to entertainment events, the Board has reached a similar conclusion. More particularly, in determining whether public servants would be attending a sporting or other entertainment event as part of their official duties, the Board has required that two criteria be satisfied: 1) there must be a clear and direct nexus between the public servant's official duties and the nature or location of the event, **and** 2) the public servant must in fact be performing some official function at the event. As to the first of these criteria, the Board would be hard-pressed, for example, to find a nexus between a World Series Game at Yankee Stadium and the official duties of any Borough President except the Bronx Borough President, or between the US Tennis Open and the duties of any Borough President except the Queens Borough President. Similarly for Members of the City Council, acceptance of complimentary attendance at sporting and entertainment events occurring outside their Council districts will be examined closely to determine whether there is indeed a clear and direct nexus between the Member's official duties and the event in question.

Even where there is a clear and direct nexus between a public servant's official duties and the event in question, the public servant must still be performing some official function at the event in order to justify a free ticket. One such official function, as the Board noted in Opinion No. 2007-3, would be the evaluative role that a small number of City employees, such as program officers of the Department of Cultural Affairs, perform when they attend performances

of cultural organizations funded by their City agency. Another appropriate official function, especially for high-ranking public servants, is active participation in a public ceremony, such as dedicating a new public arena or delivery of welcoming remarks at an Opening Day game or a session of the Tennis Open. But performing such a “ceremonial function” requires some kind of *active participation* in the ceremony; the mere acknowledgement in a public address announcement of the official’s presence at the event, even with an accompanying wave to the crowd from the public official, is not a sufficient ceremonial role. Nor does the Board accept the argument that merely attending to show the City’s support for an entertainment event that is of importance to the City’s economy and its cultural life constitutes performing an official function so as to permit the acceptance of free tickets.²

To illustrate the application of the foregoing determination to specific cases, the Board now summarizes the advice it has recently given:

1. Several Members of the City Council, as well as a Borough President, received invitations to attend sessions of a major annual sporting event and sought the Board’s advice as to whether they might accept these invitations. The Board first determined that there was a clear and direct nexus between their City positions and this event only for the Borough President in whose borough the event took place and for the Council Member in whose Council district the event took place.

² The Board is not presented with the question, and therefore does not decide here, whether attendance to “show the City’s colors” is a legitimate City purpose that would justify the expenditure of *City funds* for the purchase of tickets to entertainment events. Its decision here is limited to determining when official duties will be performed at entertainment events so as to justify the acceptance from a third party of a gift of complimentary attendance. The Board has not been presented with proposals by City officials to spend City funds for their attendance at entertainment events. If and when City officials seek the Board’s advice as to such proposed use of City funds, the Board will, pursuant to its mandate, advise accordingly.

Having found no sufficient nexus for the other Council Members, the Board advised them that accepting the complimentary tickets would violate the conflicts of interest law. Even as to the Borough President and the local Council Member, the Board advised that they must perform some specific ceremonial function at the event and, in this regard, advised that the role must be more substantial than simply being announced at the event and waving to the crowd in response to that announcement. The Board provided the same advice to a lobbyist that had extended the invitations – that is, that only the invitations to the Borough President and the local Council Member would be permissible and then only if those officials were to perform a specific ceremonial role at the event.

2. The Board also advised a Borough President who sought its advice about accepting a complimentary ticket to a major entertainment event in a new entertainment and sports facility in that official's borough. In this case, it was proposed that the Borough President would perform a ceremonial role at the opening night of this entertainment event. Because the Board found both that there was a clear nexus between the Borough President's official duties and this opening night event and that he would be performing a specific ceremonial role at the event, the Board advised the Borough President that he could accept a complimentary ticket from the event's sponsor and also that, if the sponsor offered a second complimentary ticket for a guest, he could accept that second ticket as well. See Advisory Opinion No. 2000-4 at 11.

3. In contrast, when a Borough President sought the Board's advice about accepting a complimentary ticket to a major entertainment event where the proposed ceremonial role was to take place at a reception to be held at the event facility in advance of the entertainment event, the Board advised that acceptance of a complimentary ticket to the entertainment event would not be permissible. While recognizing that there was a nexus between the Borough President's duties and the event in question, the Board observed that the ceremonial role was taking place at the reception, not at the event itself, and concluded that, while the proposed ceremonial role appeared to be sufficiently within the Borough President's official duties to permit acceptance of complimentary admission to the reception, it would not support complimentary tickets to the subsequent entertainment event.
4. A high-ranking law enforcement official sought the Board's advice about acceptance of complimentary tickets to the US Tennis Open. The official had been involved in the City's planning for and provision of security and emergency response services at the Open and informed the Board that his attendance would be in furtherance of that official function. The Board advised that while there was indeed a nexus between the official's City position and the security and emergency services for the event, no *official* function would be performed by his simply sitting in the stadium watching tennis matches. More particularly, the Board advised that the official could be present on the grounds of the Tennis Center and could accept any complimentary admission sufficient for, but limited

to, what was necessary for his observation and oversight of security and related services during the event, but that he could not accept a complimentary seat in the tennis stadium, since he would be performing no official function by merely viewing the matches.

5. The Board also advised an elected official who wished to accept a complimentary ticket to view a professional sporting event in the sponsor's enclosed suite at a sports facility outside of the City. The official advised that Board that the sponsor of the event was proposing to construct a new sporting facility at a location in the City served by the elected official that would be similar to the one outside the City and that the purpose of the public official's attendance at the out-of-town location was to help inform the official about such facilities and the events that took place there. The elected official would not only view the sporting event from the sponsor's suite, but would be served complimentary food and drink during the event. In response, while noting that touring the out-of-City sports facility, and even viewing a game there, might arguably be within the City official's duties, the Board nevertheless advised that it would violate Chapter 68 to accept complimentary attendance in the sponsor's suite, with accompanying food and drink, because any official function that the official might perform in inspecting the facility and even viewing an actual sporting event there did not require being entertained in the sponsor's box.

Conclusion

The receipt by City officials of complimentary attendance to sporting and other entertainment events and the corresponding gift by lobbyists of free admission to these events will be permissible only when *both* of two requirements are satisfied: first, there must be a clear and direct nexus between the public servant's official duties and the event; and second, the public servant must be performing some official function at the event. One example of such an official function is a specific ceremonial role at the event appropriate to the official's City position. But the mere public address announcement of the official's presence at the event and the official's acknowledgement of that announcement is not a ceremonial role sufficient to permit the gift or acceptance of complimentary admission to sporting or other entertainment events.



Steven B. Rosenfeld
Chair

Monica Blum
Andrew Irving
Burton Lehman
Erika Thomas-Yuille

Dated: November 26, 2012