



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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Gifts

Commercial Discounts-Hotel Rates, Car Rentals, Cellular Telephone Plans

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

Opinions Cited: 2000-4

Advisory Opinion No. 2006-04

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The Conflicts of Interest Board (“the Board”) has been asked whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, a City employee travelling for personal reasons is permitted to accept discounted rates offered by hotels to all government employees after the employee has disclosed to the hotel management that he or she is not on official business.

Background

It appears that several of the nation’s largest hotel chains offer reduced rates to government employees, and that such discounts are prevalent throughout the travel industry. While such discounts are occasionally restricted to government employees traveling on official business, they are often extended to all government employees regardless

of the purpose of their travel. Such discounts for government employees are not limited to hotels, but are also extended by vendors such as car rental agencies and cellular phone companies. While the price reductions in question vary in size and availability, they are often substantial and well in excess of the \$50 definition of a “valuable gift” under the rules of this Board.

These vendors often do business with the City, and for purposes of this Opinion, are presumed to do so regularly.

Applicable Law

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.

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.

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

Discussion

In its Advisory Opinion No. 2000-4, discussing discounts made available to all City employees by organizations producing public events, the Board noted that “where the generalized nature of the gift will in all likelihood mean that no Chapter 68 violation has occurred is when a gift is extended to all City employees.” Opinion No. 2000-4, footnote 8. Although the Board has not yet had the opportunity to apply this standard to the discounts offered by many hotel chains to government employees, the New York State Ethics Commission and the federal Office of Government Ethics have already done so.¹

In evaluating discount offers made by hotels to State employees, the New York State Ethics Commission noted:

“Where a discount is made available broadly to all State employees and the offeror’s purpose is merely to solicit a large group of potential customers, there is no realistic possibility that the offeror is seeking to influence any governmental decision or to reward any employee for any official action . . . If, knowing that an employee is traveling on personal business, a hotel chooses to extend a discount as part of its standard practice, the State’s ethics law are not offended.” See Advisory Opinion No. 05-01 of the New York State Ethics Commission (March 28, 2005).

Similarly, the Code of Federal Regulations (“C.F.R.”) codifies an exemption for widely available discounts, specifying that the term “gift” does not include “opportunities and benefits, including favorable rates and commercial discounts, available to the public or to *a class consisting of all Government employees* or all uniformed military personnel, whether or not restricted on the basis of geographic considerations.” See 5 C.F.R § 2635.203(b)(4) (2006) (emphasis added). Subsequent informal opinions from the Office of Government Ethics have clarified the extent of the exemption and its underlying rationale. See Office of Government

Ethics Informal Opinion Letter 94x19 (1994) (noting “[i]n order for the exclusion at 5 C.F.R § 2635.203(b)(4) to apply, the discount must be offered to all Federal employees.”); Office of Government Ethics Informal Opinion Letter 85x13 (1985) (“When the offer of the discount is made to a class as large and diverse as all Government employees, there is little likelihood that the offeror is seeking to gain influence or to supplement employees’ salaries.”).

Accordingly, while hotel discounts offered to City employees on personal travel would often have a monetary value greater than or equal to the \$50.00 threshold specified for a “valuable gift” as defined by the City Charter (see Board Rules Section 1-01(a)), acceptance of such a discount is not necessarily prohibited by Chapter 68. If the discount is available to all government employees (and not, for example, only to those likely to be able to influence or affect City business with the vendor), if it is not specifically solicited by the public servant, and if it is extended after the City employee has disclosed to the staff of the hotel or other vendor that he or she is traveling on personal business, acceptance of such a discount will not violate Chapter 68. In such instances, the discount is not being offered with any intention of influencing governmental action, but instead may be more accurately labeled an attempt “to solicit a large group of potential customers.” See Advisory Opinion No. 05-01 of the New York State Ethics Commission (2005). Nor is the public servant using his or her City position to gain a personal advantage, or acting in a manner that conflicts with the proper discharge of his or her official duties.

¹ See also Conflict of Interest Opinion EC-COI-95-5 (Mass. State Ethics Commission 1995) (permitting City employees to accept a “government rate offer” from a cellular telephone carrier where the discount plan was made available to all City employees and was therefore “broad-based and uniform”).

However, this advice is subject to the caveat that, prior to accepting any discount offered by a hotel or similar vendor, a City employee must first disclose that he or she is on personal business and must verify that the discount is generally available to government employees, whether or not on official business. This is because an unstated inference that the public servant may in fact be on official business would create at least an appearance, if not the reality, of using the employee's position to gain a personal advantage.

Conclusion

A City employee may accept a discount offered to government employees by a hotel chain, a car rental agency, a cellular service provider, or other similar vendor, for the City employee's private use, where the discount is available generally to all government employees and the vendor has been made aware that the City employee is not on official City business.



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Dated: July 28, 2006

2006-255ao/wh/bf