

Advisory Opinion No. 92-33

A high-level appointed official has requested an opinion as to whether, consistent with Chapter 68 of the City Charter, a City agency could accept a gift for use as an award in that agency's employee incentive program.

A business entrepreneur (the "Donor") has offered the agency a gift consisting of entertainment opportunities at a facility owned or controlled by the Donor. These entertainment opportunities would then be awarded to individual agency employees who are being recognized for outstanding performance through an employee incentive program. The actual recipients would be selected from such employees by raffle or by lottery, in conjunction with events scheduled as part of the incentive program. The approximate value of each entertainment opportunity was estimated at \$300-\$500.

In addition to any other business dealings which the Donor might have with the City, an organization the Donor controls has business dealings with the subject agency, as the operator of certain public facilities. The agency has offered to exclude certain employees who

are

responsible for these business dealings from eligibility for the gift, in an effort to prevent any conflict of interest.

The Donor also has business dealings with the subject agency in connection with a project which has been proposed for construction within the City. The Donor and the agency have been engaged in extended negotiations concerning this project, which will likely lead to an ongoing contractual relationship between the Donor and the agency.

For the reasons set forth below, it is the opinion of the Board that, under the special circumstances of this case, it would be a violation of Chapter 68 of the City Charter for the agency to accept the proposed gift from the Donor.

#### Proposed Gift

As noted above, the Donor has ongoing business dealings with the subject agency.

If offered directly to an individual public servant, the Donor's proposed gift would be prohibited under Chapter 68 of the City Charter. Charter Section

2604(b)(5) provides that a public servant may not accept a valuable gift, as defined by rule of the Board, from a person or firm which such public servant knows is or intends to become engaged in business dealings with the

City, except for acceptance of a gift which is customary on family or social occasions. The Board, in turn, has defined a "valuable gift" 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." Rules of the Board, Section 1-01(a).

However, the Board has also recognized that under certain circumstances, gifts from persons or firms doing business with the City may be accepted by City agencies, notwithstanding the provisions of Charter Section 2604(b)(5), because they can be treated as gifts to the City, rather than to an individual public servant. Thus, in our Advisory Opinion No. 92-21, the Board determined that two City agencies could solicit and accept gifts from the private sector in support of agency programs, provided that certain steps were taken to insure that the gifts did not become an inducement for, or a form of pressure on, public servants to take

official action in favor of the donors. The Board indicated that in assessing the propriety of any gift to the City, the factors to be considered include whether the donor has business dealings with the City, and whether the donor has an interest in any matter awaiting determination by the agency.

We note that employee incentive programs serve a valuable purpose, and City agencies may, in appropriate circumstances, accept gifts from the private sector in support of those programs. The facts and circumstances of this case, however, require that the gift of entertainment opportunities be declined.

While the opportunities are being offered to the City agency and not to individual public servants, and would be randomly awarded to agency employees in recognition of their outstanding performance, the nature of the Donor's present business dealings with the City precludes us from treating the offer as a gift which may be accepted as a permissible gift to the City. We note, in particular, the complex and controversial nature of the negotiations relating to the proposed project, which has been under consideration for an extended period of time. It is subject to a variety of governmental

approvals, and has been the focus of ongoing public scrutiny. The project is currently undergoing review and approval pursuant to Uniform Land Use Review Procedure (ULURP), and the negotiations are being conducted against a backdrop of shaping the project so that objections are met and approvals are secured.

Under these circumstances, if the subject agency were to accept the proposed gift, it could be creating an

appearance that its future decisions on the project were influenced by the Donor's generosity. Acceptance of the gift would therefore violate Charter Section 2604(b)(2), which prohibits a public servant from engaging in any business, transaction or private employment which is in conflict with the proper discharge of his or her official duties.

In addition, if the subject agency were to accept the proposed gift, it could be creating an appearance that the actions of individual agency employees, with respect to the project, were motivated by the expectation of, or a sense of obligation on account of, an entertainment opportunity awarded to them or to colleagues within the agency. Public confidence in their integrity and impartiality would be compromised by

the suggestion that official actions were being taken as a result of a private benefit. See Charter Section 2604(b)(3), which prohibits a public servant from using, or attempting to use, his or her official position to obtain any financial gain, contract, license, privilege, or other personal or private advantage.

For these reasons, it is the Board's conclusion that under the special circumstances presented in this case, acceptance by the subject agency of the proposed gift from the Donor would constitute a violation of Chapter 68 of the City Charter.

Sheldon Oliensis  
Chair

Benjamin Gim

Beryl R. Jones

Shirley Adelson Siegel

Robert J. McGuire recused himself from consideration of this matter and did not vote on this matter.

Dated: November 23, 1992

