

New York City Conflicts of Interest Board

Notice of Adoption of Final Rules

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043, 2603(a), 2603(c)(4), and 2604(b)(5) of the City Charter, that the Conflicts of Interest Board has adopted new and amended Board Rules governing the acceptance of gifts.

The proposed Rules were published in the City Record on March 2, 2021, and a public hearing was held on April 1, 2021. Two written comments were received. After consideration of the written comments received, the Conflicts of Interest Board now adopts the following Rules.

STATEMENT OF BASIS AND PURPOSE

In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its advisory opinions and initiate rulemaking to adopt those with “interpretative value in construing provisions” of Chapter 68, the Board has reviewed the 29 advisory opinions it has issued concerning public servants’ acceptance of gifts. These amendments to Board Rules § 1-01 (the “Valuable Gifts Rule”) codify advisory opinions with interpretive value and clarify existing rules to conform to current practice. Additionally, the amendments incorporate the Board’s longstanding interpretation of Charter § 2604(b)(3) that the acceptance of gifts offered as a result of a public servant’s City position would violate Charter § 2604(b)(3). See, e.g., Advisory Opinion (“A.O.”) Nos. 1990-3, 1991-4, 1992-10, 1992-23, 1994-12, and 2000-4.

1. Gifts to Enhance Agency Morale

In Board Rules § 1-01(i), the Board addresses acceptance by the City of blocks of free tickets for entertainment, sporting, and cultural events. For these kinds of events, the attending public servants would not be performing any governmental work; instead, the City is distributing the gifted tickets to its employees to promote office morale or reward good performance. The Board addressed such gifts in A.O. No. 2000-4, advising that it would be permissible to accept the donation of tickets for use by City employees if: (1) approved by and distributed in a manner approved by an agency head; and (2) the donation does not raise significant concerns of a conflict of interest, such as the donor having a project pending before the accepting City agency or the donor having any role in selecting the public servants who will attend. See also A.O. No. 1992-33 at 4 (advising that agency employees cannot accept free travel and hotel lodging offered a part of a morale boosting program by a firm with matters before that agency).

This longstanding interpretation of Chapter 68 is consistent with advice provided by the Board in A.O. No. 2007-3, permitting a registered lobbyist to offer blocks of tickets as gifts to the City with agency head approval. The four-factor test in Board Rules § 1-01(i) provides a mechanism by which the City may accept gifts to benefit its workforce while also safeguarding against the efforts of donors to target public servants involved in their City business or reward public servants for providing them with favorable determinations.

One of the four factors excludes from acceptance of free attendance those public servants who hold positions of authority, defined as any public servant who is required by Administrative Code Section 12-110 to file an annual disclosure report. Members of this group of public servants (which includes elected officials; public servants who are candidates for City elective office; public servants who have been designated as having substantial policy discretion pursuant to Board Rules Section 1-02; public servants responsible for reviewing contracts, leases, and other agreements; members of boards and commissions; and certain classes of higher-ranking public servants) are excluded from accepting free tickets to purely recreational events because such acceptance may implicate donors targeting them in the hopes of securing favorable City determinations.

2. Donations for Personal Emergencies

In Board Rules § 1-01(j), the Board establishes a standard to permit a public servant to accept otherwise prohibited donations in the event of a personal emergency similar to that articulated in A.O. No. 1992-29. In A.O. No. 1992-29, the Board advised an injured public servant's co-workers that they could raise funds for his medical expenses from firms that were regulated by their agency or may have matters before the injured public servant, provided that all funds were collected by a third party not connected to the agency and that the donors' identities were not revealed to the public servant or to any other agency employee. Board Rules § 1-01(j) permits public servants to accept anonymized donations in emergency situations, subject to strict restrictions on who may solicit donations and from whom donations may be solicited. Public servants who comply with these requirements may accept otherwise prohibited contributions, provided that the contributions address the need caused by the emergency.

3. Gifts between Public Servants

In Board Rules § 1-01(k), the Board refines the advice provided in A.O. No. 2013-1 concerning gifts between public servants. Board Rules § 1-01(k)(1) makes it clear that public servant peers may give gifts to each other and that superiors may give gifts to subordinates. In both scenarios, the recipient of the gift has no authority in their City job over the giver; thus, accepting the gift would be permissible. Board Rules § 1-01(k)(2) sets forth the general prohibition against public servants accepting gifts from their subordinates, with two exceptions: first, Board Rules § 1-01(k)(2)(i) permits a superior to accept a gift from a subordinate on a special occasion marking a major life event, such as a wedding, the birth or adoption of a child, or retirement, where the gift is appropriate to the occasion; second, Board Rules § 1-01(k)(2)(ii) permits a public servant to accept gifts other than gifts of cash or cash equivalents (such as gift cards) on other events, such as holidays or birthday, from their subordinates, or a group of subordinates, where the total value of the gift is \$10 or less. By providing a \$10 limit on the total value of any gift accepted by a supervisor, and by excluding cash and cash equivalents, Board Rules § 1-01(k)(2)(ii) offers a safeguard against a superior -- particularly in a large City agency or office -- receiving hundreds of dollars in cash or cash equivalents, such as gift cards, from their subordinates.

4. Disposition of Impermissible Gifts

In Board Rules § 1-01(l), the Board clarifies prior Board Rules § 1-01(i) by setting the order of steps a public servant must take to dispose of an impermissible gift. A public servant who receives an impermissible gift must first attempt to return the gift because that gift should not be accepted. If the gift cannot be returned, the public servant's agency head may, after providing written notice to the inspector general for the agency: (a) direct the item to be donated to the agency, to an entity as defined in Board Rules § 1-14(a)(1)(iii), or to the Mayor's Fund to Advance New York; (b) share the item within the agency; or (c) destroy the item.

5. Compatibility with Other Laws

In Board Rules § 1-01(m), the Board consolidates provisions of prior Board Rules § 1-01 addressing other regulatory or statutory regimes. Board Rules § 1-01(m) does not substantively change the restrictions set forth in prior Board Rules § 1-01(i), (j), and (k) except to explicitly reference Charter § 2604(b)(3) and Charter § 2604(b)(14).

New material is underlined.

Section 1. Subdivisions (i) through (k) of section 1-01 of Chapter 1 of Title 53 of the Rules of the City of New York, relating to acceptance of valuable gifts, are REPEALED and new subdivisions (i) through (m) are added to read as follows:

(i) Gifts to Enhance Employee Morale

(1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), tickets to an entertainment, sporting, or cultural event may be accepted as a gift to the City for use by City employees provided that:

- i. the attending public servants are not required to file annual disclosure reports pursuant to New York City Administrative Code Section 12-110;
- ii. the offer of the free attendance is unsolicited by any public servant;
- iii. the public servants attending the event are selected according to a method that receives agency head approval in writing; and
- iv. the public servants attending the event are not involved in the consideration of any pending particular matter, legislative proposal, action on the City budget, or text of the zoning resolution in which the offeror of tickets or the host of the event is a party or has an interest.

(j) Donations for Personal Emergencies

(1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), donations may be solicited to alleviate a public servant's immediate and serious financial need caused by a personal emergency such as an accident, sickness, or being the victim of a crime, provided that no donations are solicited from:

- i. any subordinate of the beneficiary public servant or soliciting public servant;
- ii. any firm or individual that has a particular matter, legislative proposal, action on the City budget, or text of the zoning resolution pending before the beneficiary public servant or soliciting public servant; or

iii. any firm with which the beneficiary public servant or soliciting public servant deals in their City work.

(2) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public servant may accept donations to alleviate such public servant's immediate and serious financial need caused by a personal emergency, provided that the donors' identities are not in any way revealed to the public servant and the donations directly address the immediate and serious financial need caused by the personal emergency.

(k) Gifts Between Public Servants

(1) Charter § 2604(b)(3) does not prohibit a public servant from giving:

- i. a gift to a subordinate; or
- ii. a gift to or receiving a gift from a public servant who is not a superior or a subordinate.

(2) Pursuant to Charter § 2604(b)(3), a public servant may not accept or solicit a gift from a subordinate or group of subordinates except:

- i. a public servant may accept a gift from a subordinate or group of subordinates in connection with a special occasion marking a major life event, such as a wedding, the birth or adoption of a child, or retirement, provided that the gift is of the type and value customary to the occasion in question; and
- ii. a public servant may accept a gift from a subordinate or group of subordinates in connection with a holiday, birthday, or other event if the total value of the gift does not exceed \$10 and the gift is not cash or a cash equivalent.

(l) Disposition of Impermissible Gifts

(1) If a public servant receives a gift not addressed by any of the exceptions set forth in this section, the public servant must return the gift to the giver.

(2) If a gift cannot be returned, the public servant's agency head may, after providing written notice to the inspector general of the public servant's agency:

- i. donate the item to the agency, to an entity as defined in Board Rules § 1-14(a)(1)(iii), or to the Mayor's Fund to Advance New York;
- ii. share the item within the agency; or
- iii. destroy the item.

(m) Compatibility with Other Laws

(1) City agencies may establish rules concerning gifts for their own employees that may not be less restrictive than the requirements set forth in Charter § 2604(b)(3) and Charter § 2604(b)(5) as interpreted by this section.

(2) Nothing in this section will be deemed to authorize a public servant to act or accept a gift of any value in violation of any applicable federal, state, or local law, including criminal laws, City agency rules, or Mayoral Executive Orders (including, but not limited to, Executive Order No. 16 of 1978 (as amended)), which may impose additional requirements to report gifts and offers of gifts to the agency's inspector general, whether or not a gift is accepted or returned.

(3) This section must be read in conjunction with the provisions of Charter § 2604(b)(2) and Board Rules § 1-13; Charter § 2604(b)(13); and Charter § 2604(b)(14) and Board Rules § 1-10.