

## **GIFTS AND HONORARIA**

by  
**Christopher M. Hammer**  
**Deputy General Counsel**  
**NYC Conflicts of Interest Board**

### **A. Introduction**

Public servants sometimes receive items of value or compensation from private individuals who or entities that do business with the City or as a result of their City position. In many cases these “gifts and honoraria” create a conflict of interest with respect to the public servant’s performance of his or her official duties. As a result, guidelines have been established to assist public servants in identifying which gifts and honoraria may be accepted. This Chapter discusses the applicable sections of Chapter 68 of the New York City Charter, the Conflicts of Interest Board’s Valuable Gift Rule, plus relevant advisory opinions and enforcement cases.

### **B. Prohibited Gifts**

#### **1. What is a Gift?**

Charter § 2604(b)(5) provides that no public servant shall accept any valuable gift, as defined in the Board’s Rules, from a person who or firm that the public servant knows is engaged in, or intends to become engaged in, business dealings with the City, *except* gifts that are customary on family or social occasions. If a public servant receives a prohibited gift, he or she must return the gift to the donor and, whether or not the gift is returned, report receipt of the gift to the Inspector General at the New York City Department of Investigation assigned to the public servant’s agency; if return of the gift is not possible, the Inspector General shall determine the appropriate disposition of the gift.

“Valuable gift” is defined in Board Rules § 1-01—also known as the “Valuable Gift Rule”—as any gift to a public servant with a value of \$50 or more in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form.<sup>1</sup> In Advisory Opinion Number 96-3, the Board held that a public servant may not avoid the restrictions of the Valuable Gift Rule by accepting a gift worth more than \$50 and then paying the donor the difference between the actual value of the gift and \$50. Thus, a public servant may not accept a gift over \$50, even if the public servant pays for the portion of the gift that exceeds \$50.

In 2007, the Board imposed a \$6,500 fine on a former Assistant Commissioner of Medical Affairs for the New York City Fire Department (“FDNY”) for, among other things, accepting gifts from a firm whose business dealings with the FDNY he evaluated. The gifts included reimbursement of travel expenses, dinners, and tickets to a Broadway show.<sup>2</sup> In 2013, the Board reached a settlement with the former Executive Director of Coney Island Hospital, part of the

New York City Health and Hospitals Corporation (“HHC”), who agreed to pay a \$6,000 fine for violating the Board’s Valuable Gift Rule. Among his official duties as Executive Director of Coney Island Hospital was the negotiation, implementation, and oversight of the hospital’s contract with University Group Medical Associates (“UGMA”) to provide clinical staffing to the hospital. At two events in 2005, the former Executive Director accepted from UGMA (1) four or five bottles of wine; (2) a customized fountain pen; (3) a \$500 gift card from Macy’s; and (4) the \$110.97 balance from two other gift cards.<sup>3</sup>

In *COIB v. Ashimi*, in a joint disposition with the Board and the New York City Department of Transportation (“DOT”), a DOT Assistant Director of Contracts agreed to irrevocably resign from DOT and to pay a \$10,000 fine for the Board for soliciting and receiving from two contractors whose work he oversaw at DOT a total of \$58,500 in donations, over the course of seven and one-half years, to the church in Staten Island he served in his private capacity as President, Pastor, and Trustee. Some of these funds went to his purely personal, non-church expenses, including car payments, phone bills, and a trip to Africa. The Assistant Director of Contracts admitted that, by soliciting and accepting the donations, he misused his DOT position in violation of § 2604(b)(3) to benefit the church with which he was associated and, by accepting the donations to his church from DOT vendors, which funds he then used for personal expenses, he accepted prohibited valuable gifts in violation of § 2604(b)(5).<sup>4</sup> Two or more gifts to a public servant are deemed to be a single gift for purposes of the Valuable Gift Rule if they are given to the public servant within a twelve-month period under one or more of the following circumstances: (1) they are given by the same person; or (2) they are given by persons who the public servant knows or should know are (i) relatives or domestic partners of one another or (ii) are directors, trustees, or employees of the same firm or affiliated firms.<sup>5</sup> For example, a gift by one employee of a corporation in June and a gift by another employee of the same corporation the following April are aggregated for purposes of determining whether the recipient of the gifts has violated the Valuable Gift Rule. The terms “relative,” “affiliated,” “firm,” and “domestic partner” are defined in the Valuable Gift Rule. In a case demonstrating the “cumulative” nature of gifts given during a twelve-month period, the Board in 2008 fined a manager for the New York City Department of Parks and Recreation (“Parks”) \$600 for accepting the gifts of two meals in May and August 2007, valued collectively in excess of \$50, from Kiska Construction, a firm doing business with the New York City Economic Development Corporation (“EDC”) and Parks. Kiska had been awarded three major contracts by EDC related to construction at the High Line; at Parks, the manager served as the Project Administrator for the High Line Project.<sup>6</sup>

The Board has made clear, with respect to the “knowledge” element of the Valuable Gift Rule, not only that public servants may not accept valuable gifts from those who they *should have known* had City business, but has stated that public servants have a duty to make a reasonable inquiry about the presence or absence of such business before accepting valuable gifts.<sup>7</sup>

In 2016 the Board imposed a fine of \$7,000 on a Council Member for accepting a gift of services in support of her effort to become Council Speaker. In so doing, the Board did not deviate from its long-standing determination that contributions to a campaign committee established under

the Election Law in support of a campaign for elective office are not “gifts” within the meaning of the conflicts of interest law. In this case, however, the Council Member acknowledged that she was seeking “a leadership position within the Council and [ ] not an independent public office.”<sup>8</sup>

## **2. Gifts that Conflict with Official Duties**

Separate and apart from the gifts provision discussed above, soliciting a gift and in some instances accepting a gift, even one under \$50 or one from a person or firm having no business dealings with the City, may violate other provisions of Chapter 68—specifically the prohibition against using one’s City position to benefit oneself or a person who or firm with which the public servant is associated, found in Charter § 2604(b)(3). In an Order imposing a \$20,000 fine on an elected official for accepting gifts of travel for his wife, the Board noted that “a public servant may violate Charter Section 2604(b)(3) by accepting a gift even if the donor does not have such business dealings, if the public servant is receiving the gift only because of his or her City position.”<sup>9</sup>

In another Board enforcement proceeding, a community board member solicited money from a local church that had applied to the community board to obtain a City-owned vacant lot. Admitting that he violated Charter § 2604(b)(3) prohibiting use of his position to obtain financial gain, the community board member agreed to pay a fine to the Board.<sup>10</sup> As noted above, public servants must avoid the appearance that a gift was received solely because of the public servant’s official City position, even if the gift was under \$50 or was given by a person or firm having no business dealings with the City. For example, in Advisory Opinion Number 92-10, an elected official asked whether he could accept the invitation of a firm that had no business dealings with the City to attend an event sponsored by the firm at an out-of-state resort. The Board concluded that, in the absence of a governmental purpose, the elected official’s acceptance of the trip might create the appearance that he received a valuable gift solely because of his official position.

In Advisory Opinion Number 92-23, an elected official asked whether he could accept from a common carrier two free tickets to an out-of-state destination. The tickets were presented to the official at a community event sponsored by several business organizations. The Board concluded that accepting the tickets could create the appearance that the elected official had received a valuable gift because of his official position.

In Advisory Opinion Number 94-12, a high-level public servant was advised that he must return a ceremonial sword presented to him by a restaurant and entertainment center when attending the firm’s ribbon cutting ceremony in his official capacity. The Board held that acceptance of the sword could create the appearance that the public servant received a valuable gift solely because of his official City position.

Gifts between City employees may also implicate Charter § 2604(b)(3), although such gifts will typically not violate Charter § 2604(b)(5) (because the donor is not a person with business dealings with the City) nor will they violate the ban in Charter § 2604(b)(14) against superiors and

subordinates having business or financial relationships (because a gift, unlike a loan, does not establish such a relationship). In Advisory Opinion Number 2013-1 the Board summarized and clarified the guidance, both formal and informal, that it had given over the years on the subject of gifts between City employees. These gifts will be prohibited, the Board noted, where necessary to prevent inappropriate pressure on one City employee to make a gift to another or to prevent the loss of necessary impartiality that the gift receiver might experience. Recognizing that these evils are not significantly present in the case of gifts between City employees who are peers or in the case of gifts from a City superior to his or her subordinate, the Board advised: (1) it will not violate the conflicts of interest law for a City employee to give a gift to or receive a gift from a peer City employee; and (2) except in unusual circumstances, such as when gifts are extremely frequent or extravagant, it will not violate the law for a City superior to give a gift to a subordinate or for a subordinate to accept a gift from a superior.

In contrast, the Board advised that it would violate the conflicts of interest law for a superior to solicit a gift from a subordinate or, except on certain special occasions, to accept a gift from a subordinate. On these special occasions, such as a wedding or the birth or adoption of a child, the Board advised that a superior may accept an appropriate gift from a subordinate, that is, a gift of the type and value customary to the occasion in question, where it is clear that, under all relevant circumstances, it is the occasion and not the superior's position that is the controlling factor in the giving. On more frequent special occasions, such as birthdays and the holidays, the Board indicated that a superior may not accept gifts from subordinates, either individual or group gifts, except gifts of nominal value, namely where the "thought of giving" has greater value than the gift itself. Consistent with the Board's determination in Opinion Number 2013-1, and cited therein, the Board issued a public warning letter in 2012 to a public servant who violated Charter § 2604(b)(3) by accepting a gift from her subordinates on an occasion, and in an amount, that was beyond what would be considered ordinary or customary. In that case, a Department of Sanitation District Superintendent accepted \$800 from her subordinates, who had collected this money among themselves to enable the District Superintendent to repair her personal vehicle, which had been scratched while at the Sanitation Garage. The Board advised the District Superintendent, who did not initiate the collection or solicit the \$800 and had agreed to return the money, that, in accepting this gift, she violated Chapter 68.<sup>11</sup>

In 2013, the Board reached a settlement with a former New York City Department of Correction ("DOC") Department Chief, who paid a \$6,000 fine to the Board for requesting that his subordinate repair and enhance his vehicle. The subordinate purchased between \$400 and \$500 worth of car parts and worked on the vehicle for several weeks. The Chief did not pay his subordinate for his work or reimburse him for the parts. The former Department Chief acknowledged that his conduct violated the conflicts of interest law, in particular Charter § 2604(b)(3), which prohibits City employees from using their City positions for their own personal gain, including, as Opinion Number 2013-1 advises, by soliciting a gift from a subordinate public servant.<sup>12</sup> Similarly, in 2014, in a joint disposition with the New York City Department of Education ("DOE"), a DOE Principal admitted that he had traveled abroad twice

with his subordinate, a School Aide, and that the School Aide had paid in full for both trips, a total of \$10,829. The Principal acknowledged that by accepting these free trips from his subordinate he violated Section 2604(b)(3). He paid a fine of \$4,500 to the Board.<sup>13</sup>

In 2017, the Board took the opportunity of public warning letters to a DOE Principal and three Assistant Principals to make clear that expensive holiday gifts, especially those of cash or the equivalent, do not qualify as gifts of “nominal” value, even when they are given by a group of subordinates and each subordinate’s contribution was as low as \$5 to \$11 per year.<sup>14</sup>

### **C. Permitted Gifts**

A public servant may accept a gift from a person or firm doing business with the City in certain circumstances.

#### **1. Family and Social Occasions**

Under Charter § 2604(b)(5) and Board Rules § 1-01(c), a public servant may accept gifts that are customary on family or social occasions from someone engaged in business dealings with the City, provided that: (1) the reason for the gift is the family or personal relationship rather than the business dealings and (2) receipt of the gift would not result in an *appearance* of a conflict, such as an appearance of using one’s office for private gain, giving preferential treatment to any person or entity, losing independence or impartiality, or accepting gifts or favors for performing official duties.

In *COIB v. Morello*, a City employee’s personal friendship with the gift givers (who were principals of a vendor to the City and the vendor’s subcontractor) did not insulate that employee, a former Battalion Chief with the New York City Fire Department, from liability under Section 2604(b)(5) for receiving valuable gifts. The Battalion Chief admitted that the controlling factor in his dealings with the gift givers was not personal friendship, but rather the vendor’s business dealings with the City. He accepted valuable gifts consisting of the use of a ski condo, meals, and Broadway tickets from the principals of the vendor and the subcontractor. Admitting his violation of Section 2604(b)(5), the Battalion Chief paid a \$6,000 fine to the Board. As the result of departmental disciplinary charges related to this conduct, he resigned and agreed to surrender all accrued leave balances, totaling \$93,105.<sup>15</sup>

Similarly, in *COIB v. W. Fraser*, a City superior’s personal friendship with two of his subordinates did not insulate that superior, a former Department of Correction Commissioner, from liability under Section 2604(b)(3) for misusing his position to receive a private gain from his subordinates, who repaired the leaking liner on his swimming pool. The former Commissioner paid a \$500 fine and acknowledged that he had violated the Charter provisions and Board Rules that prohibit public servants from misusing or attempting to misuse their official positions for private gain, from using City personnel for a non-City purpose, and from entering into a business

or financial relationship with subordinates.<sup>16</sup>

## **2. Awards and Plaques**

Under Board Rules § 1-01(d), a public servant may accept awards or plaques that are publicly presented in recognition of public service, provided that the award or plaque has no substantial resale value.

In Advisory Opinion Number 2010-2, the Board addressed the case of City employees who are awarded *cash* prizes in recognition of their public service. The Board first noted that, absent a waiver from the Board, accepting such a cash prize would violate the prohibition in Charter § 2604(b)(13) against accepting compensation from a party other than the City for performance of one's official duties. The Board stated, however, that it would accept applications for such waivers from agency heads and that it would evaluate these applications in light of the identity of the person or entity presenting the award, the City involvement in administering the award and in selecting the recipient, the amount of the cash prize, and the history of the award, that is, whether there is a "track record of apparent disinterested promotion of excellence in public service." Finally, the Board determined that it would consider applications to exempt certain long-established awards from the requirement of case-by-case waiver applications and, to that end, determined that public servants could accept the cash prizes associated with the following awards without making a waiver application, absent material changes in the administration of the awards: the Frederick O'Reilly Hayes Prize, the Alfred P. Sloan Public Service Award, the Isaac Liberman Public Service Award, and the E. Virgil Conway College Scholarship. More recently, the Board granted a waiver to permit a New York City Police Department Captain to receive cash awards from the Life Saving Benevolent Association of New York and the Carnegie Hero Fund Commission in connection with rescuing a person who jumped into the East River. In granting the waiver, the Board determined that both awards recognized individuals who perform heroic acts, without regard for whether they were public servants, as evidenced by the awards' long histories and the fact that the two civilians involved in the same rescue were awarded the same cash award.<sup>17</sup>

The Board has also addressed valuable prizes, other than cash, in recognition of public servant. In Advisory Opinion Number 95-28, a public servant requested an opinion as to whether he could accept an award of a watch, given to him in recognition of an act of heroism he performed in the course of his official duties. Since the award was made after the public servant had performed his act of heroism, he could not have been influenced by the incentive of an award in performing his official duties. In addition, the nature of the public servant's position was such that he would not have been able to use his position for the private advantage of anyone at the watch company, which had no business dealings with the City. Finally, neither the company nor its officials directly benefited from the public servant's actions. Thus, under the particular circumstances of the case, the Board determined that the public servant could accept this award.

## **3. Meals and Refreshments**

Under Board Rules § 1-01(e), a public servant may accept free meals or refreshments when

offered during a meeting the public servant is attending for official reasons; when offered at a company cafeteria or club where there is no public price structure and individual payment is impractical; when a business meeting continues through normal meal hours in a restaurant and refusal to participate in the meal and/or individual payment is impractical; when the free meals are provided at a meeting held at an out-of-the-way location, alternative facilities are unavailable, and individual payment is impractical; *or* when the public servant would not have otherwise purchased food or refreshments if not placed in such a situation while representing the interests of the City. This Rule would *not* permit the acceptance of meals when the meeting is specifically scheduled during mealtime (*e.g.*, “let’s discuss this contract over lunch”).

Under Board Rules § 1-01(f)(1), a public servant may accept a meal while serving as a panelist or speaker in a professional or educational program, if the meal is provided to all panelists.

#### **4. Attendance at Functions or Annual Events**

Under Board Rules § 1-01(f), a public servant may be present at a professional or educational program as a guest of the sponsoring organization; may be a guest at functions sponsored or encouraged by the City as a matter of City policy; may 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, *unless* the organization has business dealings with, or matters before, the public servant's agency; and may be a guest at any widely attended function or occasion when the employee's agency head, or a deputy mayor if the public servant is an agency head, gives written approval in advance, or within a reasonable time thereafter, that attendance of the public servant is in the interests of the City. With respect to the exception of Board Rules § 1-01(f)(5), permitting acceptance of complimentary attendance at widely attended public events with the written approval of the agency head or deputy mayor, the Board has, as discussed below, made clear in Advisory Opinion Number 2012-4 that this exception is sharply narrowed in the case of sporting and entertainment events.

In Advisory Opinion Number 94-23, a high-level public servant requested an opinion as to whether he could accept an invitation to attend a trade association's annual golf and tennis outing. Although the association did not have business dealings with the City, several of its member firms conducted business with various City agencies, including the public servant's own agency. The Board determined that the public servant could attend the sporting event because the public servant had been invited to attend the event by the association and because the association itself did not have any contracts or other business dealings with the public servant's agency.

Under Board Rules § 1-01(g), elected officials and members of their staffs may attend any function given by an organization composed of representatives of business, labor, professions, or news media, or organizations of a civic, charitable, or community nature, when invited by the organization who sponsored the function. In Advisory Opinion Number 2006-2, the Board noted that the requirement of Board Rules § 1-01(g) that the gift of a ticket be from the sponsor of the event is *not* satisfied when the gift is from the sponsor's lobbyist, so that an elected official's

acceptance of such a gift would be permissible only pursuant to the conditions listed in Board Rules § 1-01(f)(5). In addition, the Board cautioned that, even when these rules do permit acceptance of complimentary attendance to an event, they do not permit elected officials to accept gifts of items offered at the event (such as gift bags) with a value of \$50 or more.

In Advisory Opinion Number 2000-4, the Board addressed several questions concerning gifts of tickets: (1) it would not violate Chapter 68 for an elected official or designated member of his or her staff to accept a gift of a ticket to an event, even where the sponsoring organization is funded by the elected official's office, regardless of the price of the ticket, *when attending in his or her official capacity* and when the conditions of Board Rules § 1-01(f)(5) or § 1-01(g) are met. (2) Where the elected official or designated member of his or her staff has permissibly accepted a gift of a ticket to an event for his or her official use, it would likewise not violate Chapter 68 to accept *one* complimentary guest ticket, regardless of its value. (3) It *would*, however, violate Chapter 68 for an elected official's office to accept a gift of a block of tickets with an aggregate value of \$50 or more to be distributed to staff for their personal use, regardless of the value of the individual tickets, *unless* there was a *City purpose* for the gift. (4) It likewise *would* violate Chapter 68 for a staff member of an elected official to receive for his or her *personal use* a gift of a ticket to an event, or gifts from the same donor of tickets to events over a twelve-month period, with an aggregate value of \$50 or more, as determined by their price to the public, *not* their price to the sponsoring organization. (5) Nevertheless, it would not violate Chapter 68 for members of an elected official's staff to accept an offer to purchase with their own funds, for their personal use, tickets to events, where access to those tickets is limited and where they are provided access because of their public office, or for an elected official's office to accept the gift of a block of tickets to a free event for the personal use of the office's staff, where access to such tickets is otherwise difficult and where the offer is made to the elected official's office, provided that, in each case, the public servant did not affirmatively seek the tickets. A public servant who affirmatively seeks tickets for his or her personal use, depending on the circumstances, may violate Section 2604(b)(3), so that the public servant who does not first inquire of the Board prior to accepting such tickets acts at his or her own peril.

Where attendance at an event is for personal entertainment and not for an official purpose, however, a gift of complimentary tickets from a City vendor will not fall within the above exceptions. In 2011 the Board fined a Principal Administrative Associate for the New York City Administration for Children's Services ("ACS") \$3,000 for accepting five tickets to "The Lion King" from a firm doing business with ACS.<sup>18</sup>

In Advisory Opinion Number 2006-3, the Board considered questions involving attendance by City employees at union conventions, including attendance at conventions of a union to which one belonged; attendance at conventions of a union to which one did not belong; attendance at union conventions in one's official capacity; and attendance at events at these conventions underwritten by City vendors. The Board determined that it would not violate Chapter 68 for City employees to attend the convention of their own union, on their own time, at the union's expense; that it would not violate Chapter 68 for City employees to attend the



convention of a union of which they are not a member, on their own time, at the union's expense; that it would not violate Chapter 68 for City employees to attend, at union expense and on City time, a union convention at which they are performing their official City duties, provided they have received prior approval from their agency head and have otherwise satisfied the conditions of Board Rules § 1-01(h) on length of stay and appropriateness of the accommodations and meals; that City employees may attend cocktail parties and other events at these conventions that are sponsored by City vendors, so long as the party or event is a part of the regular agenda of the convention and is open to all attendees; that City employees may not accept at these conventions gifts from a City vendor worth \$50 or more cumulatively in a twelve-month period, including in particular invitations to private dinners or recreational events that are not part of the convention program; and that, notwithstanding the foregoing, at no time may a City employee accept any benefit, no matter the value, in exchange for taking, or failing to take, some future official action, or as a reward for taking, or having refrained from taking, some official action.

In Advisory Opinion Number 2012-4, the Board addressed, as noted above, the question of complimentary admission to sporting and entertainment events, such as the United States Open Tennis Championships, 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. Noting that the general public typically attends such events for their personal pleasure, the Board stated that it would 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. To that end, the Board determined and advised that 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. The Board advised, however, that 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 such entertainment events.

##### **5. Payment for Travel-Related Expenses**

Under Board Rules § 1-01(h), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City when the trip is for a City purpose and could properly be paid for with City funds; the travel arrangements are appropriate to the City purpose; and the trip is no longer than necessary to accomplish the City business. For public servants other than elected officials, it is recommended that the trip be approved in writing and in advance by the agency head or by the deputy mayor if the public servant is an agency head. On the question of what expenses may properly be paid for with City funds, the Board, in fining an elected official for accepting gifts of overseas travel for his wife, noted that, in contrast with a public servant's own

official travel, his or her spouse's overseas travel is not something that could properly be paid for with City funds.<sup>19</sup>

In Advisory Opinion Number 92-19, the Acting Director of the Mayor's Office of Film, Theatre and Broadcasting asked the Board whether she could attend the 1992 Cannes Film Festival at the expense of three private entities. Two of the entities had business dealings with the City, and the other did not. The purpose of the trip was to encourage the production of films in New York City, which would generate several million dollars in economic activity. The Board held that the public servant could accept payment from the entities for this trip as a gift to the City.

In Advisory Opinion Number 2011-2, the Board described its consideration of a number of advice requests it had received from elected officials and high-ranking appointed officials who were proposing to accept expenses-paid travel, often overseas. The Board first noted not only that the acceptance of such complimentary travel from a private person who or firm that has business dealings with the City would implicate Charter § 2604(b)(5), the Valuable Gift Rule, but also that the acceptance of gifts of travel from entities without City business dealings, including foreign governments, could, as noted in Section B(2) above, implicate the prohibition in Charter § 2604(b)(3) against misuse of one's City position for personal gain. The Board went on to state that, whatever the identity of the donor, it would apply the standard set forth in Board Rules § 1-01(h) to evaluate requests for its advice about accepting gifts of travel. To determine whether the proposed trip had a City purpose rather than simply a personal purpose and whether the proposed trip was no longer than necessary to accomplish that City purpose, the Board expects such advice requests to be presented well in advance of the scheduled departure date. Requests for the Board's advice should include a statement of the City purpose(s) of the trip; a detailed itinerary of the trip, reflecting the trip's City purpose; the identity of the trip's sponsor, including a description of any business dealings that the sponsor has with the City; and a statement of the cost of the trip to be paid for by the non-City source. Finally, while the Rule simply *recommends* that appointed officials receive the prior written approval of their travel from their agency head (or, in the case of agency heads, from their deputy mayor), the Board stated that it expects to receive that written approval as part of the official's request for advice and will consider the presence or absence of such approval in reaching its determination of whether the trip serves a City purpose.

More recently, in Advisory Opinion Number 2016-1, the Board held that an elected official may not accept as a "gift to the City" payment from a third party for the entire cost of out-of-town travel that includes political as well as governmental activities, even where the political activity adds no cost to the travel expenses. Instead, the cost of the trip must be allocated on a reasonable basis between its governmental and political purposes, and the official may accept payment on behalf of the City only for costs allocated to the governmental purposes. The Board reiterated that nothing in Advisory Opinion Number 2016-1 changes the long-standing requirement for all public servants to personally bear the extra costs incurred when the non-governmental purpose adds cost to a trip undertaken for a City purpose.

## **6. Gifts to the City or for a City Purpose**

The Board has long held that, under particular circumstances set out by the Board, City agencies, as distinct from individual public servants, may accept and may indeed solicit gifts from private entities engaged in business dealings with the City.

In a comprehensive opinion (Advisory Opinion Number 2003-4) that reviewed not only the Board's prior opinions concerning gifts to the City but also examined precedents from other jurisdictions, the Board determined that, subject to certain safeguards, public servants could solicit gifts to the City and to those not-for-profit organizations closely affiliated with City agencies and offices that had been "pre-cleared" by the Board. The safeguards imposed on such "fundraising for the City" are the following: (1) a City official may not engage in the direct, targeted solicitation of any prospective donor who the official knows or should know has a specific matter either currently pending or about to be pending before the City official or his or her agency and where it is within the legal authority or duties of the soliciting official to make, affect, or direct the outcome of the matter; (2) all solicitations must make clear that the donor will receive no special access to City officials or preferential treatment as a result of a donation; and (3) each City agency or office must twice a year file a public report with the Board setting forth certain information concerning the gifts received by the agency during the reporting period, including the identity of the donor and the nature and approximate value of the gift received. As a general matter, therefore, Opinion Number 2003-4 approves of all unsolicited gifts to the City, subject to the disclosure requirement set forth in the Opinion; approves of untargeted solicitations of gifts to the City, subject to both the disclosure requirement and the requirement that the solicitation contain the above-stated disclaimer about access and favoritism; and approves of targeted solicitations of gifts to the City, subject to all the above-listed safeguards.

#### **7. Discounts and Frequent Flier Miles**

In Advisory Opinion Number 95-14, employees in a branch office of a City agency asked whether they could accept an offer of special banking privileges and incentives from a local bank. The privileges and incentives were also offered to other businesses and organizations located in the same geographic area as the branch office. The Board determined that City employees could take advantage of this offer because it did not target City employees and, in accepting the offer, the City employees would merely have been taking advantage of a business incentive offered to both City employees and private businesses. By contrast, in Advisory Opinion Number 95-5, a fraternal organization whose membership consists solely of City employees was advised that its members could not solicit discounts from local merchants on behalf of its members because such solicitation would have been using their City positions to obtain special discounts that were unavailable to non-City employees.

In Advisory Opinion Number 2006-4, the Board further considered "government employee" discounts offered by various businesses. Recognizing that these discounts, when offered to all government employees, do not seek to influence official action, but rather aim to capture a large class of potential customers, the Board determined that 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.

In Advisory Opinion Number 2006-5, the Board considered whether City employees may use, for their own personal travel, airline frequent flyer miles earned while traveling on City business. Recognizing the administrative difficulties for the City in "harvesting" these miles for City use, the Board determined that City employees would not violate Chapter 68 by accumulating and using for personal travel the frequent flyer miles earned while traveling on official business. The Board cautioned, however, that a City employee must not make a flight selection for official travel at additional expense to the City in order to receive or increase personal frequent flyer benefits and further noted that the Opinion should not be read to restrict a City agency from requiring that miles earned on City travel be used only for subsequent City travel.

The Board examined another aspect of City travel in Advisory Opinion No. 2018-1. There, the Board concluded that a public servant may not accept compensation, for the public servant's personal use, from an airline for the voluntary or involuntary surrender of a seat on a flight taken in his or her official capacity. Rather, the public servant must (1) request the overbooked flight compensation offered be issued in a form transferable to the City and (2) transfer such compensation to the City. However, in the case of either voluntary surrender or involuntary denial of boarding, a public servant may accept and use vouchers offered by an airline for food, accommodations, and ground transportation in connection with his or her delayed City travel, provided that the public servant does not use his or her City position to obtain greater compensation from the airline.

#### **D. Compensation and Gratuities from Non-City Sources**

Charter § 2604(b)(13) provides that no 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 actions.

In 2001, two officials of the New York City Department of Buildings were prosecuted for accepting gifts from expeditors. In *Hilton*, the defendant pleaded guilty to a misdemeanor violation of Chapter 68. In *Cox*, the defendant was convicted of the misdemeanor of receiving unlawful gratuities and of two felony counts of filing a false instrument, the instrument being his City financial disclosure form in which he failed to list the gifts.<sup>20</sup>

In 2011, the Board fined a former Administrative Chaplain for the New York City Department of Correction \$2,500 for accepting a solid silver Kiddush cup and plate, with an estimated value in excess of \$500, from an inmate as a token of appreciation for arranging a private event at the Manhattan Detention Complex to celebrate the Bar Mitzvah of the inmate's

son. The former Administrative Chaplain acknowledged that his conduct violated the ban in Charter § 2604(b)(13) on public servants accepting gratuities from any person whose interests may be affected by their official actions.<sup>21</sup> In 2014, in a joint disposition with the Board and the New York City Department of Sanitation (“DSNY”), a Sanitation Worker agreed to resign from DSNY and pay a \$1,500 fine to the Board for accepting \$20 for collecting a Queens resident’s household garbage, the collection of which was part of the Sanitation Worker’s official duties.<sup>22</sup>

In Advisory Opinion Number 2005-1, the Board considered whether a not-for-profit organization closely affiliated with a City agency or office may supplement a City employee’s City salary. The Board determined, as an initial matter, that such supplementation, “whether . . . denominated overtime pay, a salary supplement, a bonus, or payment for consulting work,” will violate the prohibition of § 2604(b)(13) against receiving compensation from anyone other than the City for performing an official duty. The Board stated, however, that it would consider waiver applications on a case-by-case basis, with the requisite written agency head approval. The Board cautioned that it would not grant such waivers routinely and listed a series of circumstances that might cause it to deny a request to approve such payments.

#### **E. Additional Gift Rules**

It must be emphasized that many City agencies have rules that are stricter than the rules set forth in Chapter 68 or general City guidelines, such as the Honoraria Guidelines. Agency rules, however, may not be less strict than those promulgated by the Board. Stricter agency rules are particularly common in the area of gifts and are encouraged. If an agency has rules that are stricter than those of Chapter 68, the agency’s rules apply.<sup>23</sup> Furthermore, nothing in the Board’s Valuable Gift Rule shall be deemed to authorize a public servant to violate any applicable federal, state, or local law, rule, or regulation, including, but not limited to, the New York State Penal Law and Mayoral Executive Orders.

#### **F. Gifts from Lobbyists**

It should be noted that the foregoing discussion of gifts speaks only of the regulation of the public servant who *receives* gifts, not of the regulation of the private-sector gift giver. Indeed, Chapter 68 historically has regulated the interests and conduct only of the City public servant, and not of the frequently involved private party.

Local Law 16 of 2006, codified in Administrative Code §§ 3-224 to 3-227, which regulates the *giving* of gifts by lobbyists, was thus a first, prohibiting lobbyists from making gifts to public servants, providing for civil fines for lobbyists who violate the law’s restrictions, and authorizing the Board to administer and enforce the Law. Pursuant to the Law’s direction that the Board adopt a rule that is, to the extent practicable, consistent with the Board’s rule on the receipt of

gifts by public servants (Board Rules § 1-01), the Board in 2006 promulgated Board Rules § 1-16, entitled “Prohibited Gifts from Lobbyists and Exceptions Thereto,” and defining prohibited gifts and exceptions, including *de minimis* gifts (such as pens and mugs), gifts that public servants may accept as gifts to the City, and gifts from family members and close personal friends given on family or social occasions.

The Board provides the same training, advice, and enforcement functions with respect to the lobbyist gift law that it provides with respect to the restrictions on public servants set forth in Chapter 68. Thus, in 2007 the Board issued the comprehensive Advisory Opinion Number 2007-3 on the subject of complimentary invitations to public servants to events from organizations subject to the lobbyist registration requirement. Pursuant to the directive in Local Law 16 that the rules on the giving and the receipt of gifts be as consistent as practicable, this Opinion in substantial part parallels Advisory Opinion Number 2000-4, discussed above, on the subject of the *receipt* by public servants of free tickets to events. Advisory Opinion Number 2007-3 responded to an inquiry from a not-for-profit organization that sponsored a number of widely attended events, such as annual fundraising events, exhibits, and conferences, addressing each of these events in turn. Essentially, the Board advised that the sponsoring organization could provide free admission to elected officials and high-ranking appointed officials to events such as fundraisers and exhibit openings, since the officials’ presence at such events could advance legitimate City purposes. In contrast, free admission for such public servants to the regular exhibits or performances of the organization would not advance a City purpose, except that invitations to such regular events for that small number of City employees, typically lower-ranking, whose duties include, for example, overseeing the programs of the organization, would be permissible. As noted in Section C(5), above, the Board in Advisory Opinion Number 2012-4 addressed in detail when a public servant might accept, and when a lobbyist might permissibly give to a public servant, complimentary admission to a sporting or other entertainment event, setting forth a two-part test: 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. Opinion Number 2007-5 concluded with a caution to City lobbyists that their gift-giving is subject not only to regulation by the Board, but also by the State (*see* Legislative Law § 1-m).

In 2016 the Board imposed a \$4,000 fine on a lobbyist for violating the City’s lobbyist gift ban, the first such penalty imposed by the Board. In this matter, the lobbyist had provided free consulting services, including the expenditure of funds by his firm, in support of a Council Member’s effort to become Speaker of the City Council.<sup>24</sup>

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<sup>1</sup> Board Rules § 1-01(a).

<sup>2</sup> *COIB v. Clair*, COIB Case No. 2005-244 (2007).

<sup>3</sup> *COIB v. Wolf*, COIB Case No. 2012-848 (2013).

<sup>4</sup> *COIB v. Ashimi*, COIB Case No. 2015-878 (2017).

- <sup>5</sup> Board Rules § 1-01(a).
- <sup>6</sup> *COIB v. Bradley*, COIB Case No. 2008-423b (2008).
- <sup>7</sup> *In re Safir*, COIB Case No. 1999-115 (2000).
- <sup>8</sup> *COIB v. Mark-Viverito*, COIB Case No. 2013-903 (2016).
- <sup>9</sup> *COIB v. Markowitz*, COIB Case No. 2009-181 (2011).
- <sup>10</sup> *COIB v. Harvey*, COIB Case No. 1997-368 (1998).
- <sup>11</sup> *COIB v. Mooney*, COIB Case No. 2012-201 (2012).
- <sup>12</sup> *COIB v. Davis*, COIB Case No. 2012-365a (2013).
- <sup>13</sup> *COIB v. Kwait*, COIB Case No. 2013-296 (2014).
- <sup>14</sup> *COIB v. Marino Coleman*, COIB Case No. 2015-882 (2017); *COIB v. O'Sullivan*, COIB Case No. 2015-882a (2017); *COIB v. Wald*, COIB Case No. 2015-882b (2017); *COIB v Nevins*, COIB Case No. 2015-882c (2017).
- <sup>15</sup> COIB Case No. 1997-247 (1998),
- <sup>16</sup> *COIB v. W. Fraser*, COIB Case No. 2002-770 (2004).
- <sup>17</sup> *In re Messina*, COIB Case No. 2017-454 (2017).
- <sup>18</sup> *COIB v. Concepcion*, COIB Case No. 2008-963a (2011).
- <sup>19</sup> *Markowitz, supra*.
- <sup>20</sup> *People v. Hilton*, Indictment No. 6313/2000 (Sup. Ct. N.Y. Cty.); *People v. Cox*, Indictment No. 6311/2000 (Sup. Ct. N.Y. Cty.).
- <sup>21</sup> *COIB v. Glanz*, COIB Case No. 2010-831 (2011).
- <sup>22</sup> *COIB v. L. Dixon*, COIB Case No. 2013-782a (2014).
- <sup>23</sup> See Board Rules § 1-01(j).
- <sup>24</sup> *COIB v. Levenson*, COIB Case No. 2013-903a (2016).