



## CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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### **Gifts Travel**

**Charter Sections:** 2604(b)(3), 2604(b)(5)

**Opinion Cited:** 2011-2

### **Advisory Opinion No. 2016-1**

The Conflicts of Interest Board (the “Board”) received a request for advice from an elected official asking whether, consistent with Chapter 68 of the City Charter, the City’s conflicts of interest law, the elected official may accept as a “gift to the City”<sup>1</sup> payment from a third party for travel-related expenses associated with a trip undertaken for a City purpose when, the official also reports, a portion of the travel is for a political purpose, that is, the elected official informs the Board that the travel had both governmental and political elements. Because the Board anticipates similar questions in the future, and because such expense-paid travel by elected officials is often a matter of public interest, the Board publishes this Opinion setting forth its advice in this matter. More particularly, for the reasons set forth herein, and as the Board advised the instant elected official, when an elected official takes a trip that includes

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<sup>1</sup> See Board Rules Section 1-01(h).

both governmental and political activities, the elected official may not accept payment from a third party for that portion of the trip devoted to political activity.

We first set forth the relevant City Charter provisions and Board rules, summarize one prior Board opinion, and note relevant federal laws and practices.

## **I. Relevant Law**

Charter Section 2604(b)(3) prohibits a public servant from using or attempting to use “his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.”

Charter Section 2604(b)(5) provides that “[n]o public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.”

Section 1-01(a) of the Rules of the Board (codified as Title 53 of the Rules of the City of New York) defines “valuable gift,” as used in Section 2604(b)(5), 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.” (Emphasis added.)

Board Rules Section 1-01(h) provides as follows:

- (1) For the purposes of Charter § 2604(b)(5), a public servant’s acceptance of travel-related expenses from a private entity can be considered a gift to the City rather than to the public servant, when:
  - (i) the trip is for a City purpose and therefore could properly be paid for with City funds;
  - (ii) the travel arrangements are appropriate to that purpose; and
  - (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.

- (2) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefor be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor.<sup>2</sup>

In Advisory Opinion No. 2011-2, the Board confirmed that a public servant may accept a gift to cover the expenses of the public servant's own travel (but not that of a spouse or guest) as a gift to the City where the criteria of Board Rules Section 1-01(h) are satisfied, namely, that the trip is for a City purpose and might therefore be paid for with City funds, that the trip is no longer than is reasonably necessary for its City purpose, and that the travel arrangements are appropriate to the City purpose. The Board further noted that requests for the Board's advice about accepting payment from a third party for official travel "should include 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; a statement of the City purpose(s) of the trip; and a statement of the cost of the trip to be paid for by the non-City source." Advisory Opinion No. 2011-2 at 10. The Board further cautioned that it will "withhold its approval of payment for a trip where it appears from all of the submitted materials that the purported City purpose is simply a pretext for a paid vacation or the burnishing of a political image." *Id.* at 8. Finally, when a public servant is offered a gift of travel, whether or not from a person or firm with City business dealings, the public servant risks violating Chapter 68 if he or she accepts the gift without first seeking the Board's advice. *Id.* at 5.

To aid the Board in answering the question of what standard should be employed to determine when an elected official may accept third-party payment for travel with mixed

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<sup>2</sup> Board Rules Section 1-01(h), adopted by the Board in 1990 in the first year of its existence, is modeled, virtually verbatim, on Advisory Opinion No. 651A (1989) of the Board of Ethics, the Board's predecessor entity.

governmental and political purposes, the Board also looked to the rules governing members of Congress.

For a Member, officer, or employee of the House of Representatives, the primary purpose of the trip must be determined. If the primary purpose is governmental, the third party may pay for the entire trip so long as the secondary purpose does not add any additional costs. (If there are additional costs, the traveling official must pay for them.) The primary purpose is determined using a test of reasonableness, and one relevant factor is the amount of time devoted to each purpose. See H.R. Rule XXV (5)(b)(1)-(b)(5), 114th Cong., Rules of the House of Representatives (2015); Staff of H.R. Comm. on Standards of Official Conduct, 110<sup>th</sup> Cong., House Ethics Manual 116 (Comm. Print 2008). In the Senate, in contrast, expenses for mixed travel must be pro-rated on a reasonable basis to accurately reflect the purposes of the trip. See S. Rule XXXV (2)(a)(2)(A)-(b)(4), Staff of S. Select Comm. on Ethics, 110th Cong., The Senate Code of Official Conduct (2008); Staff of S. Select Comm. on Ethics, 108<sup>th</sup> Cong. Senate Ethics Manual 119-120 (Comm. Print 2003).

## **II. Facts**

The instant request for advice involved an elected official's out-of-town trip that had both a governmental purpose and a political purpose. The elected official was invited to speak at a conference regarding City programs and initiatives. The elected official flew to the conference location on a Friday to attend some conference-related functions, attended the conference on Saturday, and returned to New York City on Sunday. After Saturday's conference, which lasted well into the afternoon, the elected official attended a campaign fundraiser at a nearby location for the benefit of the elected official's campaign. The fundraiser, which was organized by the elected official's campaign committee, lasted approximately one hour and raised money for the campaign. No further political activity occurred on the trip. It was not disputed that the

campaign event added no extra travel cost, that is, a return to New York on Sunday rather than on Saturday would have been necessary even if there had been no campaign event. The elected official paid the cost of the roundtrip airfare with personal funds. The conference sponsor offered to reimburse the elected official for the cost of the airfare, and the elected official asked the Board for advice on whether reimbursement was permissible in light of the mixed purpose of the trip.

### **III. Discussion**

In the case before the Board, an elected official proposed to accept reimbursement from a third party<sup>3</sup> for travel-related expenses incurred for a trip that had a mixed purpose – governmental and political.<sup>4</sup> As the Board discussed in Opinion No. 2011-2, Board Rules Section 1-01(h) plainly permits acceptance of payment from a third party for travel where the trip’s City purpose is clear, and the Board has never dictated what a public servant may do in his or her off hours at, for example, an out-of-town conference, whether that activity is personal leisure or some permissible private employment.

That said, as noted above, the Board determined here that, as applied to out-of-town travel by elected officials, an elected official may not accept payment from a third party for the entire cost of a trip that includes political as well as governmental activities, even where, as here, 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

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<sup>3</sup> For the purposes of this Opinion, “third party” means any source other than the City of New York.

<sup>4</sup> Attending a political fundraiser for the benefit of the elected official’s own campaign committee is clearly political activity. The Board reserves the question of what else constitutes political activity and will determine such matters on a case-by-case basis. An elected official who wishes to accept travel-related expenses from a third party for a trip that includes some arguable political activity should not accept payment until he or she has sought the advice of the Board.

may accept payment only for the cost allocated to the governmental purposes. This approach is modeled on that of the United States Senate, described above.

As to the method for allocating expenses between the governmental and the political for the purpose of identifying the official expenses for which the elected official may accept payment from a third party, the Board advises that the primary measurement will be the time devoted to each activity. Thus, by way of example, if the elected official's time devoted to governmental activity on a particular trip is equal to 80% of the duration of the trip, with the other 20% devoted to political activity, the official could accept payment from a third party for only 80% of the cost of the total travel expenses associated with the trip.

The Board notes that this Opinion is limited to travel by elected officials undertaken for a City purpose when a portion of the travel is for a political purpose, not to mixed purpose travel by other public servants. The Board cautions that nothing in this Opinion changes the long-standing requirement for all public servants to personally bear the extra costs incurred when the non-governmental purpose adds cost to the trip, for example, the case where the length of the trip is extended for a few days of vacation.<sup>5</sup>

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<sup>5</sup> Separate and apart from the requirements of the conflicts of interest provisions of Charter Chapter 68, Administrative Code Section 12-110(d)(1)(h)(2) requires public servants who file annual disclosure reports with the Board to include in their reports payments or reimbursements of City-related travel expenses of \$1,000 or more that are provided by non-governmental sources. See also Ad. Code Section 12-110(a)(15).

**IV. Conclusion**

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 only for costs allocated to the governmental purposes.



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