

Gifts -
Charter Sections 2604(b)(3), (b)(5)

Advisory Opinion No. 94-9

The Board has received two requests for opinions from public servants who have won valuable prizes in random drawings at conferences they have attended in the course of their official duties. The first public servant ("Public Servant A") has asked whether he may, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, accept, for his personal use, a compact disc player he won in a random drawing. The second public servant ("Public Servant B") has requested an opinion as to whether he may accept, as a gift to the City, a tape backup system which he won in a random drawing.

For the reasons discussed below, it is the Board's opinion that it would be a violation of Chapter 68 for Public Servant A to accept the compact disc player for his personal use. However, both public servants may accept the prizes they have won in these random

drawings as gifts to the City.

Background

Public Servant A

This public servant has advised the Board that he represented his agency at an annual exposition and conference sponsored by a professional association; that he entered a drawing at one of the booths set up by the exposition participants; that the booth was run by a company which currently has no business dealings with the City but which intends to submit a bid in response to a Request for Proposals ("RFP"), which the public servant's agency will be issuing within the next two years; that one month later he was notified that he had won the drawing; and that he received a compact disc player valued at approximately \$100.

Public Servant B

The second public servant has advised the Board that he attended, in his official capacity, the annual conference of a professional association; that his agency paid for both his membership in the association as well as his registration fee for the conference;

that conference attendees were encouraged to leave their business cards at the various vendor exhibits; that the cards were collected in bowls from which the vendors drew names to give away samples of their products; that the public servant's name was drawn from one of these bowls to receive a 525 megabyte tape system and four versions of software which are valued at \$3600; and that the manufacturer of this equipment does not presently have any business dealings with the public servant's agency, although it does sell many of its products to the City indirectly, via distributors.

Discussion

Charter Section 2604(b)(5) provides that no 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. The Board's Valuable Gift Rule, Section 1-01, defines a valuable gift as any gift to a public servant with a value of \$50 or more.

With respect to Public Servant A, it is likely that the company which awarded him the compact disc

player will bid on an RFP which will be issued by his agency. Accordingly, it would violate Charter Section 2604(b)(5) for him to accept the prize for his personal use. Further, since Public Servant A won the compact disc player while attending a conference as part of his official duties, it would not be appropriate for him to accept the gift for his personal use. See Charter Section 2604(b)(3), which provides that no public servant shall use or attempt 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.

Public Servant B has requested permission to accept the computer equipment as a gift to the City, not for his personal use. The Board has held that, under certain circumstances, agencies, as distinct from individual public servants, may accept gifts from private entities. For example, in Advisory Opinion No. 92-21, we stated that City agencies may accept gifts from the private sector, provided that precautions are taken to prevent the appearance of impropriety.

If a public servant attends a conference as part of his or her official duties and then personally accepts a prize won in a raffle at the conference, this could create a perception that the public servant is obtaining a personal gain as a result of his or her official position. See Charter Section 2604(b)(3). In Advisory Opinion No. 94-4, however, we held that it would not violate Chapter 68 for a public servant to accept, as a gift to the City, a computer which was given to him during a conference. Acceptance of prizes on behalf of the City is permitted as long as there is no suggestion that the acceptance of the gift by the City would violate Chapter 68. For example, all prize drawings must be truly "random" and open to participants at the conference generally. Further, the conference participants should not be comprised entirely of City employees. Finally, the supplier of the prize must be put on notice, in writing, that it will not receive preferential treatment in any present or future dealings with the City as a result of the prize.

Conclusion

The Board has determined that both public servants in this case, who attended conferences as part of their official duties, may accept the prizes they have won in raffles as gifts to the City. Accordingly, they must turn the prizes over to the heads of their respective agencies, who will determine whether the gifts are of such nature that acceptance will be in the City's interest. In all such cases, a letter must be sent to the prize donor stating that acceptance of the prize will not be a basis for preferential treatment in any business dealings with the City. If such gift to the City is not accepted by the head of the agency, the prize will have to be returned to the donor.

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