

Gifts

Charter Section: 2604(b)(5)

Advisory Opinion No. 96-3

The Conflicts of Interest Board (the "Board") has received a request from the General Counsel of a City agency (the "Agency") for an opinion as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, Agency employees may accept gifts valued in excess of \$50 from individuals or organizations which have business dealings with the City, if the employees pay for those portions of the gifts which exceed \$50. For the reasons discussed below, it is the opinion of the Board that neither an Agency employee nor any other public servant may accept a gift worth more than \$50 from any person or firm which such public servant knows is or intends to become engaged in business dealings with the City, even if the public servant offers to pay for the portion of the gift which exceeds \$50.

Background

Two Agency employees have recently been offered

tickets to local events from firms doing business with the City. In the first case, an Agency employee has been offered two tickets for premium seats at a hockey game. The tickets have a face value of \$100 each. The employee has asked whether he may accept the tickets if he pays the donor \$150 to cover the difference between \$50 and the actual value of the tickets. In the second case, an Agency employee has been offered two theatre tickets, each with a face value of \$40. The employee has asked whether he may accept both tickets if he pays the donor \$30 to cover the difference between \$50 and the actual value of the tickets.

Discussion

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." Board Rules, Section 1-01(a), defines 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."

Since the face value of the tickets offered to the Agency employees exceeds \$50, acceptance of these gifts is prohibited by Charter Section 2604(b)(5). The Charter's prohibition on the acceptance of valuable gifts is intended to deter public servants from using their official positions to reward the donors of valuable gifts with favorable treatment in the donors' dealings with the City and thus to ensure that public servants act in the best interests of the City. In the words of the Preamble to Chapter 68, one of the purposes of the restrictions contained therein is to "protect the integrity of government decision-making."

See Charter Section 2600. The acceptance of gifts worth less than \$50 is permitted because such gifts are not generally considered meaningful or "valuable," and are thus unlikely to influence a public servant in performing any official act by reason of receipt of the gift.

If the Agency employees were permitted to accept

tickets by paying for the portion of the face value of the tickets which exceeds \$50, this would undermine the purpose of Charter Section 2604(b)(5) by allowing these public servants to accept otherwise prohibited gifts. The Board has therefore determined that the Agency employees may not accept tickets worth more than \$50.

City agencies may have their own guidelines for their employees concerning the acceptance of gifts which are more restrictive than Chapter 68. Public servants should thus also consult their own agencies' rules to determine whether or not they may accept a gift from a person or firm doing business with the City.

Conclusion

Based on the foregoing analysis, it is the opinion of the Board that neither an Agency employee nor any other public servant may accept a gift worth more than \$50 from any person or firm which is or intends to become engaged in business dealings with the City, even if the public servant offers to pay for the portion of the gift which exceeds \$50.

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Advisory Opinion No. 96-3
June 10, 1996
Page 5

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