

the Ethical Times

Un-Wrapping the Rules for Gifts

By Maryann White

This time of year, the Conflicts of Interest Board gets a lot of questions from public servants about giving and receiving holiday gifts. The one gift you can absolutely take is this free advice on how to stay off COIB's naughty list.

Gifts from Non-City Sources

There are three important rules to keep in mind about gifts from those outside of City government:

Rule 1 – TIPS

Public servants may not take a tip or gratuity of any value for doing their City jobs. This means that a public servant is prohibited from accepting a "thank you" gift from a member of the public or a City vendor in any amount. What if a City vendor gives you a \$5 gift card to buy a peppermint frappuccino in appreciation for your help with their contract throughout the year? Even though the card is worth less than \$50 - and probably won't cover the cost of that festive holiday beverage - you cannot accept it. What if a grateful member of the public bakes snickerdoodles for you? The law prohibits any tip or gratuity, no matter what the value is, so you can't take

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those. It's a nice gesture, but we already get paid to do our City jobs.

Rule 2 – GIFTS FROM PROHIBITED SOURCES

Public servants may not accept a gift worth \$50 or more from any person, firm, or not-for-profit doing business or seeking to do business with any City agency. This means that when a not-for-profit with a City contract tries to give you a paella gift set, which costs \$59.95, you cannot accept it. What if the vendor just opens the box and gives you the paella pan that costs \$29.95? Technically, you could accept this but it's a bit more complicated than that. The \$50 limit is cumulative, which means that City public servants may not accept, over any 12-



month period, a series of gifts from the same source worth \$50 in total. Later when that vendor gives you the rice, olive oil, and chorizo, you would be violating the Valuable Gifts Rule. And note that some City agencies have even stricter rules: a \$0 gift rule is not uncommon. The easiest, surest way to comply is: don't take stuff from anyone doing business or seeking to do business with the City.

What should you do if a vendor offers you a prohibited gift? If you can refuse it or return it, you must do so. But let's say that's not an option. An anonymous box of chocolates arrives at your office. Since you don't know that it's not from a City vendor or a member of the public that deals with your agency, you have to assume that it is. First, notify your agency's Inspector General. Then, reach out to your agency head (or their designee for these matters; typically, an attorney in the General Counsel's office), who will provide further guidance. The first choice would be to donate the chocolates. If your agency's Inspector General and your agency head agree, they could also be placed in a public area for all to enjoy. In some circumstances, it will be necessary to destroy a gift to preserve the public's faith that no civil servant has been unduly, deliciously influenced.

Rule 3 – INVITATIONS TO EVENTS AND HOLIDAY PARTIES

This is also the season for holiday and end-of-the-year parties. A public servant who works for DCAS could be invited to a New Year's Celebration by a company that sells equipment to the City. The only way for a public servant to attend an event paid for by a firm

that does business with the City is if there is an actual City purpose for them to be there. A public servant who works for ACS might be invited to the annual fundraiser of a not-for-profit children's advocacy organization that does not contract with the City but with which the public servant is involved at their City job. Because the public servant is only being invited to that event because of their City position, there must also be a City purpose for them to accept free attendance at that event. Because both of these events are mainly social affairs, it is less likely that there is a City purpose. The determination of whether there is a City purpose is made by your agency head, and you must receive written approval from them before the event.



Gifts from Co-Workers

That covers gifts from those doing business with the City and members of the public to City public servants, but what about gifts between co-workers?

City co-workers who don't supervise one another – by assigning work, approving timesheets, evaluating, promoting, etc. – can give gifts to one another in any amount. Similarly, a supervisor can give a gift to one or more of their subordinates. However,

the reverse is not the case: superiors cannot accept anything more than a token gift from a subordinate. A token gift is a gift valued at \$10 or less, and it cannot be cash or a cash substitute, like a gift card. This means that you can give your boss some of your homemade snickerdoodles or a holiday card, but that's about it.

Could ten subordinates chip in \$10 each to purchase a \$100 holiday gift for their superior? That is one big gift, not ten token gifts, so the supervisor accepting it would violate the conflicts law.

Although we have to enforce the gift rules, we at COIB are not total grinch-es. Secret Santa, Yankee Gift Swap, and other office holiday activities are allowed under Chapter 68, provided that the gifts have only a token value. You, and the Whos in Whoville, can celebrate the holidays at \$10 or less per person.

If you have any other questions about gifts, or wish to get advice on any topic related to the City's conflicts of interest law, call COIB's Attorney of the Day at 212-442-1400 or AOD@coib.nyc.gov, or visit our website at nyc.gov/ethics. All advice is confidential, and you may get advice from us anonymously.

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Recent Enforcement Cases

Particular Matter Prohibition. In 2017, the Director of Street Lighting at the New York City Department of Transportation ("DOT") reviewed, approved, and signed the architectural designs for streetlights submitted by Stantec Consulting Services pursuant to Stantec's contract with the City to design and install upgraded streetlights in Coney Island. The Director of Street Lighting left DOT in 2020 and began working for Stantec in 2021. At Stantec, the former Director worked on the same Coney Island streetlight design contract on which he had worked at DOT, including ensuring that the streetlights complied with the New York City Electrical Code and communicating with the DOT Street Lighting Unit regarding the project. The former Director paid a \$4,000 fine to the Board.

Prohibited Gratuity. A Secretary in the Imaging Unit at the New York City Housing Authority ("NYCHA"), whose responsibilities include processing documents submitted by NYCHA residents, found \$20 in cash in an envelope with a NYCHA resident's documents and kept the money for herself. In a joint settlement with the Board and NYCHA, the Secretary agreed to serve a NYCHA-imposed 10-calendar day suspension, valued at approximately \$1,653, to resolve her violation. The Board determined that the penalty imposed by NYCHA was sufficient and imposed no additional penalty.

Misuse of Confidential Information. A New York City resident (the "Complainant") filed multiple complaints through the City's 311 system about the

Recent Enforcement Cases

parking practices of New York City Police Department (“NYPD”) employees at the 84th Precinct. Using the telephone number provided by the Complainant to 311, an NYPD Police Officer assigned to the 84th Precinct called the Complainant and falsely said that he was a “311 Operator” and that the Complainant “might be barred” from the 311 system due to his “chronic” complaints. The Police Officer paid a \$500 fine to the Board to resolve this misuse of confidential information. In determining the appropriate penalty for the Police Officer’s conduct, the Board considered that the Police Officer had forfeited 15 vacation days to resolve a related disciplinary action brought by NYPD and contributed \$500 toward a \$25,000 settlement the City paid to resolve a civil suit brought by the Complainant related in part to the Police Officer’s conduct.

Prohibited Appearances by an Attorney Against the City; Misuse of City Time. Over the course of five years, an Oiler for the New York City Department of Correction (“DOC”) who had an outside legal practice represented 18 New York City employees who brought workers’ compensation claims against the City. These claims were adjudicated before the New York State Workers’ Compensation Board (“WCB”). On five occasions, the Oiler attended WCB hearings on behalf of his clients at times he was required to be performing work for DOC. After a full hearing at the New York City Office of Administrative Trials and Hearings (“OATH”), the Board imposed a fine of \$59,000—the amount recommended by

the OATH Administrative Law Judge—on the now-former Oiler. In assessing this penalty, the Board and OATH ALJ both noted that the now-former Oiler “represented multiple claimants, the claims involved substantial sums, and respondent received significant fees for litigating cases against the City’s interest.”

Visit our [search engine](#) for all COIB Enforcement Dispositions.

THE PUBLIC SERVICE PUZZLER



Are you a public servant who moonlights (or aspires to) as a private investigator? Well, the latest [Puzzler](#) has got a doozy of a case for you. We need you to track public servant “Marlene” in order to catch whether she may be violating Chapter 68 in the course of her day. Review the report and [send your conclusions here!](#)



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