

the Ethical Times

Spelling Gift Without “If”

Why Have Gift Rules?

By Rob Casimir

In theory, a gift is merely the simple transfer of some item from one person to another, without any explicit agreement for immediate or future rewards. From this perspective, the gift is nothing more than an expression of pure altruism: “Here’s a thing to bring you joy.”

In practice, however, gifts both *represent* and *create* a relationship between people.

Consider birthday gifts. Once a year, your close friend might give you a gift, as a way of showing his appreciation for your presence in his life; this is very sweet, of course, but it’s something of a call in search of a response – the opening of a dialogue. It’s not unreasonable for your birthday gift-giver to expect your appreciation in return, and thus he may likely feel the relationship is uneven – even to the point of insult! – should you not reciprocate the gesture come *his* birthday. It would mean that something was wrong about his previous assessment of the relationship. That would feel...bad.

You probably feel this pressure, too. Anthropologists refer to this feeling as “gift debt” – the sensation of having received a gift and accepted, alongside the item itself, a low-level anxiety that can only be resolved by “getting back to even.” Human beings – and, not for nothing, our primate ancestors – are highly attuned to reciprocity. Those early humans who were less attuned to the informal register of who is “up” or “down” found it

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more difficult to thrive in their societies and within their relationships, and many generations of natural selection have resulted in a real wariness around violating the social expectations of gift-giving. It took millions of years of evolution, but humans are now blessed with the anxiety of “oh no, I forgot to bring a gift.” Thanks for nothing, Darwin.

So why does all this matter to government ethicists and, much more importantly, to you, the noble public servant? Well, no surprise here: it has conflicts of interest implications.

A public servant has a conflict of interest when their private, personal, or financial interests interfere with their official duties. It’s why we tell City employees to, for example, “disclose and recuse” if they’re at the win-



dow serving clients and, all of a sudden, the employee's parent or sibling walks up: serving the *public* interest would involve being objective and fair in one's decision-making, but suddenly there's a *private* interest of "don't ruin Thanksgiving." Better to step away from the temptations of prioritizing that outside family relationship and remove oneself entirely from any possibility of violating the public's trust.

The City's Conflicts of Interest Law takes a similar approach to the acceptance of gifts. Most of us provide services directly to communities, and lots of us do it well. Sometimes those people want to show their thanks with a gift – after all, it's what they do with everyone else in their lives who they appreciate, and it's certainly not immoral to want to say "thank you" to someone who has helped you out.

But remember, gift-giving creates a relationship, and the relationship often comes with a sense of debt and a desire to "get back to even." Let's say a City procurement officer gets a birthday gift from one of three bidders to a City contract, but not the other two. Couldn't he feel, even unconsciously, that the gift must be reciprocated? And wouldn't the most obvious way to repay the "debt" be by awarding the gifting bidder that juicy City contract? Certainly, if you were one of those three bidders, you'd want to be the one with a history of giving gifts to the procurement officer, right?

It all boils down to one question: could the relationship created by acceptance of a gift be just as influential on an official duty or decision as a pre-existing familial or financial relationship? Is that possible? Jurisdictions differ on their answer to this. But here in New York City – with all the billions of dollars and hundreds of thousands of City employees serving over eight million people across more than fifty City agencies – we've decided *yes, it is possible*, and as such our policies on gifts are stricter than elsewhere.

Chapter 68 of the New York City Charter prohibits the acceptance of "valuable gifts" from any person or firm that does business or seeks to do business with the City. The Board Rules define "valuable" as anything worth \$50 or more; furthermore, this value is cumulative over 12 months, and any person closely related to, or associated with, the original gift-giver or their company is treated as a single gift-giver (so no "this \$25 is from me, and this \$25 is from the CEO's wife").

The Valuable Gifts Rule covers gifts from *all persons or entities doing business or seeking to business with the City*, not just those you deal with directly: a very wide swath of the population. But people don't normally give public servants things of value just because they, I dunno, like their smile; usually, it's because they appreciate some service they were rendered by that public servant: "thanks for processing that paperwork for my new construction, here's a little something special just for you." In these situations, the Conflicts of Interest Law is at its most prohibitive: discarding the \$50 threshold in favor of a blanket \$0 rule, often called the Tips & Gratuities Ban. It's this rule that can be more relevant to public servants, as it sets the standard for the population that is most likely to *want* to give us gifts: those people with whom we directly interface in an official capacity.

When it comes to tips, not only does the threat of debt obligation still arise, but the fact is that we're already compensated to provide government services, and that compensation comes, ultimately, from taxes. We shouldn't be taking a cent from our fellow New Yorkers for something they have literally already paid us to do. They can pay us a compliment, send in a card, maybe even write something nice to our supervisor (please do that!), but nothing of value.

When it comes to serving the public, when we as City employees are called upon to make a decision that impacts someone's life,

we want to make sure there is no underlying relationship – financial, familial, or *gift-giving* – serving as a thumb on the scale. The \$50 Valuable Gifts Rule and the Gratuities Ban provide us with guidance on how best to achieve this, and it's the Conflicts of Interest Law that formalizes this commitment to our communities, building trust and increasing citizens' willingness to come forward, interface with the City, and get the services to which they are entitled.

One service to which *you* are entitled is the advice of COIB's expert attorneys, who can provide confidential, even anonymous legal guidance on all Chapter 68-related questions. You can reach them by calling 212-442-1400 during business hours, or via the advice webform. The only gift debt you will incur by taking advantage of this service is the solemn obligation to follow the advice you receive.



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Recent Enforcement Cases

Prohibited Appearances & Moonlighting.

A Public Health Advisor for the NYC Department of Health and Mental Hygiene (DOHMH) worked at a summer camp and afterschool program run by a private childcare provider with City contracts. On six occasions, the Public Health Advisor communicated on behalf of his employer with DOHMH employees who were inspecting or otherwise regulating the summer camp and afterschool program. In a joint disposition with the Board and DOHMH, the Public Health Advisor paid a \$3,500 fine to the Board.

Misuse of City Resources. A Diesel Auto Mechanic for the NYC Department of Correction (DOC) used his DOC computer and DOC email account to send an email to 25 other DOC employees announcing his candidacy for the paid position of Shop Steward at Local 246, a municipal union that represents New York City employees who maintain and repair the City's municipal vehicles. In issu-

Financial Relationships

IN THE WORKPLACE

City employees may not enter into a business or **financial relationship** with anyone who is their **City superior or subordinate**.



Business or Financial Relationships Include:

- Loans
- Business Transaction
- Outside employment
- Purchases of property
- Renting
- Lottery pools
- Serving as an attorney, broker or representative

A Superior is Anyone with the Power to:

- Evaluate job performance
- Assign work
- Approve leave requests
- Approve overtime



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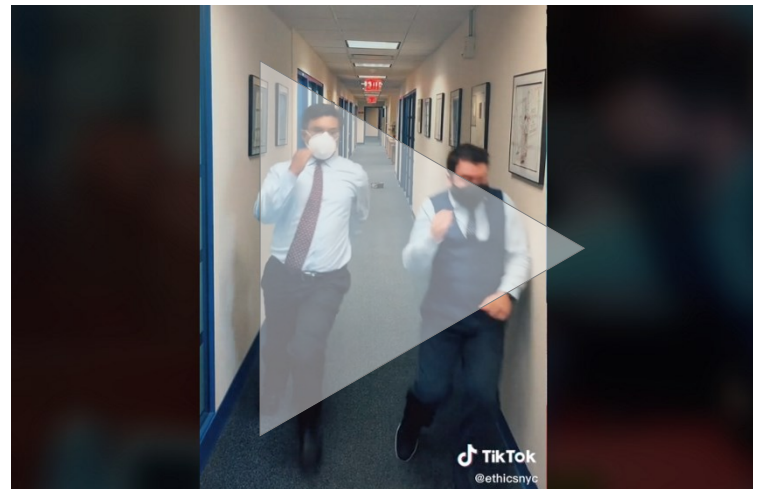
ing a public warning letter rather than seeking a fine, the Board considered that the Diesel Auto Mechanic sent a single prohibited email and that he may have been confused about the permissibility of his conduct due to the link between his union membership and his City employment.

Misuse of Confidential Information. Between 2011 and 2019, a Principal Administrative Associate at the NYC Human Resources Administration (HRA) accessed the Welfare Management System to view the public assistance records of a close family member and her own records on 112 occasions and the Paperless Office System to view the family member's and her own Supplemental Nutrition Assistance Program cases records on 8 occasions. She agreed to resign to resolve agency disciplinary charges related to this conduct, as well as other conduct unrelated to Chapter 68. The Board did not impose its own penalty but joined a three-way settlement.

Prohibited Appearances & Misuse of City Time. A Social Worker for the NYC Department of Education (DOE) worked at a private psychotherapy center where he provided therapy services to a DOE student who receives special education services. During his DOE work hours, the Social Worker represented the student at a meeting with DOE officials concerning the adequacy of the special education services being provided to that student. In resolving this matter with a public warning letter instead of seeking a fine, the Board considered that the Social Worker had already agreed to pay a \$3,000 fine to DOE to resolve disciplinary charges concerning the same conduct.

A [searchable index](#) of all COIB Enforcement Dispositions is available courtesy of New York Law School.

COIB On TikTok!



COIB has joined the latest trend: Government TikTok! Run, don't walk, to [@ethicsnyc](#) for exclusive new videos for the discerning connoisseur of quality ethics edutainment.

Some of our most popular videos so far: ["Super Confidential" Files](#), [Dad Jokes](#), and [Endless Screaming](#). Plus [bite-sized highlights](#) from 10+ years of COIB PSAs and skits.

THE PUBLIC SERVICE PUZZLER

Congratulations to **Pui Ching** of SBS, who discusses the bevy of programs her agency administered during the pandemic.



The current [contest](#) has you evaluating questionable social media acts. Will you make our Top 8? Send in your answers by **Friday, September 9th**!



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