

ASK THE CITY ETHICIST

#18: Holiday Heads-up on Gifts

By
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As the holiday season approaches, it is important for City public servants to remember that the City's ethics laws restrict our ability to accept gifts. *All gifts*, from fruit baskets to free tickets, have the potential to create an appearance that we are using our positions as public servants to receive perks. Such appearances erode the public's trust in City government.



There are two main rules to remember when it comes to gifts. With limited exceptions, it is a violation of the law to:

- 1) Accept a valuable gift from any person or firm doing business with the City, or from anyone associated with that person; or to
- 2) Accept compensation from anyone but your City agency for performing your responsibilities as a City employee.

The first rule, also known as the Valuable Gift Rule, prohibits us from accepting gifts, within any 12-month period, whose total value is \$50 or more. This means that if a public servant receives a \$40 gift in May from someone with City business dealings, and a \$15 gift in April of the following calendar year from the same person, the public servant is in violation of the City's ethics laws. Public servants have a duty to inquire about the donor's City business dealings and cannot claim that they had no knowledge of those dealings simply because they did not ask. Gifts from the donor's parents, spouse, domestic partner, children, and siblings, as well as anyone with whom the donor has a financial relationship are treated as coming from the same source and public servants who accept gifts from these related individuals risk violating the Valuable Gift Rule.

Public servants may however accept gifts where it can be shown that family or personal relationships, and not business relationships, motivated the gift. Even where the donor is a personal friend, however, a public servant may have to demonstrate that the gift would not result in the appearance that the donor received preferential treatment or that the public servant accepted the gift for performing official duties.

The ban against receiving gifts for performing official duties is very clear: a public servant cannot accept compensation, *of any value*, from anyone other than their employer for doing his or her City job. The rule doesn't simply prohibit public servants from accepting money, but also prohibits us from accepting what may be called "tokens of appreciation" as well. If the donor benefited from the public servant's official actions, and sends a gift of small value as thanks, then the token is considered "compensation" or a "gratuity" in violation of this rule. For example, a box of chocolate sent to a public

servant for a job well done would violate the rule. If a public servant were to receive such a gift, and found it impractical to return it to the donor, then the public servant must report the gift to the agency head and to the Department of Investigation.

Another rule to remember during the holidays is that superiors and subordinates may not give each other extravagant gifts. In fact, if a superior receives anything other than a token gift from a subordinate, he or she should graciously, but firmly, decline to accept the gift, as it may create the appearance that the subordinate is trying to win favor with his or her boss. Gifts between co-workers, however, do not violate the City's ethics laws.

Public servants who attend holiday parties also run the risk of violating the City's ethics laws. Those who receive complimentary invitations to events, functions or ceremonies, which are sponsored by outside entities doing business with the City, may only attend such events when: 1) acting in their official capacity, and 2) there is a legitimate City business purpose related to his or her agency. Attendance at such events, functions or ceremonies must be approved in writing, as in the interests of the City, by an employee's agency head. A good way to handle this situation if you are not sure if it is appropriate for you to attend an event is to purchase your ticket, or not to attend the event at all.

As City employees, we are subject to up to a \$10,000 fine per violation of the City's ethics laws, and violations are published in our local newspapers in order to educate other public servants about their ethical responsibilities. For example, a former NYC Police Commissioner was publicly reprimanded for accepting a free trip to the 1999 Academy Awards from a City vendor. The former Commissioner was not fined, but his case was used to make clear that public servants have a duty to inquire about the source of gifts they receive. On the other hand, two public servants each paid a fine of \$4,000 for violating the Valuable Gift Rule where the public servants were aware that the donors of the gifts they received were City vendors.

Public servants who have questions about these, or any other of the City's ethics laws, should contact the Conflicts of Interest Board for free, confidential advice at 212-442-1400. All calls are confidential and you may call anonymously.

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