

**CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD**

Notice of Adoption of Amendment
To Rule on Valuable Gifts

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Conflicts of Interest Board by Sections 2603(a) and 2604(b)(5) of the New York City Charter that the Conflicts of Interest Board has adopted an amendment to its rule on valuable gifts, amending Section 1-01(f)(4). This provision concerns when public servants may accept gifts of invitations to annual public events of certain organizations.

Pursuant to a notice published on May 17, 2000, in The City Record, a public hearing was held on June 19, 2000, at 2 Lafayette Street, Suite 1010, New York, New York. The Board received one comment, from the City Council, on the proposed amendment and, in response to that comment, added clarifying language to the statement of basis and purposes and to the text of the amendment itself. The text of the amendment is set out below.

SECTION 1-01. VALUABLE GIFTS.

(a) For the purposes of Charter §2604(b)(5), a “valuable gift” means 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. Two or more gifts to a public servant shall be deemed to be a single gift for purposes of this subdivision and Charter §2604(b)(5) if they are given to the public servant within a twelve-month period under one or more of the following circumstances: (1) they are given by the same person; and/or (2) they are given by persons who the public servant knows or should know are (i) relatives or domestic partners of one another; or (ii) are directors, trustees, or employees of the same firm or affiliated firms.

[Subdivisions (b) through (e) remain unchanged.]

(f) For the purposes of Charter §2604(b)(5), a public servant may:

(1) accept meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;

(2) be present at a professional or educational program as a guest of the sponsoring organization;

(3) be a guest at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;

(4) attend an annual public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization, provided that this exception does not apply when the invitation is from a civic, charitable or community organization which has [a contract or contracts] business dealings, as defined in Charter Section 2601(8), with, or a matter before, the public servant's agency;

(5) be a guest at any function or occasion where the attendance of the public servant has been approved in writing as in the interests of the City, in advance where practicable or within a reasonable time thereafter, by the employee's agency head or by a deputy mayor if the public servant is an agency head.

(g) For the purposes of Charter §2604(b)(5), a public servant who is an elected official or a member of the elected official's staff authorized by the elected official may attend a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization. For the purpose of this subdivision, the authorizing elected official for the central staff of the council is the speaker of the council.

[Subdivisions (h) through (j) remain unchanged.]

STATUTORY AUTHORITY: Sections 2603(a) and 2604(b)(5) of the New York City Charter.

STATEMENT OF BASIS AND PURPOSE OF THE PROPOSED AMENDMENT:

Charter Section 2604(b)(5) provides:

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, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.

As provided for by Charter Section 2604(b)(5), the Board has promulgated Rules Section 1-01, which, *inter alia*, delineates circumstances under which the receipt of gifts by public servants will and will not violate Chapter 68. Section 1-01(f) is, in the main, particularly concerned with ceremonies, functions, programs, and other occasions for which an admission fee is charged, and addresses when a public servant may accept a "ticket" at no charge. Section 1-01(f)(4) addresses the annual public affair of a business association or a charitable organization, and permits the attendance at such event when the free ticket comes from the sponsoring organization, unless the sponsoring organization is a charitable organization which has a contract with the public servant's agency.

By this amendment to section 1-01(f)(4), the Board intends to narrow the range of permitted gifts, because a public servant's agency may have many dealings with a private organization beyond a contractual relationship. For example, a community board may well have highly controversial matters before it involving for-profit and not-for-profit applicants; or the Finance Department may be considering the application from a charitable organization for an exemption from a real property tax. For a public servant at the involved community board, or at the Finance Department, to accept a free ticket to the annual affair of such an organization raises the appearance of impropriety. To limit the rule's proviso simply to the case of a contractual relationship is, the Board believes, insufficient.

The amended rule therefore would prohibit the acceptance of such free tickets from an organization which has dealings with the public servant's agency, not merely from those organizations with a contract with his or her agency. The language chosen to define those dealings, namely, "business dealings ...with, or a matter before," are terms contained in Chapter 68. "Business dealing" is indeed defined in Charter Section 2601(8). "Matter before" is a term used in Charter Sections 2604(a)(1)(a), 2604(b)(1)(a), and 2604(b)(1)(b).

Finally, it should be noted that the amendment would not change the substance of Rules Sections 1-01(f)(5) and 1-01(g), whose texts are also set forth above. Those sections permit, respectively, attendance at functions when the public servant's agency head so approves in writing and attendance by elected officials at the annual public events of certain organizations, when invited by the sponsoring organization. Thus, if the application of the amendment to a particular case would not permit acceptance of the gift

ticket, these provisions would, in all likelihood, permit attendance in those instances when the attendance is indeed in the interests of the City.

In response to the notice of opportunity to comment on the proposed rule, the City Council asked two related questions: the Board's interpretation, as applied to the activities of the Council, of the terms "business dealings" and "matters before"; and, for attendance no longer permitted under the proposed amendment to Section 1-01(f)(4), the identity, for the central staff of the Council, of the "authorizing" elected official within the meaning of Section 1-01(g). With respect to the first, the Board means no change in its historic interpretation of the Charter phrases "business dealings" and "matters before." In that regard, it should be noted that individuals who, and organizations which, merely lobby or advocate positions before the Council do not have "business dealings with" or "matters before" the Council. In contrast, individuals and organizations with Council business dealings or with matters before the Council include vendors to the Council; owners of property which is before the Council pursuant to the Charter's land use review process (see Charter Section 197-d); and organizations which receive direct appropriations from the Council (e.g., line item appropriations or discretionary funding as described in Title 9, Rules of the City of New York, Section 1-01(e)).

With regard to the identity of the authorizing official, for the central staff of the Council the proper authorizing elected official for the purpose of Section 1-01(g) is the Speaker, and the Board adds a sentence to the rule to that effect. For the aides to the individual Council members, the authorizing official is that Council member.

REASON THE PROPOSED RULE WAS NOT ANTICIPATED AND INCLUDED IN the regulatory agenda:

The Board did not consider this matter until well into the current fiscal year.