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to good government

The Ethical Times

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Dating, Gifts, and Government Service

By
Alex Kipp

We've all heard about the "valuable gifts" rule of the Conflicts of Interest Law. Just as a refresher, that's the stipulation under Chapter 68 of the City Charter that says none of us as City employees may accept "valuable gifts" from people doing business or seeking to do business with the City. Valuable is defined as something worth \$50 or more, and the rule is aggregate & cumulative, meaning that any series of gifts from any firm doing business with the City in any 12-month period will trigger a violation.

Additionally some of us work for agencies that have a zero-tolerance policy regarding gifts from members of the public. So, depending on your agency, taking a \$5 sandwich might not violate Chapter 68, but could still put you on the wrong side of your agency's code of conduct.

And also, we shouldn't forget the "Lobbyist Gifts Ban", which basically prohibits registered lobbyists from giving public servants anything except for swag items of no resale value. So that \$5 sandwich, if it's from a lobbyist, might not get you into trouble, but it would get the lobbyist into trouble and might drag you into a news story you'd probably like to avoid.

These are the kinds of points we generally cover in the 850-or-so classes we taught last year. Occasionally, I will get a question from a participant which starts something like this, "what about dating?" And after a short pause, I ask, "could you elaborate on your question?" "You know, like, being romantically involved." And then I ask, "you mean, with a contractor with whom you currently deal as a part of your City job?"

"Yes," they'll say, with a grin, as the rest of class perks up at the possibility of something salacious coming their way.

And, after a sigh, I then launch into a lengthy explanation that goes something like this: "the conflicts of interest law is not going to tell you who you can love. It's not going to tell you how to love, even though some people could really use

advice on that point. However, accepting gifts, like dinner, movie tickets, jewelry, flowers, or the other things one might associate with dates, from someone who does business with the City probably presents a violation of the conflicts of interest law, unless it's from a relative or someone with whom you have a long-standing gift-exchanging relationship that **precedes** your City position. Also, remember that you can't take any action as a public servant that confers a benefit to anyone with whom you're associated, so if you live with that person you're dating or have any sort of financial relationship with him or her, you'd have to recuse yourself from having anything to do with their City-related matters."

The person will then reply, "so, you're saying I should've gotten my romantic life together BEFORE I took my City position?"

"No, I'm not saying that, but dating a contractor, vendor, or someone you regulate presents some pretty obvious conflicts doesn't it?" We can usually agree on that. Romance, and the things that go along with it, present interesting issues for an Ethics law, and different jurisdictions have tried to address them in different ways.

In Missouri, for example, legislation was just proposed that would specifically label sexual favors from a lobbyist to a public servant as a "prohibited gift." North Carolina, on the other hand, has recently come to the opposite conclusion, explaining that "sexual relationships do not have any monetary value." (I wonder if the opinion would be different in, say, Nevada.) What does New York City's ethics law have to say?

First, the Conflicts of Interest Law was created to promote both the appearance and reality of integrity in City government. To maintain the appearance of integrity, sometimes it is necessary to recuse yourself from taking an official action, or refrain from taking an unofficial action, even if your intentions are beyond reproach. A City contractor might offer me a \$50 gift with no strings attached. And I might accept, thinking that I'll be sure to refrain from giving the contractor any special consideration now or in the future. But how will the acceptance of the gift appear to other stakeholders? To other contractors? To co-workers? To the press? This appearance

problem is why accepting any “valuable” gift from the contractor, no matter what the intention, is still a problem and a violation.

In the dating question, instead of asking, “what would it look like if I dated a City contractor?” let’s ask the question, “what would it look like if I took an action as a City employee that directly benefitted someone whom I was dating?” I think there’s at least an appearance problem that goes to heart of the Conflicts Law. From an appearance point of view, if you’re not careful, your City job gets tainted by your relationship and, at the same time, your relationship gets tainted by your City job, causing headaches on both fronts.

And so, here’s how we usually end those conversations in class: you want both things, the relationship and the job, to function as well as possible and independently of one another. You want to be able to do your City job without accusations of bias. You also want to be able to go out on normal dates without worrying about violating the law. So, here’s what you do:

- 1) Disclose your romantic relationship to your boss. That boss will probably want someone other than you to handle any matters related to your paramour.
- 2) Go Dutch. This is the 21st century. You work in government. You realize the sensitivities at play. Don’t let the acceptance of a gift taint what might become the love of your life!
- 3) If the relationship continues and grows, call the Board for legal advice. At some point, when a relationship becomes serious enough, maybe gifts from your paramour are justifiable as a social exception to the Gifts rule. But if they are, you certainly want written ad-

vice from the Board that agrees with that interpretation.

The takeaway is simple. Follow the bright-line rules. But when you encounter a situation where the rules are less clear, remember why we have the rules in the first place: to protect the appearance and reality of integrity in the job you do for NYC government. If something you’re about to do feels like it might jeopardize that, give us a call.

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Recent Enforcement Cases

▶ Melissa Mark-Viverito, Speaker of the New York City Council, was fined \$7,000 for accepting a gift from a lobbyist in violation of the Valuable Gifts Rule. That rule restricts the gifts that elected officials and other City employees may accept, they may not accept gifts totaling more than \$50 from anyone that is doing business or seeking to do business with the City. The lobbyist’s firm provided free consulting services and used the firm’s resources to aid Mark-Viverito in her efforts to become Speaker at a cost of \$3,796.44 to the firm. In addition to her fine, Mark-Viverito was required to pay the lobbying firm the cost of their services, \$3,796.44 and the lobbyist was fined \$4,000 for violating the Lobbyist Gift Law, which prohibits NYC-registered lobbyists from offering or giving a gift of any value to a public servant.

▶ A New York City Firefighter paid a \$4,000 fine for accepting 52 free tickets to Super Bowl XLVIII from the NFL and for helping his child get an internship with the NFL. The Firefighter had been the NFL’s con-

tact person at his firehouse since 2001. By helping his child secure an internship with the NFL, the firefighter misused his position as a City employee. Six higher ranking officers were fined \$500 for each ticket they accepted from the Firefighter, with fines ranging from \$500 to \$3,000. By accepting the free tickets from their subordinate, the six higher-ranking officers violated the prohibition against misuse of position.

▶ A NYCHA worker was suspended for fifteen days for twice requesting and receiving payments from subordinate NYCHA employees. The worker assisted one of her subordinates with a vehicle problem in the field and then requested and received \$10 for her work. Three weeks later she discovered another subordinate away from his assigned work location and demanded and received a can of soda for herself and another supervisor as payment for not reporting him.

▶ A City Research Scientist II for the New York City Department of Health and Mental Hygiene (DOHMH) was suspended for two days for, over the course of a year, using her City computer and City email account to send fifty emails on behalf of a professional services organization that she serves as president on a volunteer basis. The City’s conflicts of interest law prohibits the use of City time and City resources to perform work for non-City purposes. While public servants are generally permitted to use minimal amounts of City technological resources for outside volunteer activity, the Board determined that the City Research Scientist II’s frequent inclusion of her DOHMH title in the signature block of her emails created confusion regarding whether she was acting in her official capacity and thus created a conflict of interest.

▶ A former Deputy Commissioner

for the New York City Department of Homeless Services (“DHS”) was fined \$3,500 for, over several years, having five of her subordinates perform numerous personal favors for her that were unrelated to the subordinates’ DHS job duties. Subordinates performed favors such as parking the Deputy Commissioner’s City vehicle, frequently picking up her lunch, and running to the post office for her. The City’s conflicts of interest law prohibits public servants from using their City positions for personal advantage, which includes having subordinates perform personal favors

▶ A Tax Auditor II for the New York City Department of Finance (“DOF”) paid a \$750 fine for using his City computer to work on his private eBay-based business, sometimes on City time. The City’s conflicts of interest law prohibits employees from using City time or City resources to perform work for their private businesses.

▶ A Child Protective Specialist II for the New York City Administration for Children’s Services (“ACS”) agreed to be suspended for 3 workdays for accessing the State Central Register’s confidential database on one occasion to determine the status of an ACS investigation in which she was personally involved.

Congratulations! to the winner of the Conflict of Interest Board’s December Public Service Puzzler contest:

Ershaad Ally, a Instrumentation Specialist at the Departmental of Environmental Protection.

The Puzzler was on hiatus in January, but will return in February.



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Interested in more information? Get in touch with COIB’s Training & Education Unit to arrange a class in Chapter 68 for you and your staff. Contact Alex Kipp, Director of Training, at kipp@coib.nyc.gov

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