



THE ETHICS REVIEW

A JOINT COMMISSION ON PUBLIC ETHICS NEWSLETTER

BEWARE THE COOKIE MONSTER

Have you ever been struggling to stay on your New Year's diet when suddenly you come face to face with a freckled-faced Girl Scout armed with Thin Mints or even worse, those ready-to-bake cookies that are so good you start rationalizing the purchase of five boxes because, "it's for a good cause"? Maybe you have even been avoiding answering your door at home for fear of facing such a dilemma, when suddenly you open an email at work or approach the coffee pot one morning and, bam, there it is, the cookies have hunted you down. Do you really tell your supervisor, colleague or subordinate that you won't buy one box from their adorable daughter?

Does it matter if the solicitation relates to more laudable things like curing diseases? What if your boss sends out an email seeking "voluntary" contributions for the Tour de Cure complete with a picture of his child wearing a Red Rider T-shirt. Are you worried that your boss might view those who don't contribute as some nerve-wracking combination of heartless and cheap?

These dilemmas might seem trivial, but the reality is that fundraising in the office can trigger the Public Officers Law and those who solicit and accept orders or donations need to keep that in mind. Don't let what may seem trivial transform into something so anxiety provoking that you need something for your nerves, like cookies. There are rules that govern fundraising in the work place that can help you avoid the anxiety...and the pounds.

Charitable Fundraising

A State employee generally **may** collect contributions for charitable purposes, but several restrictions apply in order to avoid a conflict of interest or the appearance of a conflict. A State employee **may not** use his/her official title, position, or authority in fundraising efforts. Additionally, the employee **must not** solicit contributions from: (1) subordinates in his or her unit, or (2) persons or entities with open pending matters in which the employee is involved, or (3) persons or entities with whom the employee has had official dealings in the last 12 months. Finally, for at least one year after accepting a contribution, the employee **must be recused** from any matter involving the person or entity from which the employee accepted a contribution. The time period may

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vary depending on the amount of the contribution.

Political Fundraising

State employees **may** engage in political fundraising, but additional rules and caveats apply. First, a State employee **may not** use his/her official title, position or authority in any campaign activities, including untargeted mass mailings. No State resources of any type may be used in furtherance of these activities; campaign activities **may not** be conducted from a State office or during State business hours unless leave is taken. A State employee also **may not** solicit political contributions from subordinates, as this practice is strictly forbidden by Civil Service Law §107 (the "Little Hatch Act").

A State employee **may not** solicit political contributions from any person or entity which has a matter pending before the employee. In the context of political fundraising, however, where the employee is the supervisor, the prohibition extends to any person or entity that has a matter pending before the unit or units for which the employee is responsible. A State employee should also refrain from soliciting from a person or entity if there is a substantial basis to believe they will, in the foreseeable future, have dealings with employee, or the unit of the supervisor engaged in the solicitation.

If a State employee has appropriately solicited a political contribution from a person or entity, and subsequently the person or entity has a matter before the employee or the unit or units the employee supervises, the employee **must be recused** from the matter. Any agency employees who would ordinarily report to him/her must report to a different supervisor. There is no minimum one-year recusal period; instead, this recusal requirement is imposed for a reasonable period of time based upon the circumstances.

Questions about Ethics rules?

Contact JCOPE at jcope@jcope.ny.gov or 518-408-3976

Dear JCOPE

I work for the New York State Department of Motor Vehicles and I have been offered a free invitation to participate in the Coaches V. Cancer Charity Golf Tournament. It is a charity event sponsored by the American Cancer Society to be held at Turning Stone's Atunyote Course. A round of golf would otherwise cost \$225 and there will be food and adult beverages when we are done playing. Can I go or is this an impermissible gift?

Answer: Yes, you may attend. Pursuant to **19 NYCRR 933**, the regulation governing gifts to State officers and employees, there is an exception to the prohibition on gifts for entertainment at a **"bona-fide charitable event."** Since the "primary purpose" of the Coaches v Cancer Golf Tournament is to provide financial support for the American Cancer Society it qualifies as a bona-fide charitable event and thus, you may accept "complimentary attendance," which includes entertainment (ie. golf).

ENFORCEMENT ACTIONS

Prohibited Gifts & Nepotism: A former employee of the Metropolitan Transportation Authority (MTA) admitted to: 1) accepting gifts between August 2013 and April 2015, in the form of rounds of golf and meals, from vendors he dealt with as part of his official duties; and 2) calling Metro North employees in an effort to intervene in employment decisions about his son, a Metro-North Railroad trainee. The State employee was terminated following an investigation by the MTA Inspector General. The State employee admitted to multiple violations of the Public Officers Law, specifically §73(5)(a), which prohibits a State employee from soliciting, accepting, or receiving a gift in a situation where it could reasonably be inferred that the gift was intended to, or could be expected to, influence him in the performance his official duties or as a reward for an official action, and §73(14), which prohibits State officials from participating in any decision to hire, promote, discipline or discharge a relative, including domestic partners, for any compensated position. The State employee agreed to pay a \$2,500 fine.

Code of Conduct: An employee of the MTA admitted to violating ethics laws by participating in the contracting process with multiple vendor companies where his significant other was either employed or seeking employment. While at MTA, the State employee was involved in vendor selection activities and negotiations with a vendor at the same time the vendor employed the State employee's girlfriend. The State employee also took part in a contract selection process that included a proposal from the vendor at the same time his girlfriend was engaged in employment negotiations with that company. The State employee agreed to pay a \$5,000 fine and admitted he violated the Public Officers Law. Public Officers Law §74(3)(d) prohibits State employees from using or attempting to use their official position to secure unwarranted privileges or exemptions for themselves or others.

QUOTES OF THE QUARTER

"It is reasonable that everyone who asks justice should do justice."

Thomas Jefferson

"Democracy is finding proximate solutions to insoluble problems."

Reinhold Niebuhr

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NEW YORK STATE
JOINT COMMISSION ON PUBLIC ETHICS

Tip Line: **800-87-ETHICS**

(800-873-8442)

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REPORT MISCONDUCT BY STATE OFFICIALS,
EMPLOYEES, LOBBYISTS, AND THEIR CLIENTS

Improper Gifts • Conflicts of Interest • Nepotism
Abuse of Official Position • Sexual Harassment
Other Violations of the Public Officers Law or Lobbying Act

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