



THE ETHICS REVIEW

A JOINT COMMISSION ON PUBLIC ETHICS NEWSLETTER

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We went to high school together - can I accept that gift basket?

As the holiday season approaches, gift baskets begin to arrive in the office and you may be planning your holiday party schedule. Here at JCOPE, the gift giving questions also begin pouring in. One frequently asked question is:

What should I do if I receive a gift from someone with whom I have a personal relationship, but whose employer has a business or regulatory relationship with my agency?

Think about the following scenario: A lobbyist, Leo, went to high school with David, an employee of the Department of Environmental Conservation (DEC). Leo regularly has matters before the DEC. Leo sends David a \$50 bottle of wine as a holiday gift. Can David accept the gift?

The ethics laws generally prohibit you from accepting a gift under circumstances where it would be reasonable to believe that the gift is intended to influence you in the performance of your official duties, or to reward you for acting in your State capacity.

However, gifts from a family member or a person with whom you have a personal relationship are generally acceptable. JCOPE regulations require consideration of certain

factors to determine whether a gift is primarily motivated by that family or personal relationship. A State officer or employee must consider:

- the history and nature of the relationship between the individual offering the gift and the recipient, including whether items have previously been exchanged;
- whether the item was purchased by the individual offering the gift; and,
- whether the gift-giver at the same time gave similar items to other State employees.

Examining the scenario through consideration of these factors, what additional information would you need to know?

What is the nature of Leo and David's relationship to each other? Are they close friends or just acquaintances? Although they went to high school together, we do not have any other details about Leo and David's relationship.

Do Leo and David normally exchange gifts with each other? If they've been exchanging gifts for years, the bottle of wine might be okay. But, if this is the first time Leo has ever sent David a gift, it may be reasonable to assume that the gift was intended to influence how David carried out his official duties, and not primarily motivated by a personal relationship.

What are David's official job duties for the DEC? Do his duties have any relation to matters on which Leo is lobbying the DEC? Do David's duties provide an opportunity for him to use his official position to benefit Leo or Leo's interests? Under such circumstances, perhaps an observer would reasonably believe the gift was intended to

influence David's official actions. Is Leo claiming the bottle of wine as a business expense? That would strongly indicate that Leo regards the gift as a cost of business, not a gift of friendship.

So, can David accept the bottle of wine? Yes – IF close consideration of these and any other relevant factors establishes that the personal relationship was the primary motivating factor for Leo's generosity, and the gift cannot reasonably be viewed as intended to influence David in the performance of his official duties.

As every gift scenario is different, you should reach out to your agency's Ethics Officer or JCOPE for further guidance.

Dear JCOPE

I plan to attend a conference for work. A vendor that frequently does business with our agency has offered to pay my travel expenses. Do I need approval for this?

Answer:

Yes. The regulations governing official activity expense payments—or “travel reimbursements”—require the agency to review and pre-approve these requests. Your agency will review the request to determine whether:

- the proposed reimbursement covers only the period of time that the employee is reasonably required to be present for the official activity;
- the expense reimbursement is offered by or on behalf of an Interested Source and, if so, whether it was intended to influence, could be expected to influence, or was intended as a reward to the employee in the performance of his or her official duties;
- the reimbursement could be lawfully paid by the State Agency in accordance with its travel policy;
- the reimbursement exceeds the rate at which the State Agency would pay or reimburse the employee under its travel policy;

- any attempt is being made to conceal the identity of an Interested Source; and,
- the expense reimbursement is consistent with Public Officers Law §74.

Be sure to contact your agency’s Ethics Officer for their guidance any time you receive an offer to reimburse official activity expenses.

Enforcement Actions

CODE OF CONDUCT: A former Empire State Development employee admitted violating the Public Officers Law by seeking a job from a vendor that she was involved in selecting for an agency project. The former State employee admitted that shortly after a vendor was selected pursuant to an RFP, she asked the vendor about future employment and failed to recuse herself from the contract negotiation process. The former State employee ultimately lost her job offer from the vendor and agreed to pay a \$3,000 fine. 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.

CODE OF CONDUCT: A former employee of Health Research, Inc. (“HRI”), a not-for-profit corporation closely affiliated with the New York State Department of Health, admitted violating the Public Officers Law by accepting \$14,000 from a subcontractor he had recommended to the prime contractor of a project he was supervising. The subcontractor paid the former state worker

nearly half of what she received for her work, writing Federal grant applications, on the project. The former State worker agreed to pay a \$4,000 fine which was determined based on a certification of his limited financial assets. 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.

FINANCIAL DISCLOSURE & CODE OF CONDUCT: Two employees of the Metropolitan Transit Authority (“MTA”) separately engaged in personal outside business while on State time, and failed to reflect the outside business activity on their financial disclosure statements (“FDS”). As a result, both employees admitted to violations of Public Officers Law § 74(3)(d), were required to amend their FDS reports, and due to separate resolutions with the MTA, lost thousands of dollars in pay and one divested his interest in the outside business.

Questions about Ethics rules?

Contact JCOPE at legal@jcope.ny.gov or 800-87-ETHICS (873-8442) – press 2