



# JCOPE'S GUIDE TO GIFT REGULATIONS

## State Officers and Employees

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### A "GIFT" IS MORE THAN MEETS THE EYE

You probably already know that as a State officer or employee, you have a duty to serve the public interest and to avoid even the appearance that improper considerations are affecting the performance of your official duties.

You may also know that you cannot accept a gift under circumstances where it would be reasonable to believe that the gift is intended to influence your performance of your official duties, or to reward you for an official action.

While you might typically think of a gift as a tangible item you receive, not all gifts come in a wrapped box or a decorative bag. Here are some helpful tips on how to identify a gift when it is offered to you and why, in some cases, you have an obligation to say "Thanks, but no thank you!"

### WHAT IS A GIFT?

The gift restrictions for State officers and employees are found in Public Officers Law § 73(5) and in the JCOPE regulations at 19 NYCRR Part 933. A gift can be anything of more than nominal value, including but not limited to: an item; money; a service; a loan; travel; lodging; meals; refreshments; entertainment; a discount; debt forgiveness; or a promise that has a monetary value.

#### Did you know?

Even if you have paid market value for an item, it could still be a gift—and impermissible to solicit or receive—if the purchased item is otherwise unavailable to the public.

For example, an opportunity to buy tickets to a sold-out concert or sports event could be a gift, depending on the circumstances.

### NOMINAL VALUE

If an item or service being offered is valued at \$15 or less (considered of Nominal Value\*), then, in most circumstances, you may accept the item or service. However, receiving items or services of Nominal Value from the same source on multiple occasions could add up to a violation of the gift rules.



### GIFT EXCLUSIONS

There are several items excluded from the definition of a gift and, therefore, are generally acceptable. A few of the more common gift exclusions include:

- Complimentary Attendance,\* including food and beverage, at a Bona Fide Charitable Event\* (where the primary purpose of the event is to provide financial support to a Charitable Organization)
- Complimentary Attendance, including food and beverage, at a Bona Fide Political Event\* (where the primary purpose of the event is to provide financial support to a Political Organization(s) or Political Candidate(s)\*)
- Complimentary Attendance, including food and beverage, offered by the sponsor of a Widely Attended Event\* (where at least 25 individuals other than employees of your government entity attend or were, in good faith, invited to attend, and the event is related to your State duties and responsibilities). JCOPE regulations require an employee to contact their agency's Ethics Officer prior to accepting the offer.

*The symbol \* notes defined terms from JCOPE's gift regulations and derived from the law.*

The Widely Attended Event exclusion generally does not include free registration or admission to any entertainment, recreational, or sporting activity. Also, you may accept complimentary food and beverage at a Widely Attended Event only if it is offered to all attendees at the event.

- Promotional items with no substantial resale value, such as mugs and t-shirts that bear an entity’s name or logo
- Awards, plaques, or other ceremonial items
- Meals for participants at a Professional or Educational Program\*
- Gifts from family members or friends, when the gift was primarily motivated by the pre-existing family or personal relationship

**Note:**

This exclusion only applies when the sponsor of the event is paying your admission fee. When the State pays your expenses, there is no gift issue.

### WHO IS GIVING THE GIFT?

#### Interested Sources

You know what a gift is, but it also matters who is offering or being asked for a gift. An Interested Source\* is a person or entity who:

- is regulated by, negotiates with, or appears before your State agency; or
- does business (or seeks to do business) with your State agency; or
- is a registered lobbyist who lobbies your State agency (or the spouse or unemancipated child of such lobbyist); or
- is involved in any ongoing official action or proceeding adverse to you or your State agency; or
- has received or applied for funds from your State agency during the last 12 months.



In general, you cannot accept a gift from an Interested Source, unless it is not reasonable to infer that the item or service was intended to influence you in your job or reward you for performing your job.

#### Non-Interested Sources

If the gift is not from an Interested Source, then you may ordinarily accept the gift—unless it could be reasonably inferred or expected that the gift was intended to influence you in your job or reward you for performing your job.

In either instance—when a gift is received or solicited from either an “Interested” or a “Non-Interested” source—your agency’s

Ethics Officer or JCOPE attorneys are available to assist you in determining whether the circumstances restrict your ability to accept the gift.

### THIRD-PARTY GIFTS

A State officer or employee may not direct a Gift that is impermissible to receive under the Public Officers Law or JCOPE regulations to any third-party, including a Charitable Organization.

### WHAT HAPPENS IF I SOLICIT OR ACCEPT A GIFT FROM AN INTERESTED SOURCE IN VIOLATION OF THE STATUTE OR REGULATIONS?

Depending on the circumstances, failure to follow the gift provisions in 19 NYCRR Part 933 could result in a violation of Public Officers Law § 74 (the Code of Ethics), and/or Public Officers Law § 73(5).

Any person who knowingly and intentionally violates Public Officers Law § 73(5) is subject to a maximum civil penalty of \$40,000.00 and the value of any gift, compensation, or benefit relating to that violation. The Commission may, in lieu of imposing a civil penalty, refer the violation for prosecution as a Class A misdemeanor.

Accepting a gift could also result in a violation of Public Officers Law § 74 when it creates a conflict with the proper discharge of your State duties. For instance, knowingly and intentionally using or attempting to use one's State position to secure a gift for oneself or others could violate Public Officers Law § 74(3)(d), carrying a maximum civil penalty of \$10,000.00 plus the value of any gift, compensation, or benefit received as a result of the violation.

Further, while a violation of Public Officers Law § 74(3)(f) ("knowingly and intentionally engaging in conduct that reasonably creates an impression that any person can improperly influence them in the performance of their State duties") or of Public Officers Law § 74(3)(h) ("engaging in a course of conduct which raises suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust")

does not carry a civil penalty, your agency has the discretion to impose a fine, suspension, or removal from employment in the manner provided by law, in addition to any penalty contained in any other provision of law.

***Disclaimer:***

The information included in this Guide is for educational purposes only.

Your agency has discretion to impose more restrictive gift rules than what is set forth in the statute. Therefore, the first place you should seek guidance is from your agency's Ethics Officer. JCOPE legal staff is also available to all State officers and employees as a resource for confidential advice and guidance.