

## **ADVISORY OPINION NO. 20-02: THIRD-PARTY GIFTS**

### **Executive Summary**

As part of the efforts to promote integrity in government decision-making, the Public Officers Law restricts the solicitation, acceptance, or receipt of gifts by many public officials in the state. Similarly, Article 1-a of the Legislative Law (the “Lobbying Act”) restricts lobbyists and their clients--parties who actively seek to influence government decision-making--from offering and giving gifts to public officials. These restrictions, and their attendant regulations, presumptively prohibit a public official from directly soliciting a gift from a lobbyist or client, and similarly prohibit a lobbyist or client from offering a gift directly to a public official. The presumption that a gift is prohibited can be overcome with the application of a three-part test designed to establish whether, under the circumstances, the gift is reasonably likely to influence the public official’s performance of official duties.

A gift that would be prohibited if offered or given directly to a public official is equally unlawful if it is offered or given to a third party--including a charitable organization--on behalf of a public official, or upon an official’s direction, designation, or recommendation. An official’s request for a gift to be made to a governmental entity or to the public-at-large may also constitute a prohibited third-party gift. In an uncomplicated case, a public official would be presumptively prohibited from personally soliciting an entity with pending official business to make a gift to a third party. In most instances, however, identifying a gift that was made at an official’s designation or recommendation, or on the official’s behalf, requires examining the circumstances surrounding the gift.

A public official may also solicit a gift to a third party indirectly, through an intermediary, such as someone whom the public official has designated, authorized, or knowingly permitted to act on their behalf. An intermediary may also be someone who openly self-identifies as connected to the official, or as acting for the benefit of the official or on the official’s behalf. For example, a public official may make a general request for support while making it known that an intermediary will follow up with a specific request. A third-party gift may also be prohibited where evidence demonstrates the gift offeror’s understanding that the solicitation was made on behalf of a public official or where the public official acknowledges, or will be made aware of, the gift.

This Advisory Opinion provides detailed guidance to identify a prohibited third-party gift that was either made at a public official’s direction, designation, or recommendation, or was solicited by an intermediary who was acting for a public official. This assessment will necessarily turn on the totality of the circumstances surrounding the gift. All relevant facts may be considered, but specific important factors would include the nature of the solicitation; the substance of the solicitation; the nature and purpose of the gift; the nature and purpose of the gift recipient; the public official’s awareness of the gift; the nature of the gift offeror’s business before the official; the nexus between that pending business, the public official, and the gift; and the offeror’s history with respect to similar gifts.

This Advisory Opinion is intended to serve as a resource, for all those who are subject to the jurisdiction of the Commission, when they consider soliciting a gift to a third party or making a gift to a third party singled out by a public official. The Commission will determine, on a case-by-case basis consistent with this Advisory Opinion, whether such gifts violate the law.