

PROPOSED GIFT REGULATIONS: PUBLIC OFFICERS LAW

STATE OF NEW YORK

JOINT COMMISSION ON PUBLIC ETHICS

TITLE 19 NYCRR PART 933

933.1 Purpose and Effect of Regulation.

(a) The purpose of these regulations is to provide guidance on and clarity to the application of the provisions in Public Officers Law §§73 and 74 to individuals covered by these laws who receive items and services.

(b) The effect of these regulations is to overrule prior Advisory Opinions issued by predecessor agencies to the Joint Commission on Public Ethics to the extent they are inconsistent with this Part and to rescind and replace, specifically, Advisory Opinion Nos. 94-16, 96-28, 97-03, and 08-01.

(c) This Part will apply to conduct occurring after the effective date of these regulations.

933.2 Definitions.

(a) *Bona Fide Charitable Event* shall mean a function the primary purpose of which is to provide financial support to a Charitable Organization(s).

(b) *Bona Fide Political Event* shall mean a function the primary purpose of which is to support a Political Organization(s) or Political Candidate(s).

(c) *Charitable Organization(s)* shall mean:

(1) an entity as defined in Executive Law §171-a(1) that is registered with the Office of the Attorney General, as required by Executive Law §172, unless otherwise exempted from filing pursuant to Executive Law §172-a; or

(2) or an entity as defined in section 501(c)(3) of the Internal Revenue Code; or

(3) a person(s) who requests contributions for the relief of any individual, specified by name at the time of the solicitation, if all of the contributions collected, without any deductions whatsoever, are paid to or for the benefit of the named beneficiary, provided the individual has submitted a form for Charitable Solicitation for the Relief of an Individual with the Charities Bureau of the Office of Attorney General prior to the event.

(d) *Client* shall mean every person or organization as defined in §1-c(b) of article 1-A of the Legislative Law.

(e) *Commission* shall mean the New York State Joint Commission on Public Ethics.

(f) *Complimentary Attendance* shall mean the waiver of all or part of a registration or admission fee, or waiver of all or part of a fee or charge for the provision of food, refreshments, entertainment, instruction, or materials. “Complimentary Attendance” shall include the awarding of continuing education credits or certification for attendance at a program provided such credits or certification are offered to all attendees. “Complimentary Attendance” shall not include registration or admission without charge to an attendee to any entertainment, recreational activity or reception that is not part of the regular agenda of the event. Nor shall “Complimentary Attendance” include travel, lodging, or items of more than Nominal Value.

(g) *Covered Person(s)* shall mean:

- (1) State Officer(s) or Employee(s) as defined in subdivision (w) of this section;
- (2) Legislative Employee as defined in subdivision (m) of this section; or
- (3) Legislative Member as defined in subdivision (n) of this section.

(h) *Educational Program* shall mean formal instruction provided to attendees. Factors to be considered in assessing whether a program is educational include, but are not limited to, the curriculum, the qualifications of the instructor, whether the entity providing the program is an accredited educational entity, who the program is presented to, and where and how the program is presented.

(i) *Family Member* of any *Covered Person* shall have the same meaning as the term *Relative* set forth in Public Officers Law §73(1)(m) and shall mean any person living in the same household as the Covered Person and any person who is a direct descendant of that Covered Person's grandparents or the spouse of such descendant.

(j) *Gift* shall mean anything of more than Nominal Value in any form including, but not limited to money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance, or a promise that has a monetary value. The following are not Gifts and do not need to be analyzed under section 933.3:

- (1) anything for which the State has paid or secured by State contract;
- (2) rewards or prizes given to competitors in contests or events, including random drawings open to the public; or
- (3) Public Service Announcements as defined in Title 19 NYCRR Part 940.

(k) *Informational Event* shall mean an event or meeting the primary purpose of which is to provide information about a subject or subjects related to a Covered Person’s official responsibilities.

(l) *Interested Source* shall mean any person or entity who on his or her own behalf, or on behalf of an entity, that:

(1) is regulated by, negotiates with, appears before in other than a Ministerial Matter, seeks to contract with or has contracts in excess of \$500 with, or does other business with either: (i) the Legislative Member, the Legislative Employee, or the State Officer or Employee, in his or her official capacity; or (ii) the State Agency with which the State Officer or Employee is employed or affiliated;

(2) is required to be listed on a statement of registration pursuant to §1-e(a)(1) of article 1-A of the Legislative Law; or

(3) is involved in any action or proceeding, in which administrative and judicial remedies thereto have not been exhausted, and which is adverse to either: (i) the State Officer or Employee in his or her official capacity; or (ii) the State Agency with which the State Officer or Employee is employed or affiliated; or

(4) has received or applied for funds at any time during the previous calendar year up to and including the date of the proposed or actual receipt of the item or service from either: (i) the Covered Person in his or her official capacity; or (ii) the State Agency with which the State Officer or Employee is employed or affiliated.

(m) *Legislative Employee(s)* shall mean any officer or employee of the New York State Legislature but it shall not include members of the Legislature.

(n) *Legislative Member(s)* shall mean any duly elected member of the New York State Legislature.

(o) *Lobbyist* shall mean every person or organization as defined in §1-c(a) of article 1-A of the Legislative Law.

(p) *Ministerial Matter* shall mean an administrative act carried out in a prescribed manner not allowing for substantial personal discretion.

(q) *Nominal Value* shall mean an item or service of an insignificant value.

(r) *Political Candidate(s)* shall mean any individual meeting any of the requirements in Public Officers Law §§73-a(2)(a)(iii)-(viii), including the current office holder.

(s) *Political Organization(s)* shall mean any entity that is affiliated with or a subsidiary of a political party including, without limitation, a partisan political club or committee, or a campaign or fund-raising committee for a political party or Political Candidate(s).

(t) *Professional Program* shall mean a program that provides information on services or products, trends in an industry or discipline that would benefit the administration or operation of the State, or would enable a Covered Person to perform his or her duties more effectively. It shall not include a program sponsored by an individual or entity that does or seeks to do business with

the State that describes the products or services offered or sold by such individual or entity to the State.

(u) *Public Service* shall mean service related to a person's official duties and responsibilities as a Covered Person.

(v) *State Agency* shall mean any State department, or division, board, commission, or bureau of any State department, any public benefit corporation, public authority or commission at least one of whose members is appointed by the Governor, or the State University of New York or the City University of New York, including all their constituent units except community colleges of the State University of New York and the independent institutions operating statutory or contract colleges on behalf of the State.

(w) *State Officer(s) or Employee(s)* shall mean: (1) statewide elected officials (governor, lieutenant governor, comptroller, and attorney general); (2) heads of State departments and their deputies and assistants other than members of the board of regents of the university of the state of New York who receive no compensation or are compensated on a per diem basis; (3) officers and employees of statewide elected officials; (4) officers and employees of state departments, boards, bureaus, divisions, commissions, councils, or other State Agencies other than officers of such boards, commissions or councils who receive no compensation or are compensated on a per diem basis; and (5) members or directors of public authorities, other than multi-state authorities, public benefit corporations, and commissions at least one of whose members is appointed by the governor, who receive compensation other than on a per diem basis, and employees of such authorities, corporations, and commissions.

(x) *Widely Attended Event* shall mean an event:

(1) which at least twenty-five individuals other than members, officers, or employees from the governmental entity in which the Covered Person serves attend or were, in good faith, invited to attend in person; and

(2) which is related to the attendee's duties or responsibilities or allows the Covered Person to perform a ceremonial function appropriate to his or her position. For the purposes of this exclusion, a Covered Person's duties or responsibilities shall include but not be limited to either:

(i) attending an event or a meeting at which a speaker or attendee addresses an issue of public interest or concern as a significant activity at such event or meeting; or

(ii) for elected Covered Persons, or their staff attending with or on behalf of such elected officials, attending an event or a meeting at which more than one-half of the attendees, or persons invited in good faith to attend in person, are residents of the county, district, or jurisdiction from which the elected Covered Person was elected.

### 933.3 Gifts.

(a) A Covered Person shall not, directly or indirectly, solicit, accept, or receive a Gift, in any form, unless it would be consistent with Public Officers Law §§ 73 and 74.

(b) If the item or service offered, solicited, or accepted is a Gift, first determine whether the Gift falls within one of the exclusions set forth in section 933.4.

(c) For a Gift that does not fit into one of the exclusions set forth in section 933.4:

(1) If the Gift is from an Interested Source, then the Gift is prohibited unless:

(i) it is not reasonable to infer that the Gift was intended to influence the Covered Person, or could reasonably be expected to influence the Covered Person, in the performance of his or her official duties; or

(ii) it is not reasonable to infer that the Gift was intended as a reward for any official action on the Covered Person's part.

(2) If the Gift is not from an Interested Source, then the Gift is permissible unless it is offered or given under circumstances in which it could reasonably be inferred that the Gift was intended to influence the Covered Person, or could reasonably be expected to influence the Covered Person, in the performance of his or her official duties, or was intended as a reward for any official action on his or her part.

(d) Multiple Gifts. A Gift that is otherwise permissible may be prohibited if it is one of multiple Gifts from the same person or entity. Such Gifts could create reasonable basis for the impression that the Gift was intended to influence or reward the Covered Person in connection with the performance of his or her official duties.

(e) A Covered Person may not direct a Gift that is prohibited to any third party, including a Charitable Organization.

### 933.4 Exclusions.

(a) A Gift is permitted to be solicited, accepted, or received by a Covered Person under the exclusions set forth below:

(1) Food or beverage valued at fifteen dollars or less per event

(i) Multiple instances of an individual or entity offering food or beverage valued at fifteen dollars or less to a Covered Person could create a reasonable basis for the impression that the Gift was intended to influence or reward the Covered Person in connection with the performance of his or her official duties.

(2) Complimentary Attendance, including food and beverage, at a Bona Fide Charitable Event or a Bona Fide Political Event.

(3) Complimentary Attendance offered by the sponsor of a Widely Attended Event

(i) A State Officer or Employee must seek prior written approval from his or her State Agency before accepting Complimentary Attendance at a Widely Attended Event. Failure to obtain such written pre-approval may be used as evidence that acceptance of the Complimentary Attendance at the event is an impermissible Gift.

(ii) Factors a State Agency must consider when approving a State Officer's or Employee's request to accept Complimentary Attendance at a Widely Attended Event include but are not limited to:

(a) the relationship of the event to the State Officer's or Employee's official duties; and

(b) the nature of the sponsor's interest in any issue, matter, or proceeding involving the State Agency with which the State Officer or Employee is employed or affiliated;

(iii) Approval of a State Officer or Employee's request for Complimentary Attendance at a Widely Attended Event does not extend to any other individual.

(4) Awards, Plaques, and Other Ceremonial Items

(i) Awards, plaques, and other ceremonial items must be publicly presented, or intended to be publicly presented, and in recognition of Public Service. Additionally, such awards, plaques, and other ceremonial items must be of the type customarily bestowed at similar ceremonies and be otherwise reasonable under the circumstances.

(5) Honorary degrees bestowed upon a Covered Person by a public or private college or university

(6) Promotional Items

(i) Items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an entity's name, logo, or message in a manner which promotes the entity's cause.

(7) Goods and Services and Discounts for Goods and Services

(i) Goods and services, or discounts for goods and services, must be offered to the general public or a segment of the general public defined on a basis other than status as a Covered Person and offered on the same terms and conditions as the goods and services are offered to the general public or segment thereof.

(ii) Notwithstanding section 933.4(a)(7)(i), discounts made available to all or a select group of Covered Persons are covered by this exclusion.

(iii) The following non-exhaustive list of factors shall be considered when any discount is made available to a select group of Covered Persons to determine whether the discount would be covered by this exclusion:

(a) the scope of the class of Covered Persons who are offered the discount;

(b) the amount and duration of the discount;

(c) whether the criterion for the offer is based on factors other than the Covered Person's official duties and responsibilities; or

(d) For State Officers and Employees, whether the offeror has an interest in any issue, matter, or proceeding involving the State Agency employing the State Officer and Employee who are offered the discount.

#### (8) Personal Gifts

(i) Gifts from a Family Member, or person with a personal relationship with a Covered Person when it is reasonable to infer that the Gift was primarily motivated by the family, household, or personal relationship. Personal Gifts may include an invitation to attend a personal or family social event.

(ii) In determining whether the Gift was primarily motivated by a family or personal relationship, the factors to be considered include but are not limited to:

(a) the history and nature of the relationship between the individual offering the Gift and the recipient, including whether items have previously been exchanged;

(b) whether the item was purchased by the individual offering the Gift; and

(c) whether the individual offering the Gift at the same time gave similar items to other Covered Persons.

(iii) The Gift shall not be considered to be motivated by a family, household, or personal relationship if the individual or entity seeks to charge or deduct the value of such item as a business expense or seeks reimbursement from a client or Client.

#### (9) Reimbursement of Expenses for Speakers at Informational Events

(i) Travel reimbursement or payment for transportation, meals, and accommodations for an attendee, panelist, or speaker at an Informational Event when such reimbursement or payment is made by a governmental entity or by an in-state accredited public or private institution of higher education that hosts the event on its campus, provided, however, that the Covered Person may only accept lodging from an institution of higher education: (a) at a location on or within close proximity to the host campus; and (b) for the night preceding and the nights of the days on which the attendee, panelist, or speaker actually attends the Informational Event.

(10) Provision of Local Transportation to Inspect Facilities

(i) Provision of local transportation to inspect or tour facilities, operations, or property located in New York State, when such inspection or tour is related to the Covered Person's official duties or responsibilities is covered by this exclusion; and

(ii) The payment or reimbursement for expenses for lodging or travel expenses to and from the locality where such facilities, operations, or property are located are not covered by this exclusion.

(11) Meals for Participants at a Professional or Educational Program

(i) Receipt of food and beverages when participating in a Professional Program or Educational Program as a part of a Covered Person's official duties, provided the food or beverages are available to all participants, is covered by this exclusion.

933.5 Guidance.

Any person or entity may contact the Commission for guidance concerning the propriety of any Gift.

933.6 Enforcement.

The Commission is authorized pursuant to Executive Law §94 to investigate possible violations of Public Officers Law §73 and §74 and their corresponding regulations and take appropriate action as authorized in these statutes.

933.7 Minimum Requirements.

Nothing contained in this Part shall prohibit any State Agency from adopting or implementing its own rules, regulations, or procedures that are more restrictive than the requirements of this Part.