

PROPOSED GIFT REGULATIONS: LEGISLATIVE LAW

STATE OF NEW YORK

JOINT COMMISSION ON PUBLIC ETHICS

TITLE 19 NYCRR PART 934

934.1 Purpose and Effect of Regulation.

(a) The purpose of these regulations is to provide guidance on and clarity to the application of §1-m of article 1-A of the Legislative Law to Lobbyists and Clients who offer or give an item or service to a Public Official.

(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.

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

934.2 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 provide financial support to 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) 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 that is required to be listed on a statement of registration pursuant to §1-j(a) 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) *Educational Program* shall mean formal instruction provided to attendees. Factors to be considered in assessing whether a program is educational are 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.

(h) *Family Member* of any Public Official 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 Public Official and any person who is a direct descendant of that Public Official's grandparents or the spouse of such descendant.

(i) *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 promise that has a monetary value. The following are not Gifts and do not need to be analyzed under section 934.3:

- (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.

(j) *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 Public Official's official responsibilities.

(k) *Lobbyist* shall mean every person or organization as defined in §1-c(a) of article 1-A of the Legislative Law that is required to be listed on a statement of registration pursuant to §1-e(a)(1) of article 1-A of the Legislative Law.

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

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

(n) *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.

(o) *Political Organization(s)* shall mean any entity or organization 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).

(p) *Professional Program* shall mean a program that provides information on services or products, trends in an industry or discipline that would enable a Public Official to perform his or her duties more effectively or would benefit the administration or operation of the Public Official's governmental entity. It shall not include a program sponsored by an individual, entity or organization that does or seeks to do business with the Public Official's governmental entity that describes the products or services offered or sold by such individual or entity to the Public Official's governmental entity.

(q) *Public Official(s)* shall mean:

- (1) the governor, lieutenant governor, comptroller, or attorney general;
- (2) members of the State legislature;
- (3) state officers and employees including:
  - (i) 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;
  - (ii) officers and employees of statewide elected officials;
  - (iii) officers and employees of state departments, boards, bureaus, divisions, commissions, councils, or other state agencies;
  - (iv) 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, and employees of such authorities, corporations, and commissions;
- (4) officers and employees of the legislature; and
- (5) municipal officers and employees including an officer or employee of a municipality, whether paid or unpaid, including members of any administrative board, commission, or other agency thereof, and in the case of a county, shall be deemed to include any officer or employee paid from county funds. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer, except a fire chief or assistant fire chief.

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

(s) *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 Public Official serves attend or were, in good faith, invited to attend; and

(2) which is related to the attendee's duties or responsibilities or allows the Public Official to perform a ceremonial function appropriate to his or her position. For the purposes of this exclusion, a Public Official'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 Public Officials, 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, are residents of the county, district, or jurisdiction from which the elected Public Official was elected.

#### 934.3 Gifts.

(a) Pursuant to §1-m of article 1-A of the Legislative Law, no Lobbyist or Client shall offer or give a Gift to any Public Official, except as set forth in section 934.3(b), unless under the circumstances it is not reasonable to infer that the Gift was intended to influence such Public Official.

(b) Notwithstanding section 934.3(a), §1-m of article 1-A of the Legislative Law shall not apply to Gifts to officers, members or directors of boards, commissions, councils, public authorities or public benefit corporations who receive no compensation or are compensated on a per diem basis, unless the Lobbyist or Client giving or offering such Gift appears or has matters pending before the board, commission or council on which the recipient sits.

(c) If the item or service offered or given is a Gift, first determine whether the Gift falls within one of the exclusions set forth in section 934.4.

(d) For a Gift that does not fit into one of the exclusions set forth in section 934.4:

(1) If a Lobbyist or Client offers or gives a Gift to a Public Official who is not subject to the exception set forth in section 934.3(b) then the Gift is prohibited unless:

(i) it is not reasonable to infer that the Gift was intended to influence the Public Official, or could reasonably be expected to influence the Public Official, 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 Public Official's part.

(2) If a Lobbyist's or Client's spouse or unemancipated child offers or gives a Gift to a Public Official who is not subject to the exception set forth in section 934.3(b) then the Gift is permissible unless:

(i) it is reasonable to infer that the Gift was intended to influence the Public Official, or could reasonably be expected to influence the Public Official, in the performance of his or her official duties; or

(ii) it is reasonable to infer that the Gift was intended as a reward for any official action on the Public Official's part.

(3) If a Lobbyist or Client offers or gives a Gift to the spouse or unemancipated child of a Public Official who is not subject to the exception set forth in section 934.3(b) then the Gift is permissible unless:

(i) it is reasonable to infer that the Gift was intended to influence the Public Official, or could reasonably be expected to influence the Public Official, in the performance of his or her official duties; or

(ii) it is reasonable to infer that the Gift was intended as a reward for any official action on the Public Official's part.

(e) Multiple Gifts. A Gift that is otherwise permissible may be prohibited if it is one of multiple Gifts from the same person, entity or organization. Such Gifts could create a reasonable basis for the impression that the Gift was intended to influence or reward the Public Official.

(f) A Lobbyist or Client shall not, directly or indirectly, offer or give a Gift to a third party including a Charitable Organization, on a Public Official's designation or recommendation, or on the Public Official's behalf, under circumstances where it is reasonable to infer that the Gift was intended to influence the Public Official, or could reasonably be expected to influence the Public Official, in the performance of his or her official duties; or was intended as a reward for any official action on the Public Official's part.

#### 934.4 Exclusions.

(a) A Gift is permitted to be offered or given by a Lobbyist or Client or by his or her spouse or unemancipated child to a Public Official or to his or her spouse or unemancipated child under the exclusions set forth below:

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

(i) Multiple instances of an individual, entity or organization offering or giving food or beverage valued at fifteen dollars or less could create a reasonable basis

for the impression that the Gift was intended to influence or reward the Public Official 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

(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 Public Official 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 Public Official 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 934.4(a)(7)(i), discounts made available to all or a select group of Public Officials 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 Public Officials to determine whether the discount would be covered by this exclusion:

(a) the scope of the class of Public Officials 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 Public Officials' official duties and responsibilities; or

(d) for any Public Official other than a member, officer or employee of the legislature, whether the offeror has an interest in any issue, matter, or proceeding involving the State or municipal agency employing the class of Public Officials who are offered the discount.

(8) Personal Gifts

(i) Gifts from a Family Member, or person with a personal relationship with the Public Official 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 Public Officials.

(iii) The Gift shall not be considered to be motivated by a family, household, or personal relationship if the individual 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 Public Official 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 Public Official's official duties, provided the food or beverages are available to all participants, is covered by this exclusion.

934.5 Guidance.

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

934.6 Enforcement.

The Commission is authorized pursuant to Executive Law §94 to investigate possible violations of §1-m of article 1-A of the Legislative Law and its corresponding regulations and take appropriate action as authorized in these statutes.

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