



INTERIM GUIDANCE ON GIFTS

The Joint Commission on Public Ethics (“JCOPE”) issues this interim guidance on gifts to update Advisory Opinion No. 08-01 in light of the amendments recently enacted by the Public Integrity Reform Act (“PIRA”), Chapter 399 of the Laws of 2011. This interim guidance will be in effect until JCOPE issues formal guidance on gifts and related matters. Other than as detailed below, and until formal guidance is issued, [Advisory Opinion No. 08-01](#) remains in effect.

Specifically, PIRA amended the definition of “gift” in two ways:

- 1) Excluded from the definition of “gift” food or beverage valued at \$15 or less.
- 2) Clarified the “**widely attended event**” exception to apply to an event offered by the sponsor at which at least 25 individuals who are not from the governmental entity in which the public official serves attend or were, in good faith, invited to attend, and is related to the public official’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
 - 1) 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
 - 2) 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.

As a result of these changes:

- 1) A Statewide elected official, a State Officer or Employee, an individual whose name has been submitted by the Governor to the Senate for confirmation to become a State Officer or Employee, or a legislative member or employee may accept a gift of food or beverage equal to \$15 or less provided the acceptance of the gift complies with Public Officers Law §74.
- 2) A Statewide elected official, a State Officer or Employee, an individual whose name has been submitted by the Governor to the Senate for confirmation to become a State Officer or Employee, or a legislative member or employee may attend a widely attended event if it meets the above statutory requirements provided the acceptance of the gift complies with Public Officers Law §74.

- 3) Lobbyists and their clients should be on notice that the gift prohibition set forth in Legislative Law §1-m incorporates the revised definition of “**gift**” in Legislative Law §1-c(j).

Below, the Commission provides further guidance to individuals subject to the gift provisions in order to determine under what circumstances it may be permissible or impermissible to offer or accept a gift. The gift analysis involves Public Officers Law §73(5) and Legislative Law §§1-c(j) and 1-m, but covered individuals must also consider the conflict of interest standards set forth in Public Officers Law §74.

To determine whether an individual may solicit, accept, or receive, or an entity may offer or give an item or service, the following analysis should be undertaken:

- 1) **Is it a “gift”?**

- a) Is the item or service offered, solicited, or accepted of more than “**nominal value**”?

If not, then the item or service is not a “**gift**” under Public Officers Law §73(5) and the Legislative Law §§1-c(j) and 1-m.

- b) If the item or service is more than “**nominal value**,” does the item or service fall within one of the exclusions set forth in Legislative Law §1-c(j) or those identified in Advisory Opinion No. 08-01? *See Addendum.*

If yes, then it is not a gift.

- 2) **If the item or service is of more than “nominal value” and does not fit into one of the exceptions referenced above, then what is the source?**

- a) Under Advisory Opinion No. 08-01, if the source is a lobbyist required to be listed on a registration statement or a client of such a lobbyist, or any other source determined to be a “**disqualified source**” under Advisory Opinion No. 08-01, then the gift is prohibited.

- b) If the source is not determined to be a “**disqualified source**” under Advisory Opinion No. 08-01, 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 public official in the performance of his or her official duties or was intended as a reward for any official action on his or her part.

- 3) **Even if the item or service is not prohibited under the foregoing analysis, a public official must consider the totality of the circumstances to determine whether it is permissible to accept the item or service in light of the conflict of interest standards set forth in Public Officers §74, with particular attention to §§74(d), (f) and (g).**

If you have specific questions, please feel free to contact the Joint Commission on Public Ethics at jcope.ny.gov

ADDENDUM

A. Under Legislative Law Article 1-A(1-c), the following are excluded from the definition of a gift:

- 1) Complimentary attendance, including food and beverage, at bona fide charitable or bona fide political events.
- 2) Complimentary attendance, including food and beverage, offered by the sponsor of a "Widely Attended Event". A Widely Attended Event is an event at which at least 25 individuals who are not from the governmental entity in which the public official serves attend or were, in good faith, invited to attend, and is related to the public official'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 (1) 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 (2) 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.
- 3) Awards, plaques, and other ceremonial items that are publicly presented, or intended to be publicly presented, in recognition of public service, provided that the item or items are of the type customarily bestowed at such or similar ceremonies and are otherwise reasonable under the circumstances.
- 4) An honorary degree bestowed upon a State Officer or Employee by a public or private college or university.
- 5) Promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts that bear an organization's name, logo, or message in a manner that promotes the organization's cause.
- 6) Goods and services, or discounts for goods and services, offered to the general public or a segment of the general public and offered on the same terms and conditions as the goods and services are offered to the general public or segment thereof.
- 7) Gifts from a family member, member of the same household, or person with a personal relationship with the State Officer or Employee, including, without limitation, an invitation to attend a personal or family social event, when, in light of all the circumstances, it would be reasonable to infer that the gift was primarily motivated by the family, household, or personal relationship.

- 8) Contributions related to campaign receipts and expenditures reportable under Election Law Article 14, including contributions made in violation thereof.
- 9) 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.
- 10) Provision of local transportation to inspect or tour facilities, operations, or property located in New York State; provided, however, that such inspection or tour is related to the individual's official duties or responsibilities. 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 considered to be impermissible gifts, unless otherwise permitted.
- 11) Receipt of meals or refreshments when participating in a professional or educational program and the meals or refreshments are provided to all participants.
- 12) Food or beverage valued at \$15 or less.

B. Advisory Opinion No. 08-01 adds these additional exclusions from the definition of a gift:

- 1) Anything for which a State Officer or Employee pays market value;
- 2) Anything for which the State has paid or secured by State contract;
- 3) Rewards or prizes given to competitors in contests or events, including random drawings, open to the public; and
- 4) Other exceptions to the definition of gift, including:
 - a) Gifts for customary or special occasions, which are defined as those items that are modest, reasonable, and customary, given on special or unique occasions that occur in the personal life of a State Officer or Employee, such as marriage, illness, retirement or death in a family.
 - b) Invitations to State agency heads to events where the attendance must be appropriate to the performance of the attendee's official duties or permits the attendee to perform a ceremonial function appropriate to his or her official position.

C. In addition, Advisory Opinion No. 08-01 defines “Disqualified Source” as follows:

A “**disqualified source**” is an individual who, on his or her own behalf or on behalf of a non-governmental entity, or a non-governmental entity on its own behalf, which:

- 1) is regulated by, or regularly negotiates with, appears before other than in a ministerial matter, does business with, seeks to contract with or has contracts with the State agency with which the State Officer or Employee is employed or affiliated; or
- 2) is required to be listed on a statement of registration as required by the Legislative Law, or is the spouse or unemancipated minor child of an individual who is required to be listed on a statement of registration; or
- 3) is not required to be listed on a statement of registration as required by the Legislative Law, and lobbies or attempts to influence action or positions on legislation or rules, regulations or rate-making before the State agency with which the State Officer or Employee is employed or affiliated; or
- 4) is involved in litigation, adverse to the State, with the State agency with which the State Officer or Employee is employed or affiliated, and no final order has been issued; or
- 5) has received or applied for funds from the State agency with which the State Officer or Employee is employed or affiliated, including participation in a bid on a pending contract award, at any time during the previous year up to and including the date of the proposed or actual receipt of the gift; or
- 6) seeks to contract with or has contracts with a State agency other than the agency with which the State Officer or Employee is employed or affiliated when the officer or employee's agency is to receive the benefits of the contract.