



# THE ETHICS REVIEW

## A JOINT COMMISSION ON PUBLIC ETHICS NEWSLETTER

### THE SEASON OF THE BIG SANDWICH

'Tis the season for holiday parties but before State employees don their party clothes, they better check that they are the right fit. JCOPE hopes that a party invitation received by a State employee triggers more than an analysis of how great the food and drinks will be. Otherwise, that new party dress might cost more than you bargained for!

#### Consider this:

A State agency employee is invited to a law firm's holiday party in an exclusive location where there will be an open bar and that staple of holiday parties everywhere...10 foot hero sandwiches. The law firm represents several clients who appear before the employee's State agency seeking grants. The employee is responsible for reviewing grant applications and makes recommendations, however, a supervisor has the final decision-making authority. Is it a violation of the Public Officers Law for that employee to attend?

#### Gift analysis

**First** you must consider whether attending the party constitutes the acceptance of a gift. The short answer is yes. The open bar plus food amount to more than fifteen dollars and, therefore, are a gift and do not fall under any of the exclusions. **Second**, is the gift being given by an interested source? Clearly, the law firm is an interested source. The firm represents a client with business before the State employee's agency and, in particular, the State employee. Gifts from interested sources are presumptively impermissible unless it is unreasonable to infer the gift was intended or could be expected to influence, or was intended as a reward for official action on the State employee's part. The party invitation does not overcome these inferences.

### Dear JCOPE

Every year I send office-wide emails asking for contributions for a holiday gift for our supervisor and participants in a holiday grab bag for co-workers. Last year, I received a complaint from a co-worker about the email. Can I dismiss that colleague as a scrooge or does he or she have a point?

**Answer:** Are you feeling warmly towards your supervisor and co-workers or is there a chill in the air? It doesn't matter. Even if you can't dream of anything more fulfilling than giving them holiday gifts, there are ethical implications that should be considered. No State ethics opinion directly deals with gifts between superiors and subordinates or between co-workers, but if you sprinkle in

### Inside This Issue

The Season of the Big Sandwich	1
Dear JCOPE	1
Enforcement Actions	2
Quotes of the Quarter	2

It's time to return the party dress.

#### What if you offer to buy the Big Sandwich?

What if, instead, you pay for your own food and drinks. Sounds perfect, right? You are already imagining which holiday drink you might order. Not so fast. That hot toddy could still get you in hot water. Arguably the employee is no longer receiving a gift, but don't forget the Code of Ethics. State employees may not use their official position to secure unwarranted privileges, give a reasonable basis for the impression they may be improperly influenced, or engage in conduct which will raise suspicion that they are acting in violation of the public's trust. Attending a private holiday party at an exclusive location given by an interested source certainly might appear improper even if you pay for your drinks and the piece(s) of the big sandwich.

**Bottom line:** Facts matter. Is the big sandwich a gift? Is it being offered by an interested source? If so, can the presumption be overcome? If it's not being offered by an interested source, it may be okay to take a bite. When in doubt, call JCOPE to be sure that the party won't turn into a penalty.

#### Questions about these rules?

Contact JCOPE at [jcope@jcope.ny.gov](mailto:jcope@jcope.ny.gov) or  
518-408-3976

a little common sense, mixed in with an analysis of the Public Officers Law, you should be able to come up with a quick and easy recipe. Public Officers Law §73(5) provides that no State officer or employee should solicit, accept or receive a gift over nominal value (\$15) if it can be inferred that the gift was intended to influence that person. Granted this law most typically deals with gifts between outside parties and State officers and employees, but the principles behind it can be applied to gifts between State employees as well. **"Intent to influence" is the key ingredient here.** Presumably, gifts between co-workers that are *voluntarily given* cannot be viewed as given with any intent to influence.

## Dear JCOPE (Continued)

However, gifts between superiors and subordinates can create a sour taste and must be mixed with care. Subordinates may feel obligated to give their bosses a gift for fear that choosing not to could directly or indirectly affect the terms and conditions of their employment. In turn, bosses should keep in mind that Public Officers Law §74 prohibits them from securing unwarranted privileges. So if and when a boss receives a \$200 gift certificate to Best Buy, he or she should check for the following key ingredients.

### Recipe for Appropriate Gift Giving in the Office

- Participation in gift giving should be optional and that should be clearly communicated;
- The amount of any gift should be reasonable;
- Cards that go along with gifts should be signed by everyone, whether they contributed or not; and
- Superiors should carefully consider the Public Officers Law before accepting gifts from subordinates.

**Bottom line:** Any gift-giving among State employees must be voluntary and free from any subtle or obvious intent to influence the giftee. Recipes well followed are well received. And remember the gift of good ethical advice might be the greatest gift of all. Call JCOPE when in doubt. Happy Holidays to all!

## ENFORCEMENT ACTIONS

### Prohibited Gifts:

An employee of the State Office of the Medicaid Inspector General (OMIG) admitted to violating the Public Officers Law prohibition on gifts by; 1) interviewing for and accepting a job offer from a company that held a contract with OMIG which was overseen by that employee; and 2) accepting numerous meals expensed by the company. Public Officers Law §73(5)(a) provides that no statewide employee shall directly or indirectly solicit, accept or receive any gift having more than a nominal value. Under the settlement agreement with the Commission, the employee was fined \$14,000.

### Self-Dealing:

A former employee of the New York State Homes and Community Renewal agency admitted to violating the Public Officers Law by using her official agency letterhead when writing letters advocating on her own behalf and for personal friends in private landlord-tenant matters which were not related to official agency business. Under the settlement agreement with the Commission, the employee was fined \$1,500. Public Officers Law §74(3)(d) provides that no officer or employee of a State agency should use his or her official position to secure unwarranted privileges for him or herself or others.

### Nepotism:

A former New York City Transit Authority manager admitted to violating the Public Officers Law prohibiting nepotism when he enlisted the assistance of subordinates in securing a Transit Authority job for his son. Under the settlement agreement with the Commission, the employee was fined \$1,500. Public Officers Law §73(14) prohibits State officials from participating in any decision to hire, promote, discipline or discharge a relative for any compensated position.

## QUOTES OF THE QUARTER

Divorced from ethics, leadership is reduced to management and politics to mere technique.

*James MacGregor Burns*

“A man convinced against his will is of the same opinion still”

*Dale Carnegie*

**Make Ethics  
Your Business**



NEW YORK STATE  
JOINT COMMISSION ON PUBLIC ETHICS

Tip Line: **800-87-ETHICS**  
(800-873-8442)

**ReportMisconduct.ny.gov**

REPORT MISCONDUCT BY STATE OFFICIALS,  
EMPLOYEES, LOBBYISTS, AND THEIR CLIENTS

Improper Gifts • Conflicts of Interest • Nepotism  
Abuse of Official Position • Sexual Harassment  
Other Violations of the Public Officers Law or Lobbying Act

NEW YORK STATE  
JOINT COMMISSION ON  
PUBLIC ETHICS



540 Broadway  
Albany, NY 12207

Phone: 518.408.3976

Website:

[www.jcope.ny.gov](http://www.jcope.ny.gov)