STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY

Advisory Opinion No. 08-01:	Interpretation of Advisory Opinion No. 94-16 in light of amendments to Public Officers Law §§73(5) and 74, and Legislative Law §§1-c and 1-m with respect to gifts.

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I. INTRODUCTION

In Advisory Opinion No. 94-16, the former New York State Ethics Commission ("Ethics Commission") set forth parameters, consistent with Public Officers Law §§73(5) and 74, to guide State officers and employees concerning the soliciting, offering or accepting of gifts. The Public Employee Ethics Reform Act of 2007 ("Act") amended, *inter alia*, Public Officers Law §73(5)(a), the provision of law most directly applicable to gifts.[1]

The New York State Commission on Public Integrity ("Commission") has received many inquiries concerning the recent amendments to Public Officers Law §73(5) and their applicability to Advisory Opinion No. 94-16 from persons subject to the Commission's jurisdiction and the requirements of Public Officers Law §73.

Therefore, pursuant to the authority vested in the Commission by Executive Law §94(15), the Commission issues this opinion to review Advisory Opinion No. 94-16 in light of the amendments to Public Officers Law §73(5). Since the Commission also assumed the powers and duties of the New York Temporary State Commission on Lobbying pursuant to the Act, this opinion will also apply to lobbyists and clients of lobbyists who are subject to the gift prohibitions in Legislative Law §1-m.

The Commission concludes that the principles enunciated by the Ethics Commission in

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[1] The Public Employee Ethics Reform Act of 2007 created the New York State Commission on Public Integrity. The thirteen-member Commission assumed the powers and duties of the Ethics Commission and the New York Temporary State Commission on Lobbying. *See*, Chapter 14 of the Laws of 2007. Executive Law §94(1) states that "[t]his section shall not revoke or rescind any regulations or advisory opinions issued by the state ethics commission and the temporary lobbying commission in effect upon the effective dates," *i.e.*, September 22, 2007.

Advisory Opinion No. 94-16 in defining permissible gifts remain sound and are applicable to State officers and employees as well as lobbyists who are under the Commission's jurisdiction.[2] This opinion reaffirms these principles and addresses those areas that have been modified by the Act in order to provide guidance to affected persons.

The Act requires the Commission to promulgate regulations pertaining to gifts. Therefore, the principles set forth in this Opinion will be reissued in a regulatory format. Pursuant to the State Administrative Procedure Act, individuals will have an opportunity to comment on the substance of the principles in this Opinion in that process.

II. APPLICABLE LAW

A. Public Officers Law §73(5)

Public Officers Law §73(5) sets forth the framework for determining whether a gift to a State officer or employee[3] is permissible, as follows: No statewide elected official, state officer or employee, individual whose name has been submitted by the governor to the senate for confirmation to become a state officer or employee, member of the legislature or legislative employee shall, directly or indirectly:

> (a) solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could

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[2] Executive Law §94(1) states that the Commission "shall have and exercise the powers and duties set forth in this section only with respect to statewide elected officials and state officers and employees, ..., candidates for statewide elected office, and the political party chairman ..., lobbyists and clients or lobbyists, and individuals who formerly held such positions, were lobbyists or clients of lobbyists, or who have formerly been such candidates."

[3] For the purposes of this Advisory Opinion, the term "State officer or employee" or "State employee" refers to those individuals subject to Public Officers Law §§73(5) or 74 who are also subject to the Commission's jurisdiction set forth in Executive Law §94(1).

reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.

(b) solicit, accept or receive any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law unless under the circumstances it is not reasonable to infer that the gift was intended to influence him; or

(c) permit the solicitation, acceptance, or receipt of any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law to a third party, including a charitable organization, on such official's designation or recommendation on his or her behalf, under circumstances where it is reasonable to infer that the gift was intended to influence him.

Thus, State officers and employees may not accept gifts of more than nominal value under circumstances where it may reasonably be inferred that the gift was intended to influence the State officer or employee in the performance of his or her official duties. Prior to the Act, gifts from "disqualified sources," defined below in Section D, valued at $75 or more were *per se* impermissible. Gifts from a disqualified source with a value of less than $75 were not *per se* impermissible, but were subject to further analysis under Public Officers Law §74. The $75 limitation now has been replaced with "nominal value."

B. Legislative Law §1-c(j)

Public Officers Law §73(5) was further amended by adding subdivisions (b) and (c), which, in turn, reference Legislative Law §§1-c(j) and 1-m. Section 1-c(j) provides, as follows[4]:

[4] Legislative Law §1-c(j) and Public Officers Law §73(5) both indicate that gifts of more than nominal value are prohibited. It is to be noted, however, there is a distinction between the Legislative Law and the interpretation of the Public Officers Law by the Ethics Commission concerning exceptions to this prohibition. The Legislative Law states the items set forth in the exclusions are not considered gifts for purposes of the statute. The interpretation set forth by the Ethics Commission in Advisory Opinion No. 94-16, which is affirmed by this Commission, is not whether the item is "excluded" from the definition of gift, but whether the gift is permissible

1-c (j) - The term "gift" shall mean anything of more than nominal value given to a public official in any form including, but not limited to, money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, having a monetary value.[5] The following are excluded from the definition of gift:

(i) complimentary attendance, including food and beverage, at bona fide charitable or political events, and food and beverage of a nominal value offered other than as part of a meal;

(ii) complimentary attendance, food and beverage offered by the sponsor of an event that is widely attended or was in good faith intended to be widely attended, when attendance at the event is related to the attendee's duties and responsibilities as a public official or allows the public official to perform a ceremonial function appropriate to his or her position;

(iii) awards, plaques, and other ceremonial items which 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, and further provided that the functionality of such items shall not determine whether such items are permitted under this paragraph;

(iv) an honorary degree bestowed upon a public official by a public or private college or university;

(v) promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an organization's name, logo, or message in a manner which promotes the organization's cause;

(vi) goods and services, or discounts for goods and services, 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;

(vii) gifts from a family member, member of the same household, or person with a personal relationship with the public official, including invitations to attend personal or

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or impermissible.

While there is a distinction between the two statutes, the principle is consistent, *i.e.*, items given to a State officer or employee or public official of more than nominal value are prohibited, unless the circumstances surrounding the offering, soliciting or receiving of the item comes within one of the exceptions as defined by the Legislature and as interpreted by the Commission.

[5] The Act expanded the types of items that are considered gifts in Legislative Law §1-c(j) to include lodging, meals, refreshment, discount and forbearance. Removed from the list by the Act were the terms "hospitality" and "thing."

family social events, when the circumstances establish that it is the family, household, or personal relationship that is the primary motivating factor; in determining motivation, the following factors shall be among those considered: (A) the history and nature of the relationship between the donor and the recipient, including whether or not items have previously been exchanged; (B) whether the item was purchased by the donor; and (C) whether or not the donor at the same time gave similar items to other public officials; the transfer shall not be considered to be motivated by a family, household, or personal relationship if the donor seeks to charge or deduct the value of such item as a business expense or seeks reimbursement from a client;

(viii) contributions reportable under article fourteen of the election law;

(ix) 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 night of the days on which the attendee, panelist or speaker actually attends the event;

(x) provision of local transportation to inspect or tour facilities, operations or property owned or operated by the entity providing such transportation, provided, however, that payment or reimbursement of lodging, meals or travel expenses to and from the locality where such facilities, operations or property are located shall be considered to be gifts unless otherwise permitted under this subdivision; and

(xi) meals or refreshments when participating in a professional or educational program when the meals or refreshments are provided to all participants.

C. Legislative Law §1-m

Section 1-m of the Legislative Law provides, as follows:

Prohibition of Gifts. No individual or entity required to be listed on a statement of registration pursuant to this article shall offer or give a gift to any public official as defined within this article, unless under circumstances it is not reasonable to infer that the gift was intended to influence such public official. No individual or entity required to be listed in a statement of registration pursuant to this article shall offer or give a gift to the spouse or unemancipated minor child of any public official as defined within this article under circumstances where it is reasonable to infer that the gift was intended to influence such public official. No spouse or unemancipated minor child of an individual required to be listed on a statement of registration pursuant to this article shall offer or give a gift to a public official under circumstances where it is reasonable to infer that the gift was

intended to influence such public official. The section 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 person listed on the statement of registration appears or has matters before the board, commission or council on which the recipient sits.

D. Legislative Law §1-c(l)

The gift provisions set forth in the Public Officers Law §73(5) apply to statewide elected officials, State officers and employees, individuals whose names have been submitted by the Governor to the Senate for confirmation to be a State officer, members of the Legislature and legislative employees. The gift provision in the Legislature Law applies to "public officials," who are defined in Legislative Law §1-c(l) as:

(i) the governor, lieutenant governor, comptroller or attorney general;

(ii) members of the state legislature;

(iii) state officers and employees including:

(A) 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,

(B) officers and employees of statewide elected officials,

(C) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies,

(D) 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;

(iv) officers and employees of the legislature; and

(v) 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.

There are several noteworthy distinctions in these statutes. The individuals covered by the Public Officers Law cannot accept gifts from any person or entity where it can be reasonably inferred that the gift was intended to influence such individuals in the performance of their official duties. Legislative Law §1-m prohibits persons required to be listed on a statement of registration from offering gifts, as defined in Legislative Law §1-c, to "public officials," as defined above. Accordingly, to the extent that the list of individuals in the Public Officers Law and the Legislative Law overlap, those individuals must be cognizant of Public Officers Law §74.

E. Public Officers Law §74

Public Officers Law §74, which sets forth the Code of Ethics, applies to officers and employees of State agencies as well as members of the Legislature and legislative employees.[6] The applicable subdivisions are as follows:

2. Rule with respect to conflicts of interest. No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Standards.

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[6] "State agency" was amended by the Act and is defined as "any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor or corporations closely affiliated with specific state agencies as defined in paragraph (d) of subdivision five of section fifty-three -a of the state finance law or their successors." Public Officers Law §74(1). The Act added the closely affiliated corporations defined in State Finance Law §53-a(d), which are: Youth Research Inc., The Research Foundation for Mental Hygiene, Health Research, Inc., The Research Foundation of the State University of New York, and Welfare Research, Inc.

> d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.
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> f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.
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> h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

Public Officers Law §74 applies to all State officers and employees, including *per diem* and unpaid members of boards and authorities, and employees of closely affiliated corporations. These provisions prohibit such individuals from soliciting, accepting or receiving a gift of any value if to do so would constitute a substantial conflict with the proper discharge of his or her duties in the public interest (subdivision 2), or if it would cause the State officer or employee to violate any of the standards of §74(3).

III. DISCUSSION

The Ethics Commission had indicated in Advisory Opinion No. 94-16 that gifts to a State officer or employee are to be evaluated on a case-by-case basis with consideration given to the donor's identity, the value of the gift and the circumstances surrounding the offering of the gift in order to determine whether the gift is permissible under the Public Officers Law. Those same considerations are to be weighed when determining whether a gift is permissible under the Public

Officers Law and the Legislative Law, as amended by the Act.

A. What is a gift?

A gift is anything of more than nominal value, in any form, given to a State officer or employee. The Act modified Public Officers Law §73(5) and Legislative Law §1-c(j) so that now both sections indicate that gifts include, but will not be limited to money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise.

A gift does not include:

(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) exceptions to the definition of gift set forth in Legislative Law §1-c(j) as interpreted by the Commission, which are fully discussed below in Section F in this Opinion.

EXAMPLE: A State employee enters a 5K race open to the public that will benefit a charity. One of the sponsors of the race is an entity that the State employee's agency regulates. Since the race was open to the public, the State employee may participate and may accept a t-shirt and any prizes.

EXAMPLE: A State employee attends a conference as part of her official duties. There are multiple vendors at the conference, some of which do business with the State and some with the employee's own agency. All participants at the conference, which include government and private entities, have an opportunity to win raffle prizes by dropping their business card in a fish bowl. The State employee's card is drawn and she wins a $1000 laptop that is donated by a vendor who does business with the State. She may keep the prize since it is a raffle that is open to all participants.

B. What is "nominal value?

The Act substantively amended Public Officers Law §73(5) and Legislative Law §1-c(j)

by prohibiting gifts of more than a nominal value. The $75 limit, while one of many factors, was a bright line that helped distinguish permissible from impermissible gifts. Now that this limitation has been eliminated from the Act, guidelines are necessary to assist affected individuals to determine whether a gift is of "nominal value" since "nominal value" is not defined in the Act.

A survey of state ethics laws indicates that some states have employed "nominal value" in their gift laws and have defined "nominal" by either a dollar amount or by examples of what would constitute "nominal." For example, South Carolina's statute states that nominal value is not to exceed ten dollars,[7] while the West Virginia Ethics Commission concluded that "nominal gift means a gift with a monetary value of twenty-five dollars ($25.00) or less."[8] On the other hand, the State of Washington permits "unsolicited advertising or promotional items of nominal

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[7] South Carolina Code of Law §8-13-100(1)(b) states, in part,
(b) "Anything of value" or "thing of value" does not mean:
(i) printed informational or promotional material, not to exceed ten dollars in monetary value;
(ii) items of nominal value, not to exceed ten dollars, containing or displaying promotional material;

[8] West Virginia Code §6B-2-5(c)(2)(C), states, in part,
(2) "... a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to: ... (C) Unsolicited gifts of nominal value or trivial items of informational value;

West Virginia Ethics Commission Regulation §158-7-4 states,
"For purposes of the Ethics Act, W. Va. Code §6B-2-5(c)(2)(C), a nominal gift is any gift with a monetary value of twenty-five dollars ($25.00) or less. Some examples of nominal gifts include a T-shirt, hat, key chain, pen, pencil or any memento of that caliber. A public official or employee may accept from an interested party a nominal gift or gifts not exceeding twenty-five ($25.00); Provided, That, the total value of any nominal gift or gifts accepted from any one source may not exceed twenty-five ($25.00) in one calendar year.

value, such as pens and note pads."[9] Alabama allows "promotional items commonly distributed to the general public and food or beverages of a nominal value."[10] The Ethics Rules of the United States House of Representatives permits House members to accept items of nominal value such as a greeting card, baseball cap or t-shirt.[11] The United States Senate Select

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[9] Revised Code Washington §42.52.150 states, in part,
(1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. ...

(2) Except as provided in subsection (4) of this section, the following items are presumed not to influence under RCW 42.52.140, and may be accepted without regard to the limit established by subsection (1) of this section:
...
(b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

[10] Code of Alabama §36-25-1(31) states, in part,
(31) THING OF VALUE.
a. Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event offered only to public officials, unsecured loan, other than those loans made in the ordinary course of business, reward, promise of future employment, or honoraria.
b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:
...
6. Promotional items commonly distributed to the general public and food or beverages of a nominal value.

[11] U.S. House of Representatives Gift Rule, House Rule 26, clause 5 (106th Congress) states, in part,

5. (a)(1)(A) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift except as provided in this clause.
...
3) The restrictions in subparagraph (1) do not apply to the following:
...
(W) An item of nominal value such as a greeting card, baseball cap, or a T-shirt.

In the commentary to the Rules, it notes that the previous House rules changed. "Accordingly, as a general matter, Members and staff should not rely on the nominal value provision in accepting any item having a value of $10 or more, except for the items that are explicitly referred to in that provision, *i.e.*, a baseball cap or a T-shirt. Instead, any such item will count against the donor's annual gift limit."

Committee on Ethics issued Guidance Under the Gift Rules, which discusses items of little intrinsic value, and food and refreshments of nominal value.[12] In addition to those items specifically identified in the Senate Rules, *i.e.*, baseball caps, t-shirts or greeting cards that have a reasonable value, other items excluded are non-food items that have a value of $10, or less, in the aggregate, and food items, flowers and perishables that have a value of $10, or less, in the aggregate "and are brought, sent or delivered to the Senate office and are not taken as part of a meal." Examples of food or refreshments of nominal value are "hors d'oeuvres and drinks at a reception (as opposed to a sit-down meal) or a 'continental-style' breakfast at a briefing."

"Nominal" is defined by Webster's Dictionary as "trifling, insignificant." [13]

Webster's Online Thesaurus describes "nominal" as "so small or unimportant as to warrant little or no attention." [14] Black's Law Dictionary indicates "nominal" is "often with the implication that the thing named is so small, slight, or the like, in comparison to what might properly be expected, as scarcely to be entitled to the name: *e.g.*, a nominal price [citation omitted]."[15]

The Act was intended to "ensure that New York State officials adhere to the highest ethical standards, in an effort to restore public trust and confidence in government."[16] To this end, the Act prohibits all gifts having more than nominal value, unless a specific exception applies. Eliminating the $75 limitation for gifts was intended to obviate the improper influence, or the appearance of improper influence, that may be brought to bear on State officers and

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[12] United States Senate, Select Committee on Ethics, New Guidance Under the Gift Rules, February 4, 2008. *See also*, Senate Gift Rules 35.1(c)(22) and (23).

[13] Webster's Ninth New Collegiate Dictionary, Merriam-Webster, Inc, 1986.

[14] Webster's Online Thesaurus, http://www.merriam-webster.com/thesaurus/nominal.

[15] Black's Law Dictionary, West Publishing Co., St. Paul, Minn., 1979.

[16] New York State Senate Introducer's Memorandum in Support, Bill No. S2876.

employees and public officials who are offered gifts from individuals or businesses with an interest in the State employee's or public official's duties. Giving gifts to State employees and public officials by disqualified sources provides unfair access to these officials and may improperly influence public policy decision making.

Given the legislative purpose to remove improper influences from State government, the Commission adopts a narrow construction of the term "nominal value." We do not define "nominal" with a dollar limit. It is our view that nominal value is considered such a small amount that acceptance of an item of nominal value could not be reasonably interpreted or construed as attempting to influence a State employee or public official. Therefore, items of insignificant value, as, for example, a regular cup of coffee or a soft drink, are considered nominal. Nominal value would not include a meal nor would it include an alcoholic beverage. However, even items of nominal value can be improper depending on the context.

> EXAMPLE: The State employee represents his State agency in a multi-party administrative proceeding that includes other interested State agencies. At the end of the day, the employee meets the Commissioner of one of the other agencies, who is presiding over the matter, in the cafeteria. It would be unacceptable for the State employee to offer a cup of coffee to the Commissioner since there could be the appearance that the State employee was attempting to secure unwarranted privileges for himself, which would be a violation of Public Officers Law §74(3)(d). Likewise, it would be unacceptable for the Commissioner, in this instance, to accept a cup of coffee from the employee since the Commissioner's conduct may give a reasonable basis for the impression that any person can improperly influence him in the performance of his official duties, in violation of Public Officers Law §74(3)(f).

Gifts of nominal value are allowed; however, State officers and employees are to be cognizant of the Public Officers Law §74.

With regard to gifts having values greater than "nominal," as we have narrowly construed that term, we conclude that soliciting, offering or accepting such gifts is prohibited, unless the surrounding circumstances come within one of the exceptions identified by the Act in Legislative Law §1-c(j) and as interpreted by the Commission discussed below in Section F.

C. The Aggregation Rule

Advisory Opinion No. 94-16 permitted a State officer or employee to accept multiple gifts from a donor in the course of a twelve-month period, provided the aggregate value of the gifts was not greater than $75 during that period.

The principle underlying this provision is that a State officer's or employee's acceptance of multiple gifts from a donor could create a reasonable impression that the donor could improperly influence the State officer or employee or unduly enjoy his or her favor in the performance of his or her official duties, in violation of Public Officers Law §74(3)(f). When multiple gifts are accepted, it may also reasonably appear that the State officer or employee was pursuing a course of conduct that could raise suspicion among the public that he or she was likely engaged in acts that were in violation of his or her trust, which would constitute a violation of Public Officers Law §74(3)(h).

The amendment to Public Officers Law §73(5) nullifies the $75 threshold for multiple gifts from a single donor in a twelve month period. However, the principle underlying that provision remains the same: the acceptance of multiple gifts from a single donor on a regular basis, even gifts of nominal value such as a cup of coffee or a soft drink, could create a reasonable basis for the impression that the donor was improperly influencing the State officer or employee or enjoying his or her favor in the performance of the State officer's or employee's official duties.

Some State officers and employees have indicated that numerous "gifts" of nominal value, such as several cups of coffee, would not impinge upon their official responsibilities. The Commission recognizes that personal friendships may develop over long-term business relationships and the occasional acceptance of an insignificant item, such as a cup of coffee, could not be reasonably interpreted or construed as attempting to influence a State employee or public official. However, there is the public perception of undue influence by a donor when a public official or State employee accepts multiple gifts, even of nominal value, on a regular basis. State officers and employees and public officials must strive to avoid creating any

appearance that would suggest that they are being improperly influenced in discharging their public responsibilities by refusing multiple nominal gifts from the same donor.

D. Disqualified Sources

In assessing whether a gift is permissible, it is necessary to consider the donor of the gift. In Advisory Opinion No. 94-16, the Ethics Commission concluded, as a general rule, that "disqualified sources" should not, directly or indirectly, offer or give a gift of $75 or more, nor should a State officer or employee, directly or indirectly, solicit such a gift from a disqualified source. The Commission reaffirms this general rule that State officers and employees should not, directly or indirectly, solicit a gift of nominal value from a disqualified source, nor should a disqualified source, directly or indirectly, offer or give a gift of nominal value to a State officer or employee.

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[17] 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

[17] Legislative Law §1-e(a)(1) requires every lobbyist who expends, incurs or receives more than $5000 to file a statement of registration. The statement of registration must contain, in addition to other information, the name and address of the lobbyist or the name of the organization and any officers and employees who lobby, as well as the name of the client on whose behalf the lobbyist is retained. *See*, Legislative Law §1-e(c)(1)(2).

(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.

The amendment to Legislative Law §1-m by the Act created a substantive change to the classes of disqualified sources set forth in Advisory Opinion No. 94-14. Previously, one class of disqualified sources was an individual or entity that "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." Legislative Law §1-m was amended to prohibit individuals and entities required to be listed on a statement of registration, as well as their spouses and unemancipated children, from offering a gift to a public official under circumstances in which it can be inferred that the gift was intended to influence official action. Individuals who expend, incur or receive less than $5,000 in lobbying costs are not within the parameters of the statute and, ostensibly, may no longer be considered a disqualified source under the Ethics Commission's previous definition.

Therefore, subsection (2) reflects Legislative Law §1-m and defines as a class of disqualified sources those individuals and entities who are required to file, as well as their spouses and unemancipated children. In order to encompass those individuals and entities who lobby State agencies but expend, incur or receive less than $5,000 in their lobbying efforts, subsection (3) includes this category of lobbyists as a disqualified source. Therefore, consistent with the spirit of Advisory Opinion No. 94-16, if an individual or entity lobbies a State agency, the individual or entity is a disqualified source, without regard to the amount the individual or entity expends, receives or incurs.

Exempted from Legislative Law §1-m are gifts to unpaid and *per diem* members of boards and commissions, unless the person listed has a matter before that board or commission. Unpaid and *per diem* members of boards and commissions are subject, however, to the Code of Ethics in Public Officers Law §74, as are employees of closely affiliated corporations. Therefore, any such gift would have to be examined pursuant to Public Officers Law §74 in order to determine whether it is permissible.

E. Impermissible Gifts to Third Parties

Public Officers Law §73(5)(c) prohibits a person required to be listed on a statement of registration from giving a gift, as defined in Legislative Law §1-c, to a third party, including a charitable organization, on behalf of a public official and based on his or her designation or recommendation, where it is reasonable to infer that the gift was intended to influence the third party. The principle underlying this statute is consistent with the Ethics Commission's conclusion in Advisory Opinion No. 94-16: an impermissible gift to a State officer or employee may not be given by the donor to a third party, including a family member of the State officer or employee, or any other person or entity, including a charitable organization designated or recommended by the State officer or employee.

The Commission reaffirms this principle and concludes that a gift that could not be given to a State officer or employee by a disqualified source may not be directed by the State officer or

employee to a third party, including (a) the State officer or employee's spouse, parent, sibling, child, relative or friend, and (b) to any other person or entity designated by the State officer or employee, including a charitable entity, on behalf of such officer or employee. An otherwise impermissible gift is not permissible because it is given to a third party at the State employee's direction.

F. Exceptions to the Definition of Gift and Permissible Gifts

Legislative Law §1-c(j) sets forth those circumstances under which the soliciting, offering or accepting an item of more than nominal value is excluded from the definition of gift. Many of these circumstances are consistent with those set forth by the Ethics Commission in Advisory Opinion No. 94-16 as "permissible" gifts. The Commission concludes that the following will be considered exceptions to the definition of gift when offered by lobbyists or clients to public officials, or will be permissible gifts when offered by disqualified sources to State officers and employees.

(i) Complimentary Attendance at Charitable or Political Events

Complimentary attendance, including food and beverage, at *bona fide* charitable or political events, and food and beverage of a nominal value offered other than as part of a meal.

EXAMPLE: Senator X offers a complimentary ticket to a State employee, who lives in his district, to attend a fund raiser for the Senator. The State employee may accept since it is a political event.

EXAMPLE: Several State employees from different agencies are involved in a meeting that includes entities from outside of government. The meeting is all day and is being held at the offices of one of the private entities, Corporation X, who is a registered lobbyist. Corporation X offers coffee and cookies to all of the participants. The State employees may accept the food and beverage because it is of nominal value and is offered other than as part of a meal.

EXAMPLE: The participants in the meeting described above decide it would be helpful to have a "working lunch." Corporation X offers to order sandwiches and soft drinks and

have them delivered to the meeting for all of the participants. The State employees must pay for their sandwiches and soft drinks. It is not permissible for a State employee to accept a meal from a disqualified source.

EXAMPLE: A State employee is an auditor who is reviewing the company's books and records. The company offers the auditor coffee while he is performing the audit. While it may be permissible to accept the coffee as a nominal item of drink, it is advisable to consider the circumstances surrounding the offer to ensure that there is not a violation of Public Officers Law §74.

If the company were a registered lobbyist or client, the prohibitions of Legislative Law §1-m would apply, while nominal gifts are permitted, it is necessary to determine whether, under the circumstances, it could be reasonable to infer that the cup of coffee was intended to influence the auditor in the performance of his official duties of inspecting the company's books.

(ii) Complimentary Attendance at Widely Attended Event

Complimentary attendance, food and beverage offered by the sponsor of an event that is widely attended or was in good faith intended to be widely attended, when attendance at the event is related to the attendee's duties and responsibilities as a public official or State employee, or allows the public official or State agency head to perform a ceremonial function appropriate to his or her position.[18] However, under no circumstance may travel or lodging be included.

As indicated in Advisory Opinion No. 94-16, the State agency must first determine that an employee's attendance will further agency programs and operations, then the State employee may accept an unsolicited gift from a sponsor, even from a disqualified source, of free attendance at all or part of a widely attended gathering of mutual interest to a number of parties.

"A gathering is 'widely attended' if it is open to members from throughout a given industry or profession, or if those in attendance represent a range of persons interested in a given matter. 'Free attendance' may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all in attendance as an integral part of the event. When others in attendance

[18] Attendance at events at which the activities are substantially recreational in nature shall not be considered to be for a public purpose or related to a State employee's official duties.

> will generally be accompanied by spouses, the State agency may authorize the State employee to accept a sponsor's invitation to an accompanying spouse to participate in all or a portion of the event at which the employee's free attendance is permitted. Travel expenses, lodging, entertainment collateral to the event, or meals taken other than in a group setting with all others in attendance may not be included as part of the gift, either to the employee or the employee's spouse."

For a State agency to find that an agency purpose is served by a State employee accepting free attendance at a widely attended event, the agency should conclude that its interest in the employee's participation outweighs the likelihood that such participation will actually or apparently improperly influence the employee in the performance of his or her official duties. A number of factors should be considered, including: the nature of any pending matter affecting the donor's interest, the importance of the event to the agency, the significance of the State officer or employee's role in the event, the timing of the event, the purpose of the event, the identity of other expected participants and the monetary value of the gift.

> EXAMPLE: A State employee is offered free admission to a conference that is jointly sponsored by several organizations, including an entity that is regulated by her agency. If the conference is related to the State employee's official responsibilities, the employee may accept the offer of admission and the meals that are offered as part of the conference.
>
> EXAMPLE: Following the conference, the State employee is invited to the regulated entity's hospitality suite for wine and cheese and to meet the entity's staff. The State employee must decline the invitation since the invitation was extended for an event that is not part of the conference and open to all participants.
>
> If the regulated entity was a registered lobbyist or client, it would be a violation of Legislative Law §1-m to invite the State employee to the hospitality suite if the invitation was to a select group of individuals because that would not constitute a widely attended event.
>
> EXAMPLE: A consultant offers to drive the State employee to the conference and pay for the tolls and the gas. The State employee may not accept travel from the consultant.
>
> If the consultant was a lobbyist or a client, the consultant could not offer to drive the State employee. Travel is considered a gift, as defined in Legislative Law §1-c(j), and is prohibited since it would be of more than nominal value. The offer of the gift is a violation of Legislative Law §1-m.

EXAMPLE: The consultant offers to drive the State employee and will share the tolls and the cost of gas. The State employee cannot accept the offer of travel from the consultant. Acceptance of part of the cost of travel would be considered a gift.

EXAMPLE: Company A, who has matters before a certain agency, has a holiday party and invites to the party every individual who worked with Company A during the year - both government and non-government. All the State employees who worked on a case pertaining to Company A were invited. They cannot attend because there is no State agency purpose requiring their attendance at the holiday party.

(iii) Awards, Plaques and Other Ceremonial Items

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, and further provided that the functionality of such items shall not determine whether such items are permitted under this paragraph.

State employees and public officials may be recognized for their public service, which the Commission defines as service related to an individual's official duties and responsibilities as a State employee or public official.[19] To determine whether it would be permissible for the State employee or public official to accept such an award, we look to the totality of circumstances concerning the item given including, but not limited to, the following factors.

[19] The Commission is cognizant that State employees and public officials often participate in community based or charitable activities and may be publicly recognized for their contributions with an award, plaque, or other ceremonial item. While these activities may not be related to their official duties, State employees and public officials are to be mindful as to whether the donor of the award, plaque or ceremonial item is a disqualified source who may be attempting to influence the State employee or public official in the performance of their official duties. The Commission is available to provide guidance to State employees and public officials in such circumstances.

First, the item must be either an award, plaque or item that is associated with the ceremony. The statute indicates that the functionality of an item, *i.e.*, the utility of an item in day-to-day activities, shall not be determinative as to whether the item is ceremonial. The Commission concludes that functionality is one of several factors to be considered when determining whether an award is ceremonial.

Second, the award, plaque or other ceremonial item must be publicly presented or intended to be publicly presented. Presenting the item at a non-public occasion is inconsistent with the statute.

Third, the award must be given in recognition of public service, which the Commission concludes is service undertaken as part of the State employee's or public official's official duties, or has a nexus to such official duties.

Fourth, the item must be of the type customarily bestowed and reasonable in value under the circumstances. Factors to be considered include, but are not limited to, the monetary value of the gift to the recipient and whether the gift is personally engraved with the recipient's name. An inquiry would be necessary to determine whether the donor regularly bestowed such gifts under similar circumstances.

> EXAMPLE: A non-profit organization recognizes a State employee who volunteers on his own time coaching little league and presents him with a plaque. The employee may accept the plaque since the activity is not related to the employee's official duties.
>
> EXAMPLE: A public official is recognized by a lobbying organization at its annual membership meeting for his public service. The official is presented with a crystal bowl made by a world-renowned glassmaker. The bowl is permanently etched with the public official's name and the honor it represents. The bowl, while it may be functional, is primarily ceremonial. Since the bowl was publicly presented to the official, the public official may accept it.

(iv) <u>Honorary Degrees</u>

An honorary degree bestowed upon a public official by a public or private college or university.

(v) Promotional Items

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

EXAMPLE: A State employee attends a conference that is jointly sponsored by several entities and receives as part of the "welcome package" a pen, pad and magnet with the name of the organization on it, which is an entity her State agency regulates. It is permissible to accept these items.

(vi) Discounts for Goods and Services

Goods and services, or discounts for goods and services, 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.

The Legislature's inclusion of this exception in the Act conflicts with the Ethics Commission's Advisory Opinion No. 05-01, which permitted State employees to accept discounts on goods and services that were offered to State employees. In that opinion, the Commission concluded that "[w]here a discount is made available broadly to all State employees and the offeror's purpose is merely to solicit a large group of potential customers, there is no realistic possibility that the offeror is seeking to influence any governmental decision or to reward any employee for any official action. Under such circumstances, it seems inconceivable that the Legislature intended for §73(5) to be read to prohibit an employee from accepting such a discount."

The Legislature has now determined that Public Officers Law §73(5), which incorporates Legislative Law §1-c(j), is intended to prohibit a State employee or a public official from accepting discounts for goods and services made broadly available to State employees, if the offeror is a lobbyist or client of a lobbyist. Therefore, if a State employee accepts the discount, the State employee would be accepting a gift from a lobbyist or client.

Public Officers Law §73(5)(b) includes an additional inquiry that is to be undertaken in determining whether a gift may be accepted. If the gift is not within one of the enumerated exceptions in Legislative Law §1-c(j), the gift cannot be accepted "unless under the circumstances it is not reasonable to infer that the gift was intended to influence him." Therefore, the next level of inquiry is whether it is reasonable to infer whether the State employee or public official would be influenced by the offer of the discount.

The Ethics Commission Opinion No. 05-01 does not come within the *per se* exception set forth in the Act since the discounts that were the subject of that Opinion were offered to a segment of the public that was defined on the basis of status as a public official. In that Opinion, the Commission concluded that it was permissible for State employees to accept a discount on their personal telephone bills that was offered by a nationwide telecommunications carrier, who had been designated as an approved State contractor. The discount was part of a plan that was made available to all federal, State and local government employees nationwide. Pursuant to the Act, employees who accepted the discount are now accepting a gift from a disqualified source. It is necessary, then, to look at the next prong and determine whether the offer of the discount intends to influence individual employees or has the appearance of doing so.

We conclude that it is not reasonable to infer that the offering of a discount to all State employees is intended to influence an individual employee or has the appearance of doing so. As the Ethics Commission stated in Advisory Opinion No. 05-01, "[i]t is a common business practice for vendors to offer discounts to large market groups to increase market share - to gain more in volume than in lost in price." We affirm the conclusion of the Ethics Commission that there is no realistic possibility that the offeror in such instances is seeking to influence any

government action or to reward any State employee for any official action. The Commission concludes that broad-based discounts made available to all State employees are permissible gifts that employees may accept.[20]

Any other type of discount offered to a select group of State employees or public officials must be assessed on a case-by-case basis to determine whether it is a permissible gift. Factors to be considered include, but will not be limited to, the class of public officials who are offered the discount; whether the offeror of the discount is a disqualified source; the amount and duration of the discount; and whether the offeror has a nexus to the class of public officials who are offered the discount, *i.e.*, whether the offeror has a pending matter, is regulated by or is seeking to contract with the public official's agency.[21]

(vii) Gifts from a Family Member

Gifts from a family member[22], member of the same household, or person with a personal relationship with the public official, including invitations to attend personal or family social

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[20] In Advisory Opinion No. 05-01, the Commission also addressed whether a State employee could receive a room discount by showing his or her State identification at the time of check in, even when the State employee advises hotel management that he is not traveling on official State business. Since this discount is available to all State employees, it is not reasonable to infer that the offering of the discount is a means to influence any individual State employee. Therefore, we conclude that the acceptance of this type of discount is a permissible gift.

[21] The Commission considered, and rejected, reversing Advisory Opinion No. 05-01. The Commission has had no indication since issuing Advisory Opinion No. 05-01 that employees have been improperly influenced in the performance of their official duties by these broad based discounts. The intent to influence a public official is an essential element of the statute. We conclude that there is no basis to reject Advisory Opinion No. 05-01.

[22] For the purposes of this section, the Commission will define a "family member" as "relative," which is described in Public Officers Law § 73(1)(m) as "any person who is a direct descendant of that individual's grandparents or the spouse of such descendant."

events, when the circumstances establish that it is the family, household, or personal relationship that is the primary motivating factor. In determining motivation, the following factors shall be among those considered: (A) the history and nature of the relationship between the donor and the recipient, including whether items have previously been exchanged; (B) whether the item was purchased by the donor; and (C) whether the donor at the same time gave similar items to other public officials; the transfer shall not be considered to be motivated by a family, household, or personal relationship if the donor seeks to charge or deduct the value of such item as a business expense or seeks reimbursement from a client.

(viii) Contributions Reportable under Election Law Article 14

Article 14 of the Election Law pertains to campaign receipts and expenditures. Contributions are defined in Election Law §14-100(9) and include, but are not limited to: gift, subscription, outstanding loan, advance, deposit of money made in connection with the nomination for election or election of a candidate, or to promote a ballot proposal; funds received by a political committee from another political committee, provided the funds do not constitute a transfer; and any payment by any person other than a candidate, made in connection with the nomination or election of a candidate, including but not limited to compensation for personal services.

The exception does not apply to amounts donated in excess of contribution limitations established by Article 14 of the Election Law or otherwise in violation of the Election Law.

(ix) Reimbursement of Expenses for Speakers at Informational Events

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 night of the days on which the attendee, panelist or speaker actually attends the event.

EXAMPLE: A State employee or public official is asked to attend a national symposium from October 2 - 4 at a private college in Buffalo. The State employee or public official may accept reimbursement for travel as well as meals and accommodations, at a location close to the campus, for no longer than the period of October 1 - 4, provided the individual was in attendance throughout the symposium.

(x) Provision of Local Transportation to Inspect Facilities

Provision of local transportation to inspect or tour facilities, operations or property owned or operated by the entity providing such transportation, provided, however, that payment or reimbursement of lodging, meals or travel expenses to and from the locality where such facilities, operations or property are located shall be considered to be gifts unless otherwise permitted under this subdivision.

EXAMPLE: A regulated entity, who is also a lobbyist or client, offers to take the Director of the agency, who is based in Albany, on a tour of the newly refurbished facilities in Schenectady. The Director may accept the offer of transportation to and from the facilities.

EXAMPLE: The Director may accept an offer to tour the facilities in Buffalo if the State agency pays for the travel to and from Albany and Buffalo as well as the lodging in Buffalo.

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

Meals or refreshments when participating in a professional or educational program when the meals or refreshments are provided to all participants.

EXAMPLE: A union representative is holding a meeting in a State agency before work hours to discuss the contract negotiations, and the union provides bagels and coffee at the meeting. Those in attendance may have the bagels and coffee since they are attending a

professional program.

If the union representative is a lobbyist, or if the union he is representing is a lobbyist or client, then the offer of the bagels and coffee is permissible. However, while coffee and bagels are permitted, it is necessary to determine whether, under the circumstances, it could be reasonable to infer that the coffee and bagels were intended to influence the State employees who were participating in the contract negotiations.

EXAMPLE: A State employee is attending a continuing education program that is sponsored by an entity that lobbies the employee's agency. As part of the program, lunch and refreshments are offered to all of the participants. It is permissible to accept the food and beverages since it was offered to all participants.

(xii) Gifts for Customary or Special Occasions

The Commission retains as permissible gifts those items that are modest, reasonable and customary, given on special or unique occasions that occur in the personal life of a State employee or public official, such as marriage, illness, retirement or death in a family.

State employees or public officials may also accept a modest gift from a member of the public to acknowledge the State employee's or public official's exemplary performance of their official duties, provided the member of the public has a nexus to the outcome of the State employee's or public official's official duties.

EXAMPLE: The parent of a State employee dies. The consultant sends flowers to the funeral home. It is permissible to accept the flowers.

If the consultant was a registered lobbyist or a client, it would be permissible to accept the flowers.

EXAMPLE: The family of a patient at a State-run facility wants to express their gratitude to the nurse, who is a State employee, for the care she gave the patient and gives her a homemade crocheted quilt. The nurse may keep the quilt.

EXAMPLE: Several State employees work substantial overtime repairing a road. A homeowner in the area sends a homemade cake to the employees' work site to thank them for their work. The employees may accept the cake.

(xiii) Invitations to State Agency Heads

A statewide elected official or an agency head may accept an invitation to attend a function or event in his or her official capacity sponsored by any person or entity.[23]

The elected official or agency head may designate a staff member to attend in his or her place. Such events should be those that would normally appear on such elected official or agency head's work schedule and would likely be publicized. The purpose of attendance must be appropriate to the performance of the attendee's official duties or to permit the attendee to perform a ceremonial function appropriate to his or her official position.

(xiv) Gifts to a State Agency

The Commission does not address in this Opinion the concepts of gifts given to a State agency rather than to individual State officers or employees. We have set forth standards with respect to when it is appropriate for State agencies to accept a gift.[24] However, there have been

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[23] If the invitation includes travel or lodging expenses that are to be reimbursed by such person or entity, the requirements of 19 NYCRR §930.6 must be met. Among other requirements, the individual is to demonstrate that the appearance or participation in the event is for a State agency purpose; the travel expenses, if not so reimbursed, could be paid by the State agency according to its travel reimbursement procedure; the expenses reimbursed would be at a rate no greater than the State agency would reimburse under its travel rules; and the reimbursement for food and lodging is provided for no longer than the individual is reasonably required to be present at the event.

[24] In Advisory Opinion No. 92-1, the Commission offered several guidelines when it would be permissible for an agency to accept gifts. It is first necessary to determine whether an agency has the statutory authority to accept gifts. If the agency can accept gifts, a Commissioner may accept contributions from regulated persons and entities, but not when those individuals or entities are involved in litigation or are under investigation by the agency, since the agency is to remain impartial in such adversarial situations. There are categories of donors whose gifts, because of their relationship to the agency, may raise the "specter of impropriety." Such potential donors would include lobbyists and applicants for licenses or permits. In these cases, the Commission indicated the Commissioner should consider the "source, timing and amount of the contribution before accepting it." Finally, since the Commissioner was authorized to delegate duties to department employees, the Commission stated that the authority to accept

occasions when a gift is sent to an individual State employee, usually the agency head, with the intent that the gift be shared among others in the agency. For example, during the holidays, an agency head may receive candy, fruit, or flowers from a disqualified source.

If the item is non-perishable, it is to be returned to the donor with a letter explaining that gifts cannot be accepted. If the item is perishable, the agency head has several choices: the item can be placed in a "break room" so that many employees can partake in it, and a letter is to be sent to the donor advising that gifts cannot be accepted and should not be sent in the future. As an alternative, the item can be donated to a local charity, and a similar letter sent, as described above.

G. Commission Regulations

The Act requires the Commission to issue regulations pertaining to the soliciting, accepting or receiving of gifts by those subject to the gift provisions in Public Officers Law and the Legislative Law. The draft regulations will be available for comment. The Commission will welcome comments in order to assist us in providing regulations that will be beneficial to State officers and employees and public officials.

IV. CONCLUSION

The parameters set forth above are intended to provide guidance to those subject to the gift provisions in the Public Officers Law and the Legislative Law so that they can determine under what circumstances it may be appropriate or inappropriate to accept a gift. It is not possible to anticipate every scenario that could be presented to a State employee or public official. Therefore, the Commission remains available to provide guidance to all individuals who are subject to the gift provisions concerning the propriety of any gift.

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contributions should not be delegated to those employees involved in regulatory functions on behalf of an agency. *See,* Advisory Opinion Nos. 92-1, 95-38, 96-2, 97-6 and 97-10.

All concur:

John D. Feerick,
Chair
Daniel R. Alonso
Virginia Apuzzo
John M. Brickman
Andrew G. Celli, Jr.
Richard D. Emery
Daniel J. French
David L. Gruenberg
Hon. James P. King
Hon. Howard A. Levine
Loretta E. Lynch
John T. Mitchell,
Members

Date: March 25, 2008