

145558

**GENERAL GUIDELINES FOR
MEMBERS OF THE SERVICE
CONCERNING THE ACCEPTANCE OF GIFTS
AND OTHER COMPENSATION**



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**OFFICE OF THE
DEPUTY COMMISSIONER
LEGAL MATTERS**
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**POLICE DEPARTMENT
CITY OF NEW YORK**

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FOREWORD

In recent years, Members of the Service have been presented with increasingly complex rules and guidelines concerning the acceptance of gifts and other compensation. Recent amendments to the law have created additional restrictions. In an effort to clarify pertinent guidelines and disseminate necessary information concerning statutory changes, the Board of Ethics presents this compilation to which Members of the Service may refer for guidance in this area. Further questions concerning the acceptance of gifts and compensation may be referred to the Legal Bureau at (212) 374-5400. Questions which go beyond the scope of the Police Department may be referred to the New York City Conflicts of Interest Board. The Board will provide definitions and guidance regarding the ethical provisions of the New York City Charter.

NOTE: Copies of all relevant ethics rulings are attached

A. GENERAL GUIDELINES

Chapter 68 of the New York City Charter governs the ethical propriety of gift acceptance. In most instances, members of the service may not accept gifts from the public. However, each case must be decided on its own merits by evaluating the totality of the circumstances surrounding the gift.

Three factors must always be examined when considering the ethical propriety of accepting a gift:

- The value of the gift
- The intent of the donor, and
- The intent of the recipient

1. THE VALUE OF THE GIFT

Members of the service may not accept valuable gifts such as expensive watches, money or savings bonds given in appreciation of police service unless the Department Board of Ethics approves such acceptance. A member of the service who accepts gifts or favors for performing official duties is subject to the imposition of penalties which include a fine and/or suspension or removal from office. Additionally, it should be noted that it is a Class A misdemeanor under Section 200.35 of the Penal Law for a public servant to solicit, accept or agree to accept any special benefit for having engaged in official conduct which he was required or authorized to perform.

However, it is neither unethical nor illegal for a member of the service to accept a gift which is of little value such as an inexpensive plaque, a pen and pencil set or a favor distributed to all those attending a function. See Ethics Ruling No. 1,2,8

2. THE INTENT OF THE DONOR

If a donor's conduct or demeanor indicates that he may expect special treatment from members of the service as a result of his gift, it may not be accepted regardless of its value. Additionally, if another person could get the impression that the donor was influencing official conduct, the gift must be declined. A gift from a person or entity with whom the employee deals in his or her official capacity may never be accepted even if the gift is not given for police service. The appearance of corruption has the same negative effect on the Department image as does actual corruption. See Ethics Ruling No. 11, 26, 31

3. THE INTENT OF THE RECIPIENT

The intent of a member of the service who receives a gift may be scrutinized by the Department if the gift is valuable or if he accepts inexpensive gifts on a routine basis or if he accepts a gift from someone with whom he has official contact, regardless of its value. See Ethics Ruling No. 9, 27, 33

Where the gift is inexpensive, the member of the Department should use his own judgment in accepting or declining the gift. Where a gift of unique nature or carrying a value above and beyond that of an inexpensive gift is given to a member of the service, the member should not accept the gift without a prior ruling by the Department Board of Ethics. In instances where unique or expensive gifts are tendered to a member as part of an official ceremony, or where refusal would create an embarrassment to the donor, the gift should be accepted by the member in a manner that indicates that the acceptance is on behalf of the Department. See Ethics Ruling No. 14. Additionally, if return of a prohibited gift is not practical, the Chief of Inspectional Services should be contacted to determine disposition of the gift.

In addition to being offered gifts at educational and social functions, it is not unusual for members of the public to offer police officers a cup of coffee or a danish during the course of their duties. This type of offer is acknowledged and accepted in our society as a social courtesy. In certain instances, refusal may be insulting. Accordingly, under certain circumstances the acceptance of a cup of coffee or light repast would not be improper or unethical. For example, where an officer is detained in a private home on a sick call or awaiting the arrival of the Medical Examiner, a cup of coffee offered as a token of sociability or courtesy may be accepted. This does not apply in cases where a police officer must leave his assigned post or linger unnecessarily merely to be sociable.

Restaurants which offer free cups of coffee or meals, and newspaper vendors who offer free newspapers or storekeepers who offer free cigarettes, cannot be considered in the same light as the person who displays his sense of hospitality in his own home. In most instances, any "free" offer from a commercial establishment usually comes with the expectation that special consideration will be given by the police officer in return for the "free" cup of coffee, etc. Even in those few instances where the offer is genuinely free of such expectations, the appearance of such expectations is negatively perceived by the public at large. In any instance where the appearance to a member of the public may be improper, such behavior is prohibited. Thus, a police officer may not accept any free or discounted item from any merchant where the same is not given to the public at large.

Section 14-136 of the New York City Administrative Code regulates rewards given to members of the force. This section provides that a member of the force who receives a reward or present for meritorious services rendered in the due discharge of his or her duty must so notify the Police Commissioner. The Commissioner may either order the member to retain all or part of same or may dispose of it for the benefit of the police pension fund. Failure to notify the Commissioner is considered cause for removal from the force.

Recent revisions to the New York City Charter have created additional limitations on acceptance of gifts by public servants. Section 2604(b) 5 of the Charter states:

"No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the City, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions."

A "valuable gift" is defined as any gift to a public servant which has an aggregate value of \$50.00 or more and includes money, service, loans, entertainment, hospitality or any other form of compensation. "Business dealings with the City", is defined as any transaction with the City involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit and any performance of or litigation with respect to the foregoing. "Business dealings with the City", do not include any transaction involving a public servant's residence or any ministerial matter.

If a member of the service receives gifts that are customary on family or social occasions, which would otherwise violate Sections 2604 (b) (5), the member must be sure that:

(1) it can be shown under all the relevant circumstances that it is the family or personal relationship rather than the business dealings that is the controlling factor; and

(2) the public servant's receipt of the gift would not result in or create the appearance of : (i) using his or her office for private gain; (ii) giving preferential treatment to any person or entity; (iii) losing independence or impartiality; or (iv) accepting gifts or

favors for performing official duties.

If a Department employee receives two or more gifts in a calendar year which exceed \$50.00 in aggregate, from any person or firm which the employee knows is or intends to become engaged in business dealings with the City, the employee must disclose that information to the Chief of Inspectional Services through channels.

In order to further clarify gift and compensation acceptance guidelines the following compilation consisting of Department Board of Ethics Rulings is being provided. Members of the Service should note that while there are some clear rules concerning the acceptance of gifts, each case must be decided on its own merits. Common sense, good judgment and prudence must be utilized. Additionally, members should be aware that the manner in which the public perceives certain conduct is a considerable factor in deciding ethical issues. Accordingly, activities which may reflect negatively on the member or the Department are strictly scrutinized.

B. GIFTS AND RELATED AREAS

DEPARTMENT BOARD OF ETHICS RULINGS

RULING NO. 1

FACTS: A member of the service performing duty as an instructor at the police academy in performance of his official duties gave a series of lectures to a group of employees of another city department. Subsequently, the police instructor was invited and attended a public ceremony where he was praised for his efforts and presented with a plaque and valuable wristwatch. Rather than cause embarrassment to the presenting official, the instructor accepted the awards and thereafter sought the guidance of the Police Department Board of Ethics as to whether he may ethically retain possession of the award and gift.

RULING: At a meeting of the Board of Ethics it was determined that receipt of the plaque was not improper and it could be retained, but receipt of the wristwatch was in conflict with the ethical and professional standards required of a police officer and it must be returned.

EXPLANATION: It is wrong for any police officer to accept a gift for professional services performed. The wristwatch was in the nature of a gratuity for the performance of duty and is equivalent to an offer of a monetary reward. The plaque is in the nature of an award in recognition of outstanding service. So long as it does not have unusual intrinsic value and is unaccompanied by monetary or other valuable gift, it is not unethical for a member to accept such an award. The requesting member was so

advised.

RULING NO. 2

FACTS: A police department superior officer with many years service was invited to be "guest of honor" at a dinner to be given by a fraternal organization. At the dinner a plaque was to be presented to the police officer in recognition of police work performed over the years. The member sought the guidance of the Police Department Board of Ethics regarding the propriety of accepting the invitation to be guest of honor and receiving the plaque.

RULING: The Board of Ethics determined that attendance at the dinner as guest of honor and acceptance of the plaque would not be unethical. The requesting member was so advised.

EXPLANATION: If no other gifts are offered, and if there is no attempt by the sponsoring organization to utilize the presence of the department member for any purpose that would compromise the integrity of the member or the Police Department is an unfavorable light, it is not improper for the member to accept the invitation and plaque as guest of honor. The police profession contemplates service to the public, sometimes extending over a period of many years. It is not unexpected that some officers' service and dedication will be such that community groups will seek to honor them.

RULING NO. 8

FACTS: A community group wanted to hold a testimonial dinner for a local precinct commander at which he would be presented with a plaque for outstanding efforts in promoting community relations. They also desire to invite a number of police officers and superiors from local commands to attend the dinner free of charge. The board was asked to determine if attendance at the dinner and acceptance of the plaque would be ethical for the commander and if members of the service could attend free of charge.

RULING: The Board of Ethics determined it would not be unethical for the commander to attend and accept the plaque. The board also determined that, under the circumstances given, it would not be unethical for other invited members of the service to attend free of charge.

EXPLANATION: Acceptance of the invitation by the commander and his acceptance of the plaque is not unethical if no other gift is offered and no attempt is made by the sponsoring organization to use his presence for a purpose that would

compromise his integrity or place the department in an unfavorable position.

Regarding the acceptance of free admission by other invited officers, the board believes that the fundamental question is whether such attendance would improve community relations. In this case, the answer is clearly "yes." Acceptance of the invitation to attend free of charge is therefore not unethical.

RULING NO. 9

FACTS: The Colgate Palmolive Company has sponsored a contest in conjunction with the television series "Police Surgeon." Contest rules dictated that winning contestants receive a prize and a duplicate prize be given to their local police. The commanding officers of three precincts requested the opinion of the board regarding the propriety of accepting the television sets and station wagon awarded for use in their commands.

RULING: The Board of Ethics determined that accepting the gifts would not be unethical, but the gifts could not be made directly to the Police Department. According to law, certain procedures must be followed to secure the gift through the Corporation Counsel.

EXPLANATION: In this case, the prize winners were not business men doing business with the city so there was no conflict of interest. There would be no contact between precinct personnel and the civilian prize winners so there was no danger that the gift was being given to receive preferred treatment from the department. There was no threat, or appearance of a threat, to the integrity of any police officer. Therefore, the board ruled that accepting the gifts through appropriate channels would be ethical.

RULING NO. 11

FACTS: The management of Madison Square Garden offered to donate tickets to several commands for free admission to the openings of various shows. The main purpose for this offer, as expressed by the management, was to insure a full house on opening nights. The board was asked to decide if accepting the officer would be ethical.

RULING: The board ruled that acceptance of the tickets would be improper.

EXPLANATION: The express purpose of this offer was to benefit the corporation. The offer was in no way related to community service nor was it intended to improve police community

understanding. Useful motivation for acceptance was entirely lacking. In addition, because there would be no procedural controls over the donations, it would be difficult to prevent the appearance of the acceptance of unlawful gratuities by members of the commands involved. Thus the board determined that acceptance would be improper.

RULING NO. 14

FACTS: Two members of the service who were assigned to escort and security duty for a visiting foreign dignitary were given valuable gifts by him as a token of appreciation. The officers attempted to refuse the gifts but the donor insisted. The officers felt that refusal would be embarrassing to both the Department and to the State Department. They accepted the gifts and sought a Board of Ethics opinion as to what the proper disposition of the gifts would be.

RULING: The Board decided that the acceptance of gifts was proper in this situation and determined that the gifts be turned over to the Training Division Museum for display. Should incidents of this nature occur again, in that acceptance of gifts is necessary for the sake of courtesy or diplomatic tact, officers would realize that they are accepting on behalf of the department and have the gifts placed in the museum.

EXPLANATION: It is difficult to always refuse a tendered gift especially where diplomatic courtesy is in question. Established department policy which prevents officers from accepting gifts should be explained to the donor and polite refusal should be attempted. The Board of Ethics realizes that this procedure is not always conducive to good public relations or diplomatic protocol. In cases where refusal could well prove embarrassing or insulting to the donor, the member so honored should accept on behalf of the department. The gift will be turned over to the Training Division Museum for display. Whenever prior knowledge of an intended gift of this type exists, the opinion of the Board should be sought. Where warranted, the approval of the Police Commissioner will be necessary.

RULING NO. 26

FACTS: A request for an opinion was submitted to the Board of Ethics as to the propriety of seeking financial sponsorship from private businesses for a softball team formed by and composed of members of the service.

RULING: The Board of Ethics has determined that a member of the service may not seek financial sponsorship from a private enterprise because such an arrangement constitutes the

appearance of a conflict of interest. This type of arrangement is therefore prohibited.

EXPLANATION: The sponsorship of departmental athletic teams or activities by private businesses, or the solicitation of businesses to sponsor such teams or activities would create the appearance that the sponsoring businesses would be accorded favoritism or special attention. The members of the team would derive the benefit of equipment, uniforms and other favors afforded them by the sponsoring business. The sponsoring business may, in turn, feel it should be treated more favorably. In addition, the advertising gained by the sponsoring business would give the appearance of impropriety to businesses not sponsoring teams, and those businesses may feel that they are being pressured to sponsor teams.

RULING NO. 27

FACTS: Members of the service participating in an intramural Police Department football league were sponsored by the owner of a social club which supplied jerseys worth approximately \$250.00 bearing the name of the social club. The club has been raided by the borough's Public Morals Division as operating after hours, and appears on the precinct's corruption prone list.

RULING: The Board determined that it would be improper and unethical for members of the service to accept sponsorship in this manner from a business interest whether legitimate or not, and that the jerseys must be returned to the owner of the social club in question.

EXPLANATION: Although the impropriety of accepting anything of value from a social club questionable legitimacy is obvious, this ruling does not depend on the character of the giver. Rather, the Board's general guidelines clearly prohibit solicitation or acceptance of anything which carries with it even the appearance of special consideration for the giver. In this case, members of the service wearing the name of a particular business while playing football under the auspices of the Department can only lead to the assumption that the business enjoys a special relationship with the officers involved, and hence, the Department itself. Analogous prohibitions are found in Patrol Guide 104-1, General Regulations, p. 3, wherein members of the service may not solicit or publish "booster lists" and may not accept gifts as rewards for police service.

RULING NO. 31

FACTS: It has come to the attention of the Board of Ethics that an American Legion Post has made its facilities available to a Precinct Club, free of charge. The Precinct Club provides its own food and drink, but is not charged for use of the facility.

The cost for use of the facility is normally \$100.00, though the American Legion often waives this fee for some community organizations. At issue, is whether or not it is permissible for a Precinct Club to hold its meetings at an American Legion Post, or any other similar facility without payment of the normal fee for such use.

RULING: The Board of Ethics has determined that free use of an American Legion facility by a Precinct Club, is unethical. While the Board recognizes that other community organizations may be permitted to use the facility for free, such activity on the part of a police precinct club is improper. Notwithstanding the good intentions of the American Legion Post, there is, at the very least, an appearance of impropriety. The police are sworn to uphold the laws impartially and free use of an American Legion facility may have an adverse impact on this impartiality.

In consideration for use of their facility, some members of the American Legion Post may expect special treatment when confronted with local enforcement, e.g., parking, moving violations, etc. Even if the offer by the American Legion Post is extended without any expectation of special treatment, the public may nevertheless conclude that the American Legion Post is receiving special treatment.

The only way this misperception can be corrected, is by the discontinuance of the free use of the American Legion Post for Precinct Club activities.

RULING NO. 33

FACTS: A prominent watch manufacturer has proposed to sponsor an annual special awards ceremony to honor deserving Auxiliary Policemen and Policewomen who have demonstrated their utmost in service to the community. The awards of watches valued up to \$250.00 will be given to six outstanding Auxiliary Police Officers. The award recipients will be chosen by a committee comprised solely of auxiliary police members.

The Board of Ethics was asked to rule on whether it is appropriate for a private company to offer something of value to a member of an organization (Auxiliary Police) officially connected with the New York Police Department.

RULING: The Police Department Board of Ethics determined that it was not unethical for the auxiliary police members to accept the awards.

EXPLANATION: There is little or nothing that these individuals have in their authority to enable them to reciprocate by showing favorable treatment to the donor and the watch manufacturer does not engage in any business with the Police Department. It has been taken into consideration that Auxiliary Police Officers freely donate their time to the service of the community for solely altruistic reasons with no expectation of monetary compensation or reward. Therefore, in this instant matter the recognition of their services by these awards has been deemed appropriate.

DEPARTMENT BOARD OF ETHICS GUIDELINES

GENERAL GUIDELINE NO. 2

SUBJECT: Soliciting discounts from stores or entering places of entertainment such as theaters and ball parks free of charge by members of the service.

GUIDELINE: It is unethical without exception for a member of the Department to solicit or accept any discount on merchandise or services, or to solicit or accept entry without fee to a place of entertainment such as a theater or ball park, based solely on his being a member of the department.

It should be noted that there is a distinction between attending community sponsored affairs or "Policemen's and Firemen's Day" at the ball park and routinely using a shield for free admission. In the former cases, members of the service attend in an official capacity to improve community relations or they attend as police officers to be honored by a baseball team and the public. In the latter case a member of the Department uses his official position as an instrument to gain special favors for himself. This practice is demeaning to the police service and unethical.

GENERAL GUIDELINE NO. 6

SUBJECT: Gifts given to members of the service.

GUIDELINE: When considering the ethical propriety of accepting a gift there are several aspects of the gift giving situation which must be examined:

- 1) What is the value of the gift;
- 2) What is the intent of the donor; and
- 3) What is the intent of the recipient.

Valuable gifts such as expensive watches, money, savings bonds, etc., should not be accepted at any time by members of the department if they are given in appreciation or recognition of police service, unless reviewed by the Board of Ethics and approved by the Police Commissioner. The acceptance of gifts which are of little value such as inexpensive plaques, pen and pencil sets or favors distributed to all those attending a function, is not considered unethical.

The intent of the donor and his expectations regarding the nature of his relationship with recipient members of the department is an important consideration. If the donor's conduct or demeanor indicates that he may expect special treatment from members of the department as a result of his gift, it may not be accepted regardless of its value. Regarding the donor's intent, members of the department must be prudent in deciding whether to accept or decline a gift. If, for example, the intentions of the donor clearly do not involve influencing the member's official conduct, but the danger exists that another person could get this impression, the gift must be declined. The appearance of corruption has very much the same negative effect on the department image as does actual corruption unless the facts make the purpose of the gift clearly acceptable.

The intent of the recipient of the gift, is the next consideration. Your intentions would not be questioned, for example, if while attending a large public dinner you accepted an inexpensive gift given to all present. Your behavior could be suspect, however, if a valuable gift were given to you; or if over a period of time, inexpensive gifts were routinely given to you; or if any gift, regardless of its value, were given to you by someone with whom you have official contact.

Where the gift is an inexpensive gift as indicated above, the member of the department should use his own judgment in accepting or declining said gift. Where the gift is of a unique nature or carries a value above and beyond that of an inexpensive gift, the member should not accept said gift without a priority ruling by the Board of Ethics and, where warranted, approval of the Police Commissioner. In instances where expensive or unique gifts are tendered to a member as part of an official ceremony, or where refusal would create an embarrassment to the donor, the gift should be accepted by the member in such a manner as to denote that the acceptance is on behalf of the department. Guidance of

the Board of Ethics should then be sought to determine the disposition of said gift. In all cases where prior knowledge exists on an intended presentation by any person or organization to a member of the service, prior determination by the Board should be sought. Where warranted, approval of the Police Commissioner would also be necessary.

Christmas season is not exception to these rules. In fact, members of the department must be especially careful to avoid accepting or appearing to solicit gifts at Christmas time.

Members of the department must use good judgment in accepting gifts in all instances. In all cases where doubt exists the gift should not be accepted without a prior ruling of the Board of Ethics.

GENERAL GUIDELINE NO. 8

SUBJECT: The acceptance of a cup of coffee.

GUIDELINE: It is recognized, and accepted, in our society that the offer of a cup of coffee to another person in our home is a manifestation of social courtesy. Refusal may, under certain instances, be taken as an insult by the host or hostess. In considering this matter, the Board of Ethics has sought to evaluate the value of acceptance of such a hospitably proffered cup of coffee and the damage to the spirit of community relations and the refusal of such an offer.

It is therefore acknowledged, that in certain instances, refusal to accept the hospitality offered to a police officer may engender a gap in communications between the police officer and members of the community he serves. Thus, under circumstances the acceptance of a cup of coffee would not be improper or unethical.

Where an officer is legitimately detained for a period of time in a private home on official police business, e.g., on sick call awaiting an ambulance, awaiting the medical examiner, etc., and the host or hostess offers the police officer a cup of coffee and light repass, freely as a token of sociability, courtesy should be considered in replying. Naturally, this does not apply in cases where a police officer must leave his assigned post or linger unnecessarily merely to be sociable. Nor does it apply with respect to public places.

Restaurants which offer free cups of coffee, meals, etc., newspapers vendors who offer free newspapers, storekeepers who offer free cigarettes, etc., cannot be considered in the same light as the person who displays his sense of hospitality in his own home. In most instances, any "free" offer usually comes with the expectation that special consideration will be given by the police officer in return for the free "cup of coffee," etc. Even

in those few instances where the offer is genuinely free of such expectations, the appearance of such expectation is perceived by the public at large. In any instance where the appearance to the general public may be improper, such behavior is prohibited.

Thus, a police officer may not accept any free or discounted item from any merchant where the same is not given to the public at large.

The guiding standard must not only be that behavior in fact be free of taint, but that the public perceives the police officer to be beyond reproach.

These Guidelines were prepared by
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