



LEVENTHAL, CURSIO, MULLANEY & BLINKOFF, LLP  
ATTORNEYS AT LAW  
15 REMSEN AVENUE  
ROSLYN, NEW YORK 11576  
TELEPHONE: (516) 484-5440  
FACSIMILE: (516) 484-2710

STEVEN G. LEVENTHAL  
RALPH M. CURSIO  
THOMAS J. MULLANEY  
JEFFREY L. BLINKOFF

TO: Hon. Carnell T. Foskey, County Attorney  
FROM: Steven G. Leventhal  
DATE: November 30, 2015  
RE: Advisory Opinion: [REDACTED]

---

Questions Presented

Whether officers and employees of the Nassau County Police Department (the “Department”) would receive a prohibited gift by virtue of their local facilitation of a national retailer’s distribution of holiday gift cards to selected students in need, as part of a national program aimed at promoting public safety.

Conclusions

Officers and employees of the Department would not receive a prohibited gift by virtue of their local facilitation of a national retailer’s distribution of holiday gift cards to selected students in need, as part of a national program aimed at promoting public safety.

Governing Authority

New York General Municipal Law section 805-a provides, in pertinent part, that:

No municipal officer or employee shall... directly or indirectly, solicit any gift, or accept or receive any gift having a value of seventy-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing 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 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...

Nassau County Charter section 2218 (the "Code of Ethics") provides at subdivision 3 (Gifts and Favors), in pertinent part, that:

No officer or employee of the County, whether paid or unpaid, shall accept gifts aggregating to seventy-five dollars or more during a twelve month period, nor solicit any gift of any value, whether in the form of services, loan, thing or promise of any other form, from any one person, firm or corporation which to his or her knowledge is interested directly or indirectly in any manner whatsoever in business or professional dealings with the County or any agency thereof.

### Discussion

Target Brands, Inc. ("Target") is a national, multi-product retailer, with a store located in Westbury. Target sponsors an annual charitable event, called "Heroes & Helpers", described on its web site as follows:

Our annual Heroes & Helpers events pair public safety officials with community youth for holiday shopping sprees at our stores. Through our 2014 program, we donated more than \$150,000 to agencies in approximately 200 communities across the U.S.

As a part of its 2015 Heroes & Helpers event, Target wishes to distribute gift cards to students at the Drexel Avenue School in Westbury, and has asked the Nassau County Police Department to facilitate the program by delivering the gift cards to the school for distribution to student recipients selected by the school administration.

A three step analysis was used to determine whether a prohibited gift would be received by officers and employees of the Department by virtue of their local facilitation of Target's distribution of holiday gift cards to selected students in need, as part of a national program aimed at promoting public safety. The following questions were considered: (i) whether facilitation of Target's distribution of holiday gift cards under the circumstances presented would violate New York General Municipal Law (Conflicts of Interest of Municipal Officers and Employees), (ii) whether facilitation of Target's distribution of holiday gift cards under the circumstances presented would violate the Nassau County Code of Ethics, and (iii) whether facilitation of Target's distribution of holiday gift cards under the circumstances presented would create a prohibited appearance of impropriety under common law principles.

#### *1. N.Y. Gen. Mun. Law Article 18*

Article 18 of the New York General Municipal Law the "NYGML") establishes standards of ethical conduct that are mandatory for officers and employees in every municipality within the

State of New York, other than New York City.<sup>1</sup> Section 805-a of the NYGML prohibits a municipal officer or employee from requesting a gift, or accepting a gift (or aggregate gifts) worth \$75 or more, where it “might appear” that the gift was intended to reward or influence an official action.

Here, no reasonable inference could be drawn that the invitation to participate in Target’s distribution of holiday gift cards under the circumstances presented was intended to influence or reward the official action of any officer or employee of the Department. The Department will merely facilitate the distribution of the gift cards to students in need, selected by the school administration. No benefit will accrue to any officer or employee of the Department, either directly or indirectly.

Accordingly, the facilitation of Target’s distribution of holiday gift cards under the circumstances presented would not violate New York General Municipal Law (Conflicts of Interest of Municipal Officers and Employees).

## *2. Nassau County Code of Ethics*

For the same reasons, the facilitation of Target’s distribution of holiday gift cards under the circumstances presented would not violate the Nassau County Code of Ethics.

## *3. Common Law Principles*

Ethics regulations generally are designed to promote high standards of official conduct and to foster public confidence in government.<sup>2</sup> The restrictions against solicitation or acceptance of prohibited gifts by municipal officers and employees help to foster public confidence in government by avoiding situations in which the integrity of an officer or employee may be called into question.

Here, having concluded for the reasons set forth above that the invitation to participate in Target’s distribution of holiday gift cards under the circumstances presented was intended to influence or reward the official action of any officer or employee of the Department, the facilitation of Target’s distribution of holiday gift cards under the circumstances presented would not create a prohibited appearance of impropriety under common law principles.

---

<sup>1</sup> N.Y. Gen. Mun. Law §800(4).

<sup>2</sup> In some cases, courts have found that government officials have an implied duty to avoid conduct that violates the spirit and intent of ethics regulations, even where no specific statute is violated. *See, Zagoreos v. Conklin*, 109 A.D. 2d 281 (2d Dept., 1985); *Tuxedo Conservation & Taxpayers Assoc. v. Town Bd. of Tuxedo*, 69 A.D. 2d 320 (2d Dept., 1979); *Conrad v. Hinman*, 122 Misc. 2d 531 (Onondaga Co., 1984).