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TO: Hon. Carnell T. Foskey, County Attorney  
FROM: Steven G. Leventhal  
DATE: October 9, 2015  
RE: Advisory Opinion: [REDACTED]

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Questions Presented

Whether the [REDACTED] would receive a prohibited gift by virtue of her complimentary attendance, as an honoree, at a luncheon sponsored by a not-for-profit [REDACTED] doing business with the County; or if she were to purchase or sell tickets to the luncheon.

Conclusion

Under the Nassau County Code of Ethics, the [REDACTED] would receive a prohibited gift by virtue of her complimentary attendance at a luncheon sponsored by a not-for-profit [REDACTED] doing business with the County. The [REDACTED] would not receive a prohibited gift by virtue of her paid attendance at the luncheon, nor would a conflict of interest exist if she were to purchase or sell tickets to the event, provided she did not use her official position to induce vendors or co-workers to purchase the tickets.

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. For purposes of this subdivision, the value of a gift of a ticket or comparable authorization entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket or the cost of entrance to the general public, notwithstanding the fact that part of the cost of attending is a tax-deductible or political contribution.

#### Discussion

[REDACTED]

Other funding sources include the Federal Government and certain County municipalities. [REDACTED] are provided through independent not-for-profit agencies under contracts with the County.

One such agency, [REDACTED]

[REDACTED] has invited the [REDACTED] to be a guest at a luncheon that it will sponsor, and to serve as an honoree at the luncheon. In return, the [REDACTED] will be expected to purchase or sell seven tickets valued at \$85 each.

A three step analysis was used to determine whether the [REDACTED] would receive a prohibited gift by virtue of her complimentary attendance at a luncheon sponsored by a not-for-profit [REDACTED] organization doing business with the County. The following questions were considered: (i) whether complimentary attendance by the [REDACTED] at the luncheon, or her purchase or sale of tickets to the luncheon, would violate New York General Municipal Law (Conflicts of Interest of Municipal Officers and Employees), (ii)

whether complimentary attendance by the [REDACTED] at the luncheon, or her purchase or sale of tickets to the luncheon, would violate the Nassau County Code of Ethics, and (iii) whether complimentary attendance by the [REDACTED] at the luncheon, or her purchase or sale of tickets to the luncheon, 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. 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 complimentary attendance by the [REDACTED] at the luncheon was intended to influence or reward any official action. In return for a pecuniary benefit valued at \$85, the [REDACTED] will be expected to purchase or sell seven tickets having an aggregate value of \$595. Accordingly, attendance at the Dinner under the circumstances presented would not violate Article 18 of the New York General Municipal Law (Conflicts of Interest of Municipal Officers and Employees). Nor would the [REDACTED] purchase or sale of tickets to the luncheon violate the statute.

*2. Nassau County Code of Ethics*

[REDACTED] is under contract with the County to provide [REDACTED] services. Because Code of Ethics subdivision 3 absolutely prohibits a County officer or employee from accepting a gift having a value of \$75 or more from a corporation doing business with the County, even where no inference of impropriety may be drawn, the [REDACTED] complimentary attendance at the luncheon would constitute a prohibited gift in the amount of \$85, the face value of the ticket, notwithstanding that she will be expected to purchase or sell other tickets.

In her inquiry, the [REDACTED] indicated that she is willing to attend the luncheon at her own expense, and to pay for the tickets that she is expected to purchase or sell. The [REDACTED] would not receive a prohibited gift by virtue of her paid attendance at the luncheon, nor would a conflict of interest exist if she were to purchase or sell tickets to the event, provided she did not use her official position to induce vendors or co-workers to purchase the tickets.

*3. Common Law Principles*

Ethics regulations generally are designed to promote high standards of official conduct and to foster public confidence in government. 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.<sup>1</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, a prohibited appearance of impropriety would not exist if the Executive Director were attend the luncheon at her own expense, or to purchase or sell tickets to the luncheon, provided the Executive Director did not use her official position to induce vendors or co-workers to purchase the tickets.

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<sup>1</sup> 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).