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

Questions Presented

Whether two members of the [REDACTED] would receive a prohibited gift by virtue of their complimentary attendance at a luncheon hosted by the [REDACTED] a not-for-profit organization that sponsors programs in the field of [REDACTED].

Conclusions

Two members of the [REDACTED] would not receive a prohibited gift by virtue of their attendance at a luncheon hosted by the [REDACTED] a not-for-profit that sponsors programs and projects [REDACTED].

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

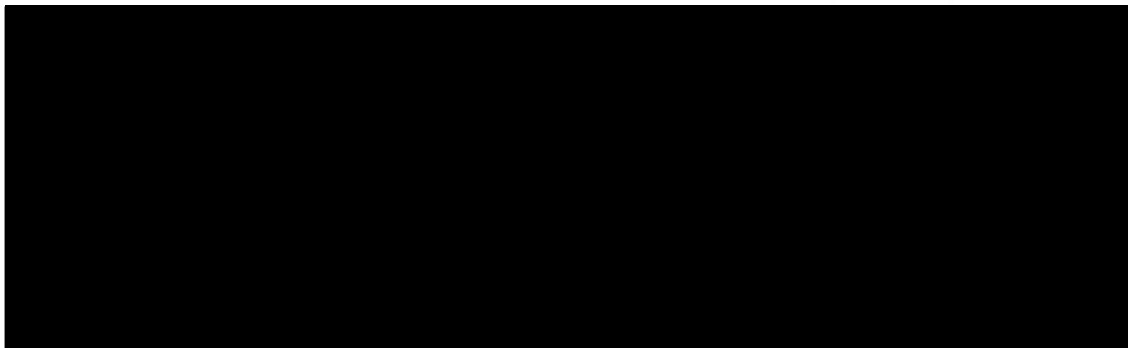
[REDACTED]

[REDACTED] is a not-for-profit organization. It is classified under IRC section 501(c)(6) as a professional association. Chapters in the U.S. are covered under Group Exemption #3110. Under the IRS Group Exemption program, subordinates are recognized as exempt based on this exemption of the parent.

[REDACTED]

According to its website, the [REDACTED] organizes and provides a number of services and events, which include, among others:

[REDACTED]



[REDACTED] has invited [REDACTED] to send two of its [REDACTED] to attend a luncheon hosted by the organization, where the [REDACTED] will be honored. The cost of attendance, \$75.00 per person, will be waived. The luncheon will take place during the organization's annual [REDACTED] featuring educational programs and networking opportunities.

A three step analysis was used to determine whether a prohibited gift would be received by two [REDACTED] if they were to accept tickets to attend the luncheon as guests of the sponsoring organization. The following questions were considered: (i) whether attendance by two [REDACTED] at the luncheon under the circumstances presented would violate New York General Municipal Law (Conflicts of Interest of Municipal Officers and Employees), (ii) whether attendance by two [REDACTED] at the luncheon under the circumstances presented would violate the Nassau County Code of Ethics, and (iii) whether attendance by two [REDACTED] at the luncheon 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.¹ 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 not for profit organization's unsolicited offer of two tickets for attendance at the luncheon by two unspecified [REDACTED] was intended to influence or reward any official action of the [REDACTED] or its [REDACTED]. The invitation was made without specifying the particular recipients of the tickets. Further, the not for profit organization is not a County vendor. Neither the [REDACTED] nor its [REDACTED] have bestowed any official benefit on the not for profit organization.

¹ N.Y. Gen. Mun. Law §800(4).

Accordingly, attendance at the luncheon 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*

The [REDACTED] transacts no business with the County. For that reason, and for the reasons set forth above, complimentary attendance at the luncheon by two members of the Department under the circumstances presented would not violate the Nassau County Code of Ethics. Rather, attendance by two members of the [REDACTED] at the luncheon and [REDACTED] is likely to advance the interests of the County by providing educational and networking opportunities.

3. *Common Law Principles*

Ethics regulations generally are designed to promote high standards of official conduct and to foster public confidence in government.² 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 no reasonable inference could be drawn that the offer of complimentary attendance at the luncheon by two unspecified members of the [REDACTED] was intended to influence or reward any official action of the [REDACTED] or its [REDACTED] attendance at the luncheon under the circumstances presented would not create a prohibited appearance of impropriety under common law principles.

² 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).