

**Philadelphia Board of Ethics**  
**Opinion No. 2004-01**

**HOLIDAY PARTIES AND EXECUTIVE ORDER 002-04**

City employees are often invited to holiday parties hosted by private entities, as the guests of the host. Such parties generally involve the provision of food and beverages, and occasionally may include entertainment. The Ethics Board has been asked to consider the circumstances under which City employees may accept invitations to such parties, under Mayor's Executive Order No. 002-04. This executive order, which took effect September 12, has fewer exceptions than the previous executive order, which it replaced. There are no longer automatic exceptions for gifts valued at less than \$100 or for gifts of food and drink. Virtually any gift is subject to the order, so interpretation of the exceptions is often crucial.

1. Is the host a generally prohibited source? Section 1 of the Executive Order ("the Order") identifies as generally prohibited sources persons (which includes businesses, organizations and other groups) that, among other things:

- have financial relations with the City;
- whose operations or activities are regulated or inspected by the City; or
- who seek legislative or administrative action by the City.

Given the broad reach of City action within its borders, this definition conceivably includes virtually any business or organization that does business within the City limits or has an office here; or ever does business with the City. Hence, it is likely that any entity that is throwing a holiday party and inviting City employees is probably subject to the Order.

2. Is an invitation to attend a holiday party a "gift"? Anything of value received for free or for less than the fair market value (or price to the general public) is a "gift." If there is a ticket price to a holiday party, a City employee who is invited for free or for a discounted price, is being offered a gift. Where there is no ticket price, but the party is open only to invitees and free food and drink is provided, consuming food or beverages would constitute a gift. Whether a City employee may permissibly attend an invitation-only party and consume no food or drink, on the theory that they have received nothing

of value, could create an issue of the propriety of the employee's attendance at such an event, and the potential need to have such an employee certify that no receipt of food or beverage occurred.

3. Does the exception for a gift from a "friend" apply (Section 2(a) of the Order)? Although a party at a friend's home may fit this exception, a party at a hotel or other place of business and hosted by an organization would not.

4. Does the exception for a gift of food during a meeting apply (Section 2(b) of the Order)? No. Holiday parties are not meetings.

5. Does the exception for a gift of food at a public event sponsored by a non-profit apply (Section 2(c) of the Order)? Although it is conceivable that some non-profit organizations may hold holiday parties, even parties that are open to the public, it cannot be assumed that any City employee attending is doing so in his/her official capacity, as required by this exception. However, certain City officials with a governmental purpose to attend such a party may do so. Questions should be referred to the Law Department in uncertain cases.

6. Does the exception for a "gift to the City" apply? (See Section 4(b) of the Order and Charter Section 8-204) Generally, holiday parties cannot be a "gift to the City." Ideally, a private entity wishing to make a gift to the City, such as attendance at a dinner or conference by certain mid-level managers, will make the offer to the appointing authority of any officials invited to attend. That appointing authority should then make the decision as to which City employee/official is the logical person to represent the City at the dinner or conference or the like. The approving official must also be able to articulate a defensible justification as to a legitimate governmental purpose of the City that is advanced or assisted by the acceptance of this gift. We conclude that there is a presumption that holiday parties have no governmental purpose, and that therefore the burden is on the City official to demonstrate facts that overcome that presumption, before concluding that attendance may be a "gift to the City."

Approved by the Board December 3, 2004