

**Philadelphia Board of Ethics**  
**Opinion No. 2004-03**

**GIFTS AND EXECUTIVE ORDER 002-04**

The approaching holidays raise two important issues under Mayor's Executive Order No. 002-04, issued August 12, 2004:

- (a) Free attendance at holiday parties, offered to City employees; and
- (b) Gifts offered, or sent unsolicited, to City employees.

Issue (a) having been addressed in a separate policy (See Board of Ethics Opinion No. 2004-01, "Holiday Parties and Executive Order No. 002-04"), this policy is to address (b). The 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.

The first question is whether the donor of the gift is 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. It certainly covers City vendors and other contractors. It is important to keep in mind that the Executive Order provides that a vendor or other prohibited source that offers a gift to a City official or employee may be barred from future contracts with the City or other sanctions (see Section 1(2) of the Order).

The next question is whether an exception applies. There are perhaps three categories of gifts that most frequently raise issues under the exceptions:

1. Gifts from family and friends. These are clearly acceptable. However, it must be clear that the motivation for the gift is the family or friendship relationship. That City vendor who you have done business with for years, so that you now socialize with him/her on your free time, is still a City vendor. A gift from that person is suspect, and the burden would be on you to show that it was clearly motivated by the friendship alone.

2. Gifts among City employees. The Executive Order permits such gifts on “a special occasion such as marriage, illness, or retirement.” We interpret “special occasion” to include all holidays that are customarily thought of as gift-giving occasions, including “Administrative Professionals Day” and birthdays. Accordingly, on such occasions, you may give a gift to, or receive a gift from, a subordinate, superior, or co-worker, provided that the gift is a “nominal” amount. The risk of a gift being considered more than nominal rests with the employee. Please use common sense.

3. Return of gifts. Returnable prohibited gifts must be returned. See Section 4 of Executive Order No. 002-04. Non-returnable gifts, such as perishables (e.g., a fruit basket or a bouquet of flowers) are more problematic. (1) If at all possible, when the gift arrives, if it can be immediately determined that it is a prohibited gift (and not, say, a present from a family member), the gift should be refused and the delivery person told to take it back before he leaves the premises (or the delivery company called and asked to come back and take back the item); (2) if that is not possible, the last sentence of Section 4(b) of the Executive Order applies, and the gift may be shared among the members of the office (e.g. put the fruit basket in a common area with a note to 'help yourself'); and (3) although not required, we strongly recommend that the office head should write a letter to the gift giver, explaining that receipt of the gift violates the Executive Order, and that offering such gifts may even make the vendor ineligible to do business with the City. (See Section 1(2) of the Executive Order.) Indeed, all City offices are urged to develop a form letter to send out to all their vendors and contractors, and others subject to their regulation, notifying them of the new rules on gift-giving and discouraging such entities from offering gifts to City employees.

We are sometimes asked whether it is permissible to donate a prohibited gift to a charity. The Executive Order does not provide for this, and such redirection does not make a gift acceptable. However, if an office prefers to direct a perishable gift to a charity rather than distribute it among employees in the office, the Ethics Board would not condemn that action, so long as it was understood that this does not make the gift acceptable under the Executive Order, and so long as the donation to the charity is clearly made in the name of the City and not in the name of (and tax deduction for) a particular City employee.

Finally, we would limit this advice to relatively inexpensive gifts like modest flower arrangements and fruit baskets. Lavish or expensive gifts along these lines should probably be returned to the donor, even if spoilage would occur, in order to avoid any suggestion that the executive order is not being complied with or that donors may avoid the order by sending perishable gifts.

Approved by the Board, December 17, 2004