PROPOSED GIFT REGULATIONS – PART 934

Title 19 NYCRR Part 934 is added to read as follows:

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. JOINT COMMISSION ON PUBLIC ETHICS

TITLE 19 NYCRR PART 933: GIFTS (Pursuant to Legislative Law Article 1-A)

934.1 Purpose and Effect of Regulation.
(a) The purpose of these regulations is to effectuate the statutory provisions of §1-c(j) and §1-m of article 1-A of the Legislative Law.

(b) The effect of these regulations is to supersede prior Advisory Opinions issued by predecessor agencies to the Joint Commission on Public Ethics to the extent they are inconsistent with this Part.

934.2 Definitions.
(a) *Bona Fide Charitable Event* shall mean a function the primary purpose of which is to provide financial support to a Charitable Organization.

(b) *Bona Fide Political Event* shall mean a function the primary purpose of which is to provide financial support to a Political Organization or Political Candidate.

(c) *Charitable Organization* shall mean:

(1) an entity as defined in Executive Law §171-a(1) that is registered with the Office of the Attorney General, as required by Executive Law §172, unless otherwise exempted from filing pursuant to Executive Law §172-a; or

(2) an entity organized and operated exclusively for charitable purposes and qualified as an exempt organization by the United States Department of Treasury under section 501(c)(3) of the Internal Revenue Code; or

(3) a person who requests contributions for the relief of any individual, specified by name at the time of the solicitation, if all of the contributions collected, without any deductions whatsoever, are paid to or for the benefit of the named beneficiary, provided the individual has submitted a form entitled "Charitable Solicitation for the Relief of an Individual" with the Charities Bureau of the Office of Attorney General prior to the event.

(d) *Client* shall mean every person or organization as defined in §1-c(b) of article 1-A of the Legislative Law.

(e) *Commission* shall mean the New York State Joint Commission on Public Ethics.

(f) *Complimentary Attendance* shall mean the waiver of all or part of a registration or admission fee, or waiver of all or part of a fee or charge for the provision of food, beverages, entertainment, instruction, or materials. "Complimentary Attendance" shall include the awarding of continuing education credits or certification for attendance at a program provided such credits or certification are offered to all attendees. "Complimentary Attendance" shall not include registration or admission without charge to an attendee to any entertainment, recreational activity, or reception that is not part of the regular agenda of the event. "Complimentary Attendance" also shall not include travel, lodging, or items of more than Nominal Value.

(g) *Educational Program* shall mean formal instruction provided to attendees. Factors to be considered in assessing whether a program is educational include, but are not limited to: the curriculum; whether the entity providing the program, or the instructors, are accredited, certified, or otherwise qualified to provide the program; who the program is presented to; and where and how the program is presented.

(h) *Family Member* of any Public Official shall have the same meaning as the term *Relative* set forth in Public Officers Law §73(1)(m).

(i) *Gift* shall mean anything of more than Nominal Value in any form including, but not limited to: money; service; loan; travel; lodging; meals; refreshments; entertainment; discount; or a forbearance of an obligation or a promise that has a monetary value. Notwithstanding the preceding sentence, the exclusions contained in section 934.4 are not Gifts and do not need to be analyzed under section 934.3.

(j) *Informational Event* shall mean an event or meeting the primary purpose of which is to provide information about a subject or subjects related to a Public Official's official responsibilities.

(k) *Lobbyist* shall mean every person or organization as defined in §1-c(a) of article 1-A of the Legislative Law.

(l) *Ministerial Matter* shall mean an administrative act carried out in a prescribed manner not allowing for substantial personal discretion.

(m) *Nominal Value* shall mean an item or service with a fair market value of ten dollars or less.

(n) *Political Candidate* shall mean any individual meeting any of the requirements in Public Officers Law §§73-a(2)(a)(iii)-(viii), including the current office holder.

(o) *Political Organization* shall mean any entity that is affiliated with or a subsidiary of a political party including, without limitation, a partisan political club or committee, or a campaign or fund-raising committee for a political party or Political Candidate.

(p) *Professional Program* shall mean a program that provides information, such as trends in an industry or discipline, which would benefit the administration or operation of the State or the Public Official's applicable governmental entity, and would enable a Public Official to perform his or her duties more effectively. It shall not include a program, the primary purpose of which is the promotion or marketing of products or services for purchase or lease by the State or the Public Official's applicable governmental entity.

(q) *Public Official(s)* shall mean:

(1) Statewide elected officials (the Governor, Lieutenant Governor, Comptroller, or Attorney General of the State of New York) and their officers and employees;

(2) Members, officers, and employees of the New York State Legislature;

(3) Heads of State departments and their deputies and assistants other than members of the Board of Regents of the University of the State of New York who receive no compensation or are compensated on a per diem basis;

(4) Officers and employees of state departments, boards, bureaus, divisions, commissions, councils, or other state agencies;

(5) Members, directors, and employees of public authorities (other than multi-state authorities), public benefit corporations, and commissions at least one of whose members is appointed by the Governor; and

(6) Municipal officers and employees (including officers or employees of a municipality as defined §1-c(k) of article 1-A of the Legislative Law), whether paid or unpaid. Municipal officers and employees also includes members of any administrative board, commission, or other agency thereof, and in the case of a county, shall include any officer or employee paid from county funds. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer, except a fire chief or assistant fire chief.

(r) *Widely Attended Event* shall mean an event as defined in Section 934.4(a)(4)(i).

934.3 Gifts.

(a) No Lobbyist or Client (or spouse or unemancipated child of such Lobbyist or Client) shall offer or give a Gift to any Public Official unless under the circumstances all of the following criteria are met:

(1) it is not reasonable to infer that the Gift was intended to influence the Public Official; and

(2) it could not reasonably be expected to influence the Public Official, in the performance of his or her official duties; and

(3) it is not reasonable to infer that the Gift was intended as a reward for any official action on the Public Official's part.

(b) No Lobbyist or Client shall offer or give a Gift to the spouse or unemancipated child of a Public Official unless under the circumstances all of the following criteria are met:

(1) it is not reasonable to infer that the Gift was intended to influence the Public Official; and

(2) it could not reasonably be expected to influence the Public Official, in the performance of his or her official duties; and

(3) it is not reasonable to infer that the Gift was intended as a reward for any official action on the Public Official's part.

(c) Notwithstanding sections 934.3(a) and (b), nothing in this Part shall apply to Gifts to officers, members, or directors of boards, commissions, councils, public authorities, or public benefit corporations who receive no compensation or are compensated on a per diem basis if the Lobbyist or Client giving or offering such Gift does not appear, and does not have any matters pending before, the entity on which the recipient sits.

(d) No Lobbyist or Client shall offer or give a Gift to a third party, including a Charitable Organization:

(1) on behalf of a Public Official (or a Public Official's spouse or unemancipated child), when such Gift cannot be offered or given to such Public Official (or the spouse or unemancipated child of such Public Official) under sections 934.3(a) or (b); or

(2) at the designation or recommendation of a Public Official (or a Public Official's spouse or unemancipated child), when such Gift cannot be offered or given to such Public Official (or the spouse or unemancipated child of such Public Official) under sections 934.3(a) or (b).

(e) Multiple Gifts. A Gift that is otherwise permissible under sections 934.3(a) and (b) may be prohibited if it is one of multiple Gifts from the same person, entity, or organization offered within any 12-month period. Such Gifts could create a reasonable basis for an inference that the Gift was intended to influence or reward the Public Official in connection with the performance of his or her official duties.

934.4 Exclusions.

(a) The following are not Gifts:

(1) Contributions reportable under article fourteen of the Election Law, including contributions made in violation of that article of the Election Law.

(2) Food or beverage valued at fifteen dollars or less per occasion.

(3) Complimentary Attendance (including food and beverage) at a Bona Fide Charitable Event or a Bona Fide Political Event.

(4) Complimentary Attendance (including food and beverage) offered by a Lobbyist or Client who is the sponsor of a Widely Attended Event.

(i) Widely Attended Event shall mean an event:

(A) which at least twenty-five individuals other than members, officers, or employees from the governmental entity in which the Public Official serves attend or were, in good faith, invited to attend in person; and

(B) which is related to the attendee's duties or responsibilities or allows the Public Official to perform a ceremonial function appropriate to his or her position. For the purposes of this exclusion, a Public Official's duties or responsibilities shall include but not be limited to either:

(1) attending an event or a meeting at which a speaker or attendee addresses an issue of public interest or concern as a significant activity at such event or meeting; or

(2) for an elected Public Official, or his or her staff attending with or on behalf of such elected official, attending an event or a meeting at which more than one-half of the attendees, or persons invited in good faith to attend in person, are residents of the county, district, or jurisdiction from which the elected Public Official was elected.

(5) Awards, Plaques, and Other Ceremonial Items.

Awards, plaques, and other ceremonial items must be publicly presented, or intended to be publicly presented, and in recognition of service related to a Public Official's official duties and responsibilities. Additionally, such awards, plaques, and other ceremonial items must be of the type customarily bestowed at similar ceremonies and be otherwise reasonable under the circumstances.

(6) Honorary degrees bestowed upon a Public Official by a public or private college or university.

(7) Promotional Items.

Items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an entity's name, logo, or message in a manner which promotes the entity's cause.

(8) Goods and Services and Discounts for Goods and Services.

(i) Goods and services, or discounts for goods and services, must be offered to the general public or a segment of the general public defined on a basis other than status as a Public Official and offered on the same terms and conditions as the goods and services are offered to the general public or segment thereof.

(ii) Notwithstanding section 934.4(a)(8)(i), discounts made available to all Public Officials fall within this exclusion.

(iii) Notwithstanding section 934.4(a)(8)(i), discounts made to a select group of Public Officials may fall within this exclusion. The following non-exhaustive list of factors shall be considered when any discount is made available to a select group of Public Officials to determine whether the discount would fall within this exclusion:

(A) the scope of the class of Public Officials who are offered the discount;

(B) the amount and duration of the discount; and

(C) whether the criterion for the offer is based on factors other than the Public Official's official duties and responsibilities.

(9) Personal Gifts.

(i) Gifts, including an invitation to attend a personal or family social event, from a Client or Lobbyist (or the Client's or Lobbyist's spouse or unemancipated child) when all of the following criteria are met:

(A) the Client or Lobbyist (or the Client's or Lobbyist's spouse or unemancipated child) is a Family Member or a person with a personal relationship with a Public Official; and

(B) it is reasonable to infer that the Gift was primarily motivated by the family or personal relationship.

(ii) In determining whether the Gift was primarily motivated by a family or personal relationship, the factors to be considered include but are not limited to:

(A) the history and nature of the relationship between the individual offering the Gift and the recipient, including whether items have previously been exchanged;

(B) whether the item was purchased by the individual offering the Gift; and

(C) whether the individual offering the Gift at the same time gave similar items to other Public Officials.

(iii) The Gift shall not be considered to be motivated by a family or personal relationship if the individual or entity seeks to charge or deduct the value of such item as a business expense or seeks reimbursement from a client.

(10) Reimbursement of Expenses for Speakers at Informational Events.

Travel reimbursement or payment for transportation, meals, and accommodations for an attendee, panelist, or speaker at an Informational Event when such reimbursement or payment is made by a governmental entity or by an in-state accredited public or private institution of higher education that hosts the event on its campus, provided, however, that the Public Official may only accept lodging from an institution of higher education: (a) at a location on or within close proximity to the host campus; and (b) for the night preceding and the nights of the days on which the attendee, panelist, or speaker actually attends the Informational Event.

(11) Provision of Local Transportation to Inspect Facilities.

(i) Provision of local transportation to inspect or tour facilities, operations, or property located in New York State, when such inspection or tour is related to the Public Official's official duties or responsibilities.

(ii) The payment or reimbursement for expenses for lodging or travel expenses to and from the locality where such facilities, operations, or property are located is not covered by this exclusion.

(12) Meals for Participants at a Professional or Educational Program.

Receipt of food and beverages when participating in a Professional Program or Educational Program as a part of a Public Official's official duties, provided the food or beverages are available to all participants.

934.5 Enforcement.

The Commission is authorized pursuant to Executive Law §94 to investigate possible violations of §1-m of article 1-A of the Legislative Law and its corresponding regulations and take appropriate action as authorized in these statutes.