

January 14, 2020

Amy Moselhi
President, Board of Education
City School District of New Rochelle
515 North Avenue
New Rochelle, NY 10801-3416

Re: *Gift Giving Inquiry*

Dear Ms. Moselhi:

This opinion letter is sent in response to your recent inquiry regarding the permissibility and limitations applicable to a board member's ability, acting in the board member's individual capacity, to provide a gift to school teachers and staff. Specifically, you have asked if it is permissible for a board member, in their individual capacity and on behalf of their family, to gift an alcoholic beverage to teachers and staff as a holiday gift.

The facts pertinent to this inquiry as I understand them are as follows. It is customary for families with children in New Rochelle's schools, including board members, to give holiday gifts to teachers and school administrative staff. District PTAs and parents have gifted bottles of wine to teachers and school principals and assistant principals in appreciation for the staff's dedication to education of their children. These gifts are made during the holiday season often decorated with holiday-themed name tags indicating that they were from a family within the District. The gifts are delivered by the parents to the recipients at school.

Financial Limitations on Gifts

New York's General Municipal Law provides guidance and limitations with respect to municipal officers or employees accepting or receiving gifts. General Municipal Law Section 805-a(1) ("Section 805-a(1)") states 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 . . . ¹

A violation of Section 805-a(1) may occur even when there is no *intent* to influence or reward an officer or employee, such as when there is an appearance that the gift may cause influence to the officer or employee.² It is therefore advised that individual board members are “scrupulous in their adherence to the gift prohibitions contained” within Section 805-a(1) and Board policies.³

The District’s Board Policies and Bylaws nearly mirrors the monetary limitation set forth in Section 805-a(1). Specifically, Board Policies and Bylaws, Series 4000: Personnel, Code 4150 (“Code 4150”) states:

Gifts: A Board member, officer or employee shall not directly or indirectly solicit any gift or accept or receive any gift *having more than a nominal value (and in no event to exceed a value of \$75), or more*, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or her in the performance of his or her official duties or was intended as a reward for any official action on his or her part.

However, the Board *welcomes and encourages* the writing of letters or notes expressing gratitude or appreciation to staff members. *Gifts from parents and children that are principally sentimental in nature and of insignificant financial value may be accepted in the spirit in which they are given.*⁴

¹ N.Y. GEN. MUN. LAW § 805-a(1)(a) (McKinney 2019).

² See *Appeal of Dashefsky*, 46 Ed. Dept. Rep., Dec. No. 15486 (2006).

³ *Id.*

⁴ City School District of New Rochelle Policies and Bylaws, Series 4000: Personnel, Code 4150 (Last Rev. Aug. 23, 2016) (emphasis added). (Further, as a reminder, Board Policies and Bylaws, Series 8000: Internal Board Operations, Code 8130, states that an individual board member or member of his/her family may not “accept a gift or gratuity as defined in Board Policy No. 4150 . . . when such a gift or gratuity may

In the instance of giving a gift to a teacher or staff member, the guidance and limitations provided by Section 805-a(1) and Board Policies should be complied with. Accordingly, gifts provided to teachers and staff must not have a value of seventy-five dollars (\$75.00) or more under the abovementioned circumstances set forth in Section 805-a(1) and Code 4150. Even when a specific instance of giving a gift may not reasonably infer that it was intended to cause influence or serve as a reward, it is advisable to be attentive to the limitations set forth above.

Notably, Code 4150 encourages sentimental gifts with insignificant value on behalf of parents and children. It is my understanding that the wine gifted to teachers, principals, and assistant principals are given in the spirit of the holiday season. Further, as mentioned, the gifted bottles of wine typically include name tags, holiday cards or other identification stating that they were from a family within the District, clarifying that they were provided on behalf of the family to express appreciation and gratitude.

There is no inherent prohibition on giving a bottle of wine valued under the threshold of seventy-five dollars (\$75.00) to a New Rochelle staff member for the purpose of expressing parents' gratitude. However, other statutes limit the geographical location of when such a gift is permissible.

Applicable Board Policies & State Law Regarding the Presence of Alcoholic Beverages on School Premises

This analysis must include the permissibility of giving an alcoholic beverage as a gift when the location the gift is given is on school premises. Board policies provide further insight into this section of your inquiry. In pertinent part, the District's Board Policies and Bylaws, Series 5000: Students, Code 5165 ("Code 5165") states:

The Board of Education of the City School District of New Rochelle is committed to the prevention of alcohol and other substance use/abuse. This policy describes the philosophy of the School District and the program elements the School District will use to promote healthy lifestyles for its students and staff and to discourage and prevent the use/abuse of alcohol and other substances.

reasonably be construed as being offered because of the individual's membership on the Board of Education . . ." City School District of New Rochelle Policies and Bylaws, Series 8000: Internal Board Operations, Code 8130 (Last Rev. May 3, 2016)).

1. No person may use, *possess*, sell or distribute *alcohol* and other substances, nor may any person use or possess drug paraphernalia on school grounds or at school sponsored events, other than drugs as prescribed by a physician and used appropriately . . .⁵

Further, the District's Board Policies and Bylaws, Series 1000: Community Relations, Code 1530 ("Code 1530") states:

The following acts committed on School District property or within the jurisdiction of the School District, whether performed singly or in concert with others, shall be violations of these rules and regulations . . . [p]ossession, sale, or use of any drug or controlled substance, *including alcohol* which is in violation of any state or federal law or possession of any related paraphernalia.⁶

Code 5165 and Code 1530 described above clearly indicate that, in addition to selling or distributing alcohol, any possession of alcohol is not permissible on the District's school grounds. With this guidance, it is cautioned that when giving a gift to a teacher or staff member, gifts in the form of alcoholic beverages should not be given to teachers and staff on school premises. Additionally, you should be aware that a drug-free school zone is considered to be an area within one-thousand (1,000) feet of a private or public school, including nursery, prekindergarten, kindergarten, elementary, intermediate, junior high, vocational, or high school, and child-care facilities, as defined by law.⁷

Notably, it is a recognized longstanding practice that parents provide their child's teachers and school staff members with sentimental gifts during the holiday season. This practice is commonly carried out by families throughout New York to show their appreciation for the dedication to the education of their children. Specific to the District, it is clear that Board policies welcome the exchange of gifts of limited value from parents and children to staff members that express sentiment and gratitude, subject to the abovementioned limitations. However, gifts containing alcohol may not be delivered by a parent on school premises.

⁵ City School District of New Rochelle Policies and Bylaws, Series 5000: Students, Code 5165 (Adopted July 1, 1988) (emphasis added).

⁶ City School District of New Rochelle Policies and Bylaws, Series 1000: Community Relations, Code 1530 (Adopted Oct. 1, 1988) (emphasis added).

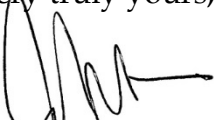
⁷ See N.Y. Penal Law §§ 220.00(14), 220.44(5).

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I trust the foregoing has been responsive to your inquiries. If you have any further questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John H. Gross', with a stylized flourish at the end.

JOHN H. GROSS
JHG/np