

Dated, September 12, 1966.

CLOYD LAPORTE, Chairman: EDWIN L. WEISL, SR., BRUCE BROMLEY, J. LEE RANKIN, Corporation Counsel and SOLOMON HOBEBMAN, Acting Director of Personnel.

**Opinion No. 99**

A request for an opinion has been filed with the Board by an employee of an agency whose funds are paid "in whole or in part from the city treasury." The employee has been offered a part time assignment as a research assistant with the New York State Legislature, which, he states, "would not interfere with my regular employment, and subject to the approval" of the agency in which he is employed.

The employee in his regular employment is a staff assistant to one of the attorneys for the City agency. He has described in detail the work which he does for the agency.

It is the opinion of the Board, that there would be no violation of the Code, if the employee fully complies with the Bylaws, Rules and Regulations of the agency in which he is regularly employed and if he receives the approval of that agency, to work for the State Legislature as a research assistant.

*Dated, February 1, 1967.*

CLOYD LAPORTE, Chairman; EDWIN L. WEISL, SR., BRUCE BROMLEY, J. LEE RANKIN, Corporation Counsel and SOLOMON HOBEBMAN, Acting Director of Personnel.

**Opinion No. 100**

**THE FACTS**

By letter, dated October 4, 1966, Mayor John V. Lindsay requested the Board of Ethics to examine the whole problem of private contributions to the City for public purposes and to make its recommendations. The Mayor described various public benefits which have resulted from private contributions and stated that his administration has "encouraged the private sector to involve itself in many aspects of the life of the City." He cited as examples the musical festivals and other performances in the "parks of the City, such as Central Park in Manhattan, Prospect Park in Brooklyn and almost all other parks in the ghettos and elsewhere." Most of those events were the result of private donations from corporations and individuals and constituted "a continuation of past practices and policies."

Special reference was made in the Mayor's letter to contributions from the private sector "to help the City in giving recognition to foreign dignitaries who visit our City" and he stated that many of such functions are tendered at the request of the Federal government. In order to provide a dignified environment, the Mayor wrote, the great cultural institutions of the City, instead of mid-town hotels, have been used as a means of acquainting our visitors with them, as well as honoring our visitors. The Mayor in his letter further stated that questions had been asked about these efforts, even including the propriety of the private funding of the construction of the new wing at Gracie Mansion. He wrote that he was "deeply concerned that the forward motion that we have begun in New York to make this a better looking and more exciting place . . . may be discouraged." (Exhibit No. 1.)

Councilman Robert A. Low (4th District, Manhattan) wrote to the Board on October 10, 1966, concerning the "practice of financing official and semi-official functions through funds from private individuals and corporations" and stated in that letter:

"You may wish to examine the question as to whether the City itself as is now the case with an officer or employee of the City, should be barred in those circumstances where the donor has business dealings with the City." (Exhibit No. 2.)

On October 11, 1966, a Resolution was introduced in the City Council sponsored by

thirteen members, calling for an inquiry into the practice of financing official and semi-official functions through funds from private individuals and corporations. (Exhibit No. 3.)

The Board has been asked to examine the "whole problem" of private contributions. We, therefore, considered it essential at the outset to ascertain so far as possible the nature and extent of gifts and contributions to the City from private sources.

### GIFTS

Since its earliest days, the City has been considered a natural object of the bounty of its citizens. Participation in satisfying the needs of or supplying additional benefits to the people by private contributions to the City itself has been a well-recognized manifestation of citizenship.

To understand the issues in proper perspective, we believe it essential to appreciate what those contributions mean to the life of the City. Perhaps the most valuable contributions have been the personal services rendered by its citizens without compensation. Incalculable public benefits have resulted from the contributions of skills and creativeness of leaders in art, science, industry, education, business and finance without cost to the City. In many cases, even if the City were able to pay for them, the services of those persons would not have been available for hire. Many thousands of our citizens give voluntarily of their time and money to the City without asking for or receiving formal recognition. The Department of Hospitals alone has thousands of volunteers in a year. The City has recently established a Volunteer Council to co-ordinate and encourage such voluntary services.

More apparent to the general public have been the gifts of real property and tangible personal property such as parks, public improvements and works of art. In addition there have been gifts of money, either for general purposes or for a specific cause or object.

The issues seen in proper proportion are far greater than appear at first glance. The variety and value of private contributions to the civic and cultural life of the people is evident even from the following listing of only a few such activities made possible by them:

The New York Philharmonic concerts in the parks in every borough, dance concerts in the City parks, strolling minstrels in Bryant Park as well as the clowns and the Amateur Youth Festival, the Park "happenings" such as "painting", the bicycle races, the track and field competition, the free water skiing shows, "the kite", the gyro-disc competition in Central Park, the fashion shows in Bryant Park are examples, as well as hundreds of other events in the City parks.

All of those events combine the use of City facilities with contributions of money and services from the private sector. Other public benefits made possible by such contributions include the following:

Vest-pocket parks, the Christmas lights on Park Avenue, construction of a new wing at Gracie Mansion, The Wollman Skating Rink in Central Park and Prospect Park, the children's zoo in Central Park, the Delacorte Theatre in Central Park, corporate scholarships to needy students, gifts of money, television and radio sets, toys, medical equipment, etc. to schools, museums, libraries, and City hospitals, such as Bellevue, Morrisania and Kings County, funds and staff for governmental research, studies and task force assignments, services to assist the City in its efforts to provide job opportunities and training programs for the disadvantaged youth of the City, and executive manpower, corporate skills, techniques and "know how" offered freely by private industry to municipal agencies in such fields as housing, education, purchasing, labor relations, finance, communications, transportation, personnel practices, management and industry.

Monetary contributions have been given by individual and corporate entities to various City departments. Millions of dollars have come from decedents' estates such as those bequeathed by the late Bernard Baruch, Louise Tallman and Agnes Robertson Clarke.

In many, if not most cases, we have no doubt that the donors or contributors had, have or will have business dealings or other relationships with the City.

There are numerous statutes which apply to the Federal, State and City governments concerning gifts. The general tenor of those statutes is to approve the acceptance of gifts for the public benefit. One such Federal statute creating the United States Information Agency provides that:

"The Secretary [of State] shall, when he finds it in the public interest, request and accept reimbursement from any cooperating governmental or private source in a foreign country, or from State or local governmental institutions or private sources

in the United States, *for all* or part of the expense of any portion of the [U.S.I.A.] program undertaken hereunder. . . ." (Title 22 Section 1478 of the U.S.C.A.) (*Emphasis supplied.*)

And Section 1437 provides that:

" . . . it shall be the duty of the Secretary to utilize, *to the maximum extent practicable, the services and facilities of private agencies . . .* through contractual arrangements or otherwise." (*Emphasis supplied.*)

In New York State, there are at least nine separate applicable statutes which permit governmental agencies to accept gifts. For example, one of the statutes, Section 20 of the General City Law of the State of New York, provides:

"Subject to the constitution and general laws of this state, every city is empowered:

"3. To take by gift grant, bequest or devise and hold and administer real and personal property within and without the limits of the city, absolutely or in trust for any public or municipal purpose, upon such terms and conditions as may be prescribed by the grantor or donor and accepted by the city."

A partial list of the gift statutes is annexed herewith as Exhibit No. 4.

In fact, many pages of the indices to the compilation of Federal and State statutes are required merely to list the laws enacted by the Congress or the New York State Legislature for the acceptance of gifts. Those laws are to be contrasted with the statutes which specifically prohibit public employees from accepting gifts for themselves or which confer a direct or indirect personal benefit upon them including, in certain cases, prohibitions against solicitation of gifts for private purposes, such as charitable organizations.

We have carefully considered the question of whether the gift statutes to which we have referred should not be qualified by an express or implied ethical prohibition against acceptance of gifts where the donor has interests which may be affected by action of a City official.

It is our opinion that contributions of money, property or services by the private sector for a municipal purpose are not only proper and ethical but a mark of good citizenship. We are aware, of course, of instances where public officers have subverted or corrupted their office. To hold, however, that contributions for public purposes pose a "possible" conflict of interest or have the "appearance" of impropriety is to conclude that a substantial part of our public service is diseased to the core. This is a conclusion that can be reached only if we accepted the view, which we reject, that corruption or impropriety have so substantially infested the public service that officials neither individually nor collectively can be trusted to honorably, properly or objectively perform their sworn duties as public servants even in situations where their personal interests are *not* involved.

Contributions for public purposes should be encouraged. They reflect citizen responsibility. For citizens to give of themselves, their money or their property to advance the public good is a manifestation of a high concept of democracy. Such acts strengthen our community, result in greater participation by our people, and provide more effective citizenship. The character of a city depends not on an abundance of wealth, or on large revenues or imposing buildings; its strength consists in the quality and courage of the men and women who make up its population. / Its character is determined by the public spirit of its citizens, by its leaders in and out of government; and by the degree to which its citizens are willing to be involved in advancing the public purposes of a city. It is not merely a question of whether or not the City could pay for certain of its activities itself but more importantly it is the fact that the ready acceptance by the City of gifts from its citizens enlarges the scope of the active participation of those citizens in the ever-expanding area of public service to all the inhabitants of the City.

Because of the complex structure of City government, it is impractical to require the head of a particular agency to determine whether a corporation or individual has business dealings with any of the various City agencies comprising the City government. It is more difficult to require him to determine whether such an individual or corporation not presently having a matter with the City may well have one in the future. Such potential dealings with the City raise similar questions. Every living person and every existing corporation or entity has present or the prospect of future dealings with the City, but a blanket prohibition would be a disservice to the City and its people.

The New York City Charter provides in Section 8 that the Mayor shall exercise all the powers vested in the City except as otherwise provided by law. Until January 1, 1963, the effective date of the present Charter, those so-called reserved powers were vested in the Board of Estimate by Section 70 of the former (1938) charter. There was

a well-established practice in the City government under the former charter with regard to the acceptance of gifts to the City. Offers to make valuable gifts to the City for the public welfare were referred by the City official or department concerned to the Corporation Counsel for his opinion as to their legality. Thereafter the matter was referred to the Board of Estimate which after consideration voted to accept or reject the proffered gift. Upon the transfer of the reserved powers from the Board of Estimate to the Mayor, the Mayor now makes the final decision as to accepting or rejecting any gift. We consider it desirable that this procedure be continued.

The Mayor is in the best position to order an investigation, if he deems the area a sensitive one by reason of the relationship existing between the donor and the City, and to make an informed decision as to whether the gift in question should be accepted or declined.

For all the reasons stated above and in view of the safeguards existing and suggested herein, which we realize are not perfect, we believe that no further restrictions should be imposed.

#### ENTERTAINMENT OF GUESTS OF THE CITY

We recommend the creation of a non-profit corporation for the purpose of receiving and making available to the City, funds from private individuals and corporations for entertainment of guests of the City and official and semi-official functions honoring them. While this area is but a small segment of the area of private donations for public purposes, it is of importance to the City and Nation. These functions are often undertaken at the request of the Federal government. They are a part of the responsibility of any great city. Of course the Federal government should bear or contribute to the cost of many such occasions but there seems to be little hope that it will.

There is a constant stream of visits by foreign and other dignitaries and there invariably are private individuals and corporations who, because of business or personal reasons or a sense of civic responsibility desire them to be properly received by the City and are willing and frequently offer to make substantial gifts of money for such purposes.

We suggest that the non-profit corporation have the Commissioner of Public Events as its Chairman and Chief Executive Officer and ten additional directors from the public at large to be designated by the Mayor from lists submitted to him by the Commissioner of Public Events, the City Council and business, civic, labor, cultural and educational groups, such as the Citizens Union, Board of Trade, Commerce and Industry Association, Foreign Trade Association. Of the ten public directors we suggest that four be selected from the list submitted by the Commissioner of Public Events, three from the City Council list and three from the list submitted by the various organizations referred to above.

A non-profit corporation would provide a vehicle for wider participation and support for such functions.

#### PAN AMERICAN AIRWAYS AND THE UNITED NATIONS SUPPER PARTY

The facts with respect to this matter are not disputed. On October 3, 1966, a supper dance was given by The City of New York at the New York State Theatre (Lincoln Center) to honor the delegates to the United Nations. The expenses for the supper dance were paid directly by Pan American Airways at the suggestion of the Commissioner of Public Events. This action was in accordance with the existing accepted practice of long standing. For many years numerous corporations and individuals have contributed to similar functions in like manner.

At the time of the United Nations party, New York Airways had already applied to the City of New York for a continuance of its permit to use the Pan Am Building heliport for its helicopter service to and from airports. That application was pending when the United Nations party took place. Pan American owned a substantial interest in New York Airways and also owned a 10 per cent interest in Grand Central Building, Inc., an independent New York corporation, which owned the Pan Am Building.

The Commissioner of Public Events had no official responsibilities or duties in connection with the renewal of the permit or with any phase thereof. Neither he nor his Department has any power or authority to exercise any official function directly or indirectly with respect to such application, permit, franchise or privilege and he was not aware of the pendency of the application. The Commissioner of Public Events does not have any official or unofficial responsibility, directly or indirectly, with respect to any other Pan American activity which is supervised, restricted or otherwise affected by our municipality.

The Commissioner of Marine and Aviation is the officer designated by law to decide the question of the renewal or continuance of the permit of New York Airways. He held a public hearing at which all parties favoring or opposing the renewal or continuance of the application were heard. About a year before this, the City Planning Commission and the Board of Estimate had held public hearings before granting the original

application for the franchise or permit. Each of these agencies, as well as the Mayor, the City Comptroller and the City Council had the right to inquire into any phase of this matter.

No personal benefit, profit or favor was directly or indirectly received by or conferred upon any City official. We are of the opinion that there was no impropriety in regard to this entire matter.

#### SUMMARY OF RECOMMENDATIONS

We believe that gifts to the City should be encouraged because they foster interest and participation on the part of our citizens in municipal activities. We also believe that there should be no prohibitions by law.

We believe that a distinction can properly be made, and should be made between gifts for entertainment of guests of the City and gifts for other purposes.

With respect to all gifts it is our view that the existing procedure whereby valuable gifts are referred to the Corporation Counsel for review and to the Mayor for decision, should be continued. The Mayor is in the best position to order an investigation, if he deems the area a sensitive one by reason of the relationship existing between the donor and the City and to make an informed decision as to whether the gift in question should be accepted or declined.

A non-profit corporation should be created to receive gifts from the private sector for the entertainment of guests of the City.

Dated, January 23, 1967.

CLOYD LAPORTE, Chairman; EDWIN L. WEISL, SR., BRUCE BROMLEY, J. LEE RANKIN, Corporation Counsel and SOLOMON HOBBERMAN, Acting Director of Personnel.

The City of New York, Office of the Mayor, New York, N. Y. 10007, October 4, 1966.

CLOYD LAPORTE, ESQ., *Board of Ethics*, 52 Chambers Street, New York, N. Y.:

#### EXHIBIT No. 1

Dear Mr. Laporte: Since I have been in office as Mayor, we have encouraged the private sector to involve itself in many aspects of the life of the City. As you know, the parks of the City, such as Central Park in Manhattan, Prospect Park in Brooklyn and almost all other parks in the ghettos and elsewhere were alive with music and other performances during the summer, especially at night. Almost all of it was a result of private donations from corporations and individuals. The new restaurant in Central Park by the fountain is a private donation to the City.

Then, of course, there is the continuing involvement of the private sector in other aspects of the City, most especially museums and libraries.

Much of this is a continuation of past practices and policies. During this administration, we have expanded it substantially. We have also continued the practice of allowing the private sector to help the City in giving recognition to foreign dignitaries who visit our City. Many of these functions are at the specific request of the Federal government, including the United States State Department and in order to provide a dignified environment we have changed it a good deal in style and approach. Rather than having a dinner for Mrs. Ghandi or President Marcos at a mid-town Manhattan Hotel, we used our great cultural institutions, which is a means of showing them off at the same time that we honor our visitors.

We have continued the practice of having members of the private sector, individual and corporate, co-host and assist in the cost of such functions which is a matter of public knowledge and indeed, during the course of each occasion I have introduced and publicly thanked those who had made possible the event.

In recent days, questions have been asked concerning these efforts to help show off our City. This may have an impact on the private sector and discourage individuals and institutions from helping. The questions have included the recognition that our City is giving to the United Nations—a recognition which, in my opinion, is long overdue. Since then, someone has even raised the question about the new wing in the mansion, because it has been funded privately, with a long list of major corporations included.

Regardless of the question of jurisdiction, I want to submit the question to the Board of Ethics and hope that you and your colleagues would be willing to examine the whole problem, discuss it with the Commissioner of Public Events, the Commissioner of Parks and ultimately advise me on the matter. I think this would be very helpful, not simply because questions have been raised, but because I am deeply concerned that the forward motion that we have begun in New York to make this a better looking and more exciting place for residents and visitors, may be discouraged.

Be assured that I would be delighted to meet with you and Judge Bromley, Mr. Weisl and your Counsel, Mr. Kreutzer, at your convenience, should such a meeting be

helpful. Be also assured that Commissioner John S. Palmer of Public Events, Commissioner Thomas P. F. Hoving of Parks, and any other Commissioner would be happy to do the same.

Sincerely,

JOHN V. LINDSAY, Mayor.

The Council of The City of New York, City Hall, October 10, 1966.  
*Honorable CLOYD LAPORTE, Chairman, Board of Ethics, 430 East 86th Street, New York, N. Y. 10028:*

EXHIBIT No. 2

Dear Mr. Laporte—A City Council resolution, sponsored by 13 members, calling for an inquiry into the practice of financing official and semi-official functions through funds from private individuals and corporations is to be introduced into The Council Tuesday, October 11, 1966. A copy of this resolution is enclosed.

Meanwhile, it is my understanding that Mayor Lindsay has requested the Board of Ethics, of which you are chairman, to review the propriety of the solicitation and acceptance by the City of gifts from private individuals and corporations. In connection with this inquiry, you will no doubt have occasion to refer to Section 1106-1.0 of the Administrative Code which sets forth the present Code of Ethics and to Section 1106-2.0 of the Administrative Code which sets forth the powers of the Board of Ethics. These sections of the Code were enacted by The Council in 1959.

The Board of Ethics, under Section 1106-2.0, is authorized to render, upon written request, advisory opinions to officers and employees of the City with respect to the Code of Ethics, which includes subdivision f. dealing with the receipt of gifts and favors by individual councilmen or officers or employees of the City. The Mayor's letter addressed to the Board and the enclosed resolution to be introduced in The City Council raises the broader question of the receipt of gifts by the City itself.

It would seem to be appropriate for the present Board of Ethics to consider this broader question for two reasons:

First, two members of the present Board served on the Advisory Committee to The Council, and the Board's present counsel served then in a similar capacity, and it was this Advisory Board which recommended enactment of the present Code of Ethics. The third public member of the present Board, like his colleagues, is a distinguished [sic] member of the Bar. The Board is then uniquely qualified in the area of legislation dealing with municipal ethics and situations involving the possibility of conflict of interest.

Second, This Board has worked over a number of years within the framework of the present Code of Ethics, and therefore knows intimately the strengths and weaknesses of the existing statute.

The review requested by the Mayor could, then, be of particular value to the City Council which will have before it a resolution calling for consideration and enactment of legislation relating to the Code of Ethics.

The present Code of Ethics respecting gifts and favors applies to individuals while the present question that I have raised involves the receipt of gifts by the City itself. But I have confined any question about this practice to those cases where the donor has business dealings with the City. You may wish to examine the question as to whether the City itself as is now the case with an officer or employee of the City, should be barred in those circumstances where the donor has business dealings with the City.

Certainly, an unhealthy relationship may develop where a request for funds is made from the Mayor's office, or the office of an agency responsible to the Mayor, to a corporation or private individual having business dealing with the City. I am particularly concerned about those cases where a private individual or corporation may be seeking a special permit, privilege or consideration from the City.

The Committee of The Council which enacted the present Code of Ethics in 1959 stated with regard to ethics in municipal service:

"Our concern is with those conflicts which influence or may influence an official action and thereby degrade such service."

The heart of the problem raised in the receipt of a gift by the City is that there may be a suspicion, whether well-founded or not, that the gift may influence an official action. That possibility degrades public servants in the minds of our citizens and unnecessarily casts shadows about important public decisions.

I respectfully request from your Board such legislative recommendations as it may deem fitting to extend the provisions of the Code to cover receipt of gifts by the City under such circumstances.

Sincerely,

ROBERT A. LOW.

cc: *Honorable* EDWIN L. WEISL, 150 Central Park South, New York, N. Y. 10019; *Honorable* BRUCE BROMLEY, 10 Gracie Square, New York, N. Y. 10028; *Honorable* S. STANLEY KREUTZER, 52 Chambers Street, New York, N. Y.; *Honorable* J. LEE RANKIN, *Corporation Counsel*, Municipal Building, New York, N. Y.; *Honorable* SOLOMON HOBERMAN, *Acting Personnel Director*, 220 Church Street, New York, N. Y.

EXHIBIT NO. 3

October 11, 1966.

**Resolution Calling on the City Council to Inquire Into the Practice of Financing Official and Semi-Official Functions Through Funds from Private Individuals and Corporations.**

By Messrs. Bernstein, Corso, Friedland, Gelfand, Lazar, Lindsay, Low, Merola, Moskowitz, Sadowsky, Santucci, Weiss and Mrs. Ryan.

**Whereas**, this Council, over the years and most particularly since 1959, has been deeply concerned with the problem of potential conflict of interest which may occur as a result of contribution of funds by individual and corporations to those within city government; and

**Whereas**, the code of Ethics adopted by this Council and codified as Section 1106 of the Administrative Code of the City of New York, while generally regarded as the most stringent such code in the nation, leaves vague and undefined the problem of contributions to the city itself; and

**Whereas**, the City government has undertaken to solicit funds from private persons and corporations to pay for entertainment and a variety of other official and semi-official functions; and

**Whereas**, the payment of funds to the City for such purposes by an individual or corporation which has pending business with the City may raise questions of conflict of interest; now, therefore be it,

**Resolved**, that the Council of the City of New York inquire into the practice of financing official and semi-official functions through solicitation of funds from private individuals and corporations and be it further

**Resolved**, that the Council of the City of New York consider and enact such revision and amendment to the Code of Ethics as may be deemed appropriate to regulate such practice.

**EXHIBIT No. 4**  
*Federal Statutes*

Title 40, Section 298(a) (USCA), Title 31, Section 757e, Title 40, Section 484(j), Title 42, Section 1855b, Title 15, Section 278(a), Title 22, Section 809, Title 42, Section 1502(b), Title 2, Section 160, Title 31, Section 901, Title 22, Section 1046 (USCA), Title 22, Section 2509 (USCA), Title 50, Section 171, Title 50, Section 1151, Title 22, Section 2056, Title 22, Section 2602(a) (2), Title 42, Section 1521(a), Title 42, Section 1532(a), Title 42, Section 2876, Title 42, Section 219, Title 16, Section 195, Title 20, Section 73, Title 20, Section 74(b), Title 24, Section 45, Title 24, Section 181-184, Title 25, Section 451, Title 25, Section 465, Title 31, Section 725s-4, Title 36, Section 974, Title 42, Section 219, Title 42, Section 278, Title 42, Section 283(b), Title 42, Section 284, Title 42, Section 287b, Title 42, Section 287c, Title 42, Section 288b(b), Title 42, Section 1594a(a), Title 42, Section 1870, Title 42, Section 2004(a) (2), Title 42, Section 2375, Title 42, Section 2473(b)(4), Title 42, Section 2493, Title 42, Section 2585, Title 42, Section 2942, Title 16, Section 179, Title 16, Section 342(a), Title 16, Section 179, Title 16, Section 425(e), Title 22, Section 1478, Title 22, Section 1437, Title 16, Section 450 (11), Title 50, Section 2081(b).

1944 United States Code and Congressional Service, page 1237.

*New York State Statutes*

Mental Hygiene Law Article 8, Section 171, Executive Law Section 355, Education Law Section 1010, State Finance Law Article II, Section 11, Conservation Law Article 16, Section 718, Education Law Section 257, General City Law, Article 2-A, Section 20(3), Education Law Section 213(1), Education Law Section 602(3), Town Law Section 64(8).

Administrative Code of The City of New York, Section 592-9.0; Section B18-3.0; Section B19-3.0(6).