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September 29, 1995

**C O N F I D E N T I A L**

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Re: Case No. 95031.Q

Dear \_\_\_\_\_,

On August 29, 1995, you telephoned our office and asked whether the Governmental Ethics Ordinance prohibits you from accepting an offer of reduced product rates with P Co., extended to you by A Co., an agent of P Co. After reviewing this matter in light of past Board opinions, staff concludes that the offer as extended to you by A Co. constitutes a sales promotion and is not a gift. As a result, the Ethics Ordinance does not prohibit you from accepting the offer, as described below.

**FACTS:** You have accepted an offer from P Co., according to which you pay the corporate rate of \$ \_\_\_\_\_ per month, rather than the usual rate of \$ \_\_\_\_\_ per month. This offer was extended to you by Mr. X, the employee of A Co. and a friend of yours, when you contacted him in order to purchase a product \_\_\_\_\_.

Mr. X explained to us that A Co. is an agent of P Co., licensed to sell P's services for a commission. A Co. is authorized by P Co. to offer this particular rate to employees of a number of large corporations, as well as to all employees of the City. However, A Co. has in fact pursued no systematic marketing to employees of the City.

You are an \_\_\_\_\_ employee with the City. When you contacted Mr. X to purchase a product \_\_\_\_\_, he informed you that you were eligible for this offer by virtue of your employment with the City. You stated that your City job in no way involves P Co., A Co., or any related business.



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**LAW AND ANALYSIS:** The relevant provision of the Ordinance is § 2-156-040(c), "Offering, Receiving and Soliciting Gifts or Favors," which states:

(c) No person who has an economic interest in a specific City business, service or regulatory transaction shall give, directly or indirectly, to any City official or employee whose decision or action may substantially affect such transaction, or to the spouse or minor child of such official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service other than an occasional one of nominal value (less than \$50) provided, however, nothing herein shall be construed to prohibit such person from accepting gifts from relatives.

The Ordinance defines gift in § 2-156-101(m) as:

any thing of value given without consideration or expectation of return.

The Board has held that the acceptance of an offer that is extended as part of a sales promotion is not a gift under the Ordinance. The primary question in this case is whether P's offer constitutes a sales promotion. In Case No. 93015.A, the Board established the two elements of a sales promotion: (1) the offer is extended to the public or a market of similarly situated persons, and (2) acceptance of the offer will provide an economic benefit to the offeror, indicating that the purpose of the offer is to create a sale and/or expand business. (Case No. 93015.A, pp.3-4; see also Case Nos. 87118.A and 88039.A.) Because acceptance of a promotional offer benefits the offeror, the sales promotion is an exchange transaction, not a gift. Further, under Board precedent, a discount is a kind of sales promotion if it is generally available, and the discount is not significantly greater than that offered to others in similar buying situations. (Case Nos. 93015.A, p.4, and 88039.A.)

In this case, according to the facts stated by Mr. X, A Co. is authorized by P Co to extend the same offer of reduced rates to a market of similarly situated persons, specifically, to all City of Chicago employees and to employees of a number of large corporations. Further, this offer is not focused on City employees who can affect decisions relating to P Co or to A Co, reinforcing the conclusion that the offer is directed to a market, and is intended to promote business, rather than affect City decisions. (See Case No. 93015.A, p.4.)

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Second, acceptance of this offer will provide an economic benefit both to P Co. and to A Co. . In this offer, acceptance provides an immediate economic benefit to P Co. , in the form of a new customer. Acceptance is also an inducement to future business -- having become a customer, the customer is situated to continue to use P's service in the future, and thus continue to pay fees for the service. Acceptance of this offer also provides an immediate economic benefit to A Co. , in the form of a commission.

Therefore, because, according to the facts presented, this offer fulfills the criteria of a sales promotion, staff concludes that A's extension of P's offer of reduced service rates constitutes a sales promotion and not a gift, as defined by the Ordinance. As a result, the gift provisions of the Ordinance do not prohibit a City employee from accepting this offer from A Co.

The Ethics Ordinance does prohibit City employees and officials from accepting anything of value, whether or not it is part of a sales promotion, if it is accepted or offered with mutual understanding that the recipient's official actions will be influenced (§ 2-156-040(b)). Where the facts indicate, however, that the offer is extended as part of a sales promotion, as is the case here, there is an inference that the offer does not involve an attempt to influence a City decision, and that its acceptance does not reflect a mutual understanding that the recipient's official action or decision on a matter of City business would be influenced (Case No. 93015.A, p.5). Where, as here, the offer is a sales promotion, we would have to find specific evidence indicating a mutual understanding in order to find that subsection (b) prevents a City employee from accepting the offer (Case No. 93015.A, pp.5-6). There is no such evidence in this case. Therefore, from the facts as presented, the staff concludes that subsection (b) does not prohibit a City employee from accepting this offer.

Staff's conclusions are based on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. Other rules or laws may be applicable to the situation. If any of the facts are incorrect or incomplete, please notify us, as a change in the facts may alter our conclusion.

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We appreciate your bringing this matter to our attention, and your willingness to abide by the standards embodied in the Ethics Ordinance. If you have further questions about this or any other matter, please do not hesitate to contact us.

Sincerely,

*Steven I. Berlin*  
Steven I. Berlin  
Deputy Director

Approved by:

*Dorothy J. Eng*  
Dorothy J. Eng  
Executive Director

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