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Gifts
Gifts from Lobbyists

Board Rules: 1-01, 1-16

Charter Sections: 2604(b)(5)

Administrative Code: 3-225, 3-226, 3-228

Opinions Cited: 2000-4

Advisory Opinion No. 2007-3

The Conflicts of Interest Board (the "Board") has received inquiries from two of the City's major not-for-profit institutions which are required to register as lobbyists, asking whether, consistent with Administrative Code Section 3-225 and its implementing regulations, these organizations may provide City officials and employees with free admission to certain widely-attended fundraising events and other functions held at the organizations' facilities.

I. Background

On June 13, 2006, Mayor Michael Bloomberg signed Local Law No. 16 of 2006 (the "Law"), which prohibits any individual required to be listed on a lobbyist statement of registration from offering or giving a gift to any

public servant. That law required the Board, in consultation with the City Clerk, to adopt rules defining prohibited gifts from lobbyists and also defining exceptions to that prohibition, including *de minimis* gifts, gifts that public servants may accept as gifts to the City, and gifts from family members and close personal friends on family or social occasions. Pursuant to the Law's directive, the Board adopted its Rule 1-16, effective January 26, 2007 (the "Rule").

The Board has now received requests from two not-for-profit organizations (the "Organizations") which have registered with the City as lobbyists, asking whether they may, consistent with the Law and the Rule, offer free admission to City officials and employees to a number of their events and functions. Because the Board has not previously issued public advice concerning the Law and the Rule, it responds to the Organizations' questions in this opinion.

II. Relevant New York City Law and Precedent

The Law added to the Administrative Code a new section 3-225, which prohibits any individual required to be listed on a lobbyist statement of registration from "offer[ing] or giv[ing] a gift to any public servant." Administrative Code Section 3-226 assigns the Board the responsibility for adjudicating complaints of violations of this provision.

Administrative Code Section 3-228 assigns to the Board, in consultation with the City Clerk, the responsibility for adopting "such rules as necessary to ensure the implementation of this subchapter, including rules defining prohibited gifts and exceptions including de minimis gifts, such as pens and mugs, gifts that public servants may accept as gifts to the City and gifts from family members and close personal friends on family or social occasions." The Law directs that, "to the extent practicable, such rules shall be promulgated in a manner consistent with the

rules and advisory opinions of such board governing the receipt of valuable gifts by public servants."

The Rule, promulgated in response to the above provision, provides the following:

(a) Pursuant to Administrative Code § 3-225, no person required to be listed on a statement of registration pursuant to § 3-213(c)(1) of the Administrative Code shall offer or give a gift to any public servant.

(b) For purposes of this section:

(1) the persons required to be listed on a statement of registration pursuant to § 3-213(c)(1) of the Administrative Code include (i) the lobbyist, (ii) the spouse or domestic partner of the lobbyist, (iii) the unemancipated children of the lobbyist, and *(iv) if the lobbyist is an organization, the officers or employees of such lobbyist who engage in any lobbying activities or who are employed in such lobbyist's division that engages in lobbying activities and the spouse or domestic partner and unemancipated children of such officers or employees* (emphasis added);

(2) the term "lobbyist" shall have the same meaning as used in § 3-211 of the Administrative Code;

(3) the term "offer" shall include every (i) attempt or offer to give a gift, or (ii) attempt or offer to arrange for the making of a gift;

(4) the term "give" shall include every (i) tender of a gift, or (ii) action as an agent in the making of a gift, or (iii) arrangement for the making of a gift;

(5) the term "gift" shall include any gift which has any value whatsoever, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form.

(c) For purposes of Administrative Code § 3-225 and this section, the following gifts shall not be prohibited:

(1) *de minimis* promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an organization's name, logo, or message in a manner which promotes the organization's cause;

(2) gifts that are customary on family or social occasions from a family member or close personal friend, when it can be shown under all relevant circumstances that it is the family or personal relationship rather than the lobbying activity that is the controlling factor and the public servant's receipt of the gift would not result in or create the appearance of:

(i) using his or her office for private gain;
(ii) giving preferential treatment to any person or entity;
(iii) losing independence or impartiality; or
(iv) accepting gifts or favors for performing official duties;

(3) awards, plaques, and other similar items which are publicly presented in recognition of public service, provided that the item or items have no substantial resale value;

(4) free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances:
(i) when offered during a meeting which the public servant is attending for official reasons;
(ii) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical;
(iii) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and refusal to participate and/or individual payment would be impractical;
(iv) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical; or,
(v) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City;

(5) meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;
(6) invitation to attendance at professional or educational programs as a guest of the sponsoring organization;
(7) invitation to attendance at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;
(8) invitation to attendance at a public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization;
(9) invitation to attendance by a public servant who is an elected official, a member of the elected official's staff authorized by the elected official, or a member of the central staff for the council authorized by the speaker of the council at a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization;
(10) travel-related expenses from a private entity which is offered or given as a gift to the City rather than to the public servant, so long as: (i) the trip is for a City purpose and therefore could properly be paid for with City funds; (ii) the travel arrangements are appropriate for that purpose; and (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose;

(d) Nothing in this section shall be deemed to authorize a person required to be listed on a statement of registration pursuant to § 3-213(c)(1) of the

> Administrative Code to offer or give a gift to any public servant in violation of any other applicable federal, state or local law, rule or regulation, including but not limited to the New York State Lobbying Act.

Thus, under the lobbyist gift Law and Rule, *all* gifts by registered lobbyists to public servants are prohibited, unless they fall within a specific exception.

Pursuant to the mandate of Administrative Code Section 3-228, and as stated in its Notice of Adoption of Board Rules Section 1-16, the Board made every effort to conform the Rule on lobbyists' gifts to public servants with the existing rules concerning the receipt of gifts by public servants, in particular with Board Rules Section 1-01, the Valuable Gifts Rule, and will strive to do so, to the greatest degree practicable, in this and future opinions and/or rules. Thus, while this Opinion is the Board's first statement on lobbyists' gifts to public servants, it is appropriate to refer to prior opinions in which the Board has addressed the receipt of gifts by public servants. In particular, the Board has considered the question of acceptance by public servants of tickets to events. In Advisory Opinion No. 2000-4, the Board permitted elected officials or designated members of their staffs to accept the gift of tickets to an event, even where the sponsoring organization was funded by the elected official's office, and regardless of the price of the ticket, provided that attendance was in the public servant's *official capacity*, and that the requirements of Board Rules Sections 1-01(f)(5) or (g) were met.[1] Additionally, in those circumstances where

[1] Board Rules Section 1-01 (f) states: "For the purposes of Charter §2604(b)(5), a public servant may: (5) be a guest at any function or occasion where the attendance of the public servant has been approved in writing as in the interests of the City, in advance where practicable or within a reasonable time thereafter, by the employee's agency head or by a deputy mayor if the public servant is an agency head."
Board Rules Section 1-01 (g) states: "For the purposes of Charter § 2604(b)(5), a public servant who is an elected official or a member of the elected official's staff authorized by the elected official may attend a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization. For the purpose of this subdivision, the authorizing elected official for the central staff of the council is the speaker of the council."

acceptance of a gift of tickets is permissible, the Board determined in Opinion No. 2000-4 that it is also permissible for the public servant to accept one additional complimentary ticket to enable a guest to accompany the public servant to the event. However, the Board concluded that it would be a violation of Charter Section 2604(b)(5) for a public servant to accept event tickets for *personal use* – i.e., not for attendance in an official capacity – where the tickets were worth $50 or more and were received from an organization doing or seeking to do business with the City.

III. Discussion

With the precedent of Opinion No. 2000-4 in mind, the Board now addresses, in turn, each of the events and functions about which the Organizations have inquired.

A. Fundraising Events

One of the Organizations typically holds several fundraising events each year; the other holds an annual fundraising dinner. In order to generate revenue, ticket prices for these events are several hundred dollars, or in the case of certain events held by one of the Organizations, several thousand dollars. The Organizations' fundraising events range from black-tie gala dinners to daytime family-centered activities attended by several hundred people. High-level elected and appointed officials from the City, State, and Federal government are often invited to these events.

The Organizations ask whether they may, as registered lobbyists, extend invitations and provide free admission to City public servants to such fundraising events. They also ask whether it would be permissible to provide a complimentary guest ticket, or, in some cases, multiple tickets for additional friends or family members of the public servants. More particularly, one of

the Organizations wishes to offer an additional complimentary invitation to partners or spouses for night-time events, and to spouses or partners and children for day-time events.

Providing free admission to public servants to the above-described fundraising events would not violate the Law, since the Organizations are the sponsoring entities of such events and since, for such events, the public servants are invited in their official capacities. See Board Rules Sections 1-16(c)(8) or (9).[2] As discussed in Advisory Opinion 2000-4, the Board determined that the corresponding receipt of tickets by public officials, for attendance in their official capacities, at such events as charitable fundraisers would be permitted, as an exception to the gift rule, so long as the requirements listed in Board Rules Section 1-01 are met. See Opinion No. 2000-4, pp. 4 and 9. Here, where the Rule has parallel exceptions for provision of tickets to public officials, the gift of tickets to a fundraising event for a public official in his or her official capacity is permissible so long as the requirements listed in Board Rules Sections 1-16(c)(8) and (9) are met. The giving and the receipt of complimentary admission to such events are, in the Board's view, permissible gifts to the City, because the resulting attendance by elected officials advances the purposes and interests of the City. As the Board noted in Opinion No. 2000-4, attendance at these events permits elected officials to learn more about the host organizations, about the problems and issues the organizations face, and about what assistance the organizations might need to better serve the elected official's constituents. In addition, elected officials and their staffs are often called upon to perform honorary and ceremonial duties at these events. See Opinion No. 2000-4, at page 3.

[2] Additionally, the Board makes no distinction between "public affair" and "function" as those terms are used in Board Rules Sections 1-16(c)(8) and (9), respectively. In each case the events for which the offer and corresponding receipt of complimentary attendance are permissible must be widely attended.

In circumstances where a public servant may permissibly accept the gift of a ticket from the Organizations to one of their fundraising events, it would likewise not violate the Law for the Organization to provide one complimentary guest ticket to the event for a partner or spouse of the public servant. In Advisory Opinion 2000-4, at page 11, the Board determined that where it would not violate Chapter 68 for a public servant to accept a complimentary ticket for him or her to attend an event, it would likewise not violate Chapter 68 to accept a second ticket for a guest. In so holding, the Board noted the strains on family and personal life which certain obligations of public service present, and expressed the belief that permitting acceptance of a second ticket, which may mitigate these strains, does not create a conflict of interest. See Opinion 2000-4, at page 11.

Further, where it is permissible to extend a complimentary ticket (plus one guest ticket) to the public servant, and if invitations are extended to additional friends or relatives of all invitees (that is, not just to the public servant), it would not violate the Law for the Organization to provide complimentary guest tickets to additional members of the public servant's family, *where there is a nexus between the nature of the event and the identity of the additional invitees.* So, for example, additional tickets for a public servant's children to attend one of the Organizations' annual Holiday Open House would be acceptable. On the other hand, additional free tickets for a public servant's children to attend a black-tie dinner would be impermissible. The Board will interpret the requirement that there be some relationship between the nature of the event and the identity of the additional invitees narrowly, and will therefore permit additional free admissions only in special circumstances.

B. Exhibit Openings

One of the Organizations, as part of its mission, presents exhibitions on its premises that are open to the public. At the opening of each such exhibition, the Organization hosts an opening event, by invitation only, for several hundred guests. The Organization invites public servants to these event openings, including the Mayor, members of the City Council, and officials from certain City agencies such as the Parks Department and the Landmarks Preservation Commission. Beverages and hors d'oeuvres are sometimes provided. The Organization wishes to continue extending invitations and free admission to such openings to public servants and their guests (children will not be invited).

The Board has concluded that inviting and providing free admission to City public servants, including elected officials, to a public affair such as an exhibit opening would not violate the Law, provided that the Organization is the sponsoring organization of such an event and the public servant is invited in his or her official capacity. See Board Rules Section 1-16(c)(8) and (9). Just as with fundraising events, attending exhibit openings provides City officials with the opportunity to learn more about the host organization and its unique issues and needs. The exchange of information facilitated by attending exhibit openings helps City officials be more responsive to these needs, especially if the host organization is a constituent of the official's district. Additionally, for the reasons set forth above regarding fundraisers, where a public servant may permissibly accept the gift of a ticket to an opening for herself or himself, it would not violate the Law for the Organization to provide one complimentary guest ticket to that public function for the partner or spouse of the public servant. See Advisory Opinion 2000-4, at page 11.

C. Free Admission to Exhibitions

One of the Organizations also wishes to provide free admission passes to public servants for entrance to the Organization's premises and to the exhibitions housed therein. Specifically, the Organization would like to invite, and provide free admission to, public servants in three separate situations: attendance at exhibitions during designated member-only viewing times, attendance at exhibitions during general viewing hours, and bundles of free admission passes providing free access to the premises of the Organization.

Members-Only Viewing

Following the opening celebration, the Organization typically opens an exhibition to its members first, before the general public, during a members-only viewing period. No refreshments are provided. The Organization asks whether, during the member preview period, it may invite and provide free admission to City public servants from the Organization's district, as well as additional public servants. It notes that similarly situated Federal and State officials are also invited.

Here, the Board believes that unless a nexus exists between the public servant's duties and the exhibition, inviting and providing free admission to a public servant for member-only preview events **would violate** the Law. See Board Rules Sections 1-16 (c)(8) and (9). Such a nexus would exist, for example, where the public servant, as part of his or her City duties, oversees City funding of the exhibition or of the Organization's overall program, so that providing free admission to the public servant for the purpose of observing the exhibition on behalf of the City would fall within the public servant's official duties. However, multiple

invitations to the same exhibit, even for such a public servant, would violate the Law, absent special circumstances. See Advisory Opinion 2000-4, at pages 9-10.

The Board reaches this conclusion based on its general view that public servants, even elected officials, are not entitled to receive complimentary tickets to any and every cultural event, performance, or sporting event in the City. For example, it is not, in the Board's view, part of the official duties of most public servants to attend plays or mid-season football, baseball, or basketball games. It may, however, be part of the official duties of certain high-ranking officials to attend such special events as World Series games, the Tony and Grammy Awards, or Broadway opening nights that focus national attention on New York City and promote commerce and tourism. It may also be part of the official duties of a very small number of City employees (for example, a program officer at the Department of Cultural Affairs) to attend a certain number of "ordinary" performances or events of City-funded arts or cultural institutions, in order to assess the programming which City taxpayers are helping to underwrite. Here, the Board views the member-preview nights as ordinary events, not public affairs, and thus appropriate as a gift to the City only for those **very few** public servants whose job it is to oversee or evaluate the Organization's programs. Nevertheless, in such cases, if it is permissible to offer one complimentary admission to a public servant, it will also be permissible to offer a second admission for a guest of the public servant.

Attendance at Exhibitions

Once an exhibition opens, the general public may attend with the purchase of an admission ticket. The Organization wishes to invite and provide free admission to certain City public servants at times when the general public is invited.

As with member previews, inviting and providing free admission to public servants for attendance to an exhibition at the Organization during the regular course of business **would violate** the Law unless a clear and direct nexus exists between the public servant's City duties and the event, and the public servant is invited in an official capacity. See Board Rules Sections 1-16 (c)(8) and (9). Again, such a nexus would exist only where the City employee attends the exhibition as part of his or her City duties, for the purpose of evaluating programs which his or her City agency helps fund or evaluate.

As with the member preview days discussed above, ongoing exhibitions are neither "public affairs" nor "functions" within the meaning of the Rule, so that offering free admission to most public servants *would* violate the Law. That said, for a small category of public servants (again, for example, program officers of the Department of Cultural Affairs), it may be part of their job duties to observe and assess such "ordinary" performances or exhibits. The Organization may therefore permissibly offer free admission to such a public servant and one guest as a gift to the City.

Groups of Free Tickets

One of the Organizations also wishes to distribute "bundles" of free admission passes to individual public servants or groups of public servants. Anticipated recipients may include teachers, police officers, or sanitation workers. Moreover, requests for bundles of tickets are sometimes made by public servants for distribution to non-public servants, as in the case of teachers requesting free passes for their students.

Providing these bundles of free admission passes would not violate the Law **provided that** they are extended as gifts to the City *and* accepted by a responsible public servant for use as

the agency deems appropriate in furtherance of the agency's City purpose. See Advisory Opinion 2000-4, at page 13. Thus, free passes intended for the use of a group of City employees, such as teachers, police officers, or sanitation workers, may be extended to and accepted as gifts to the City, **only** by the agency head or his or her designee. In such cases, if the schools Chancellor, or the Police or Sanitation Commissioner (or their designee) determines that it would further the Agency's purpose for employees to receive free admission to the Organization's exhibitions, then bundles of passes are an appropriate gift to the City. Likewise, admission passes being sought or offered for use by those who might be considered "customers" or "clients" of a City agency -- for example, public school children or residents of a City homeless shelter -- may be given as a gift to the City, to the public servant responsible for serving those customers or clients of the City -- e.g., to a teacher for use by the students in his or her own classroom. Again, the public servant's acceptance of the gift should be based on a determination that receiving complimentary passes to the exhibition furthers the agency's City purpose.

This conclusion follows the Board's determination in Opinion No. 2000-4, in which the Board held that *under certain circumstances* City agencies could accept blocks of tickets to events, for distribution to their employees or to groups or communities served by such agencies, because valid City purposes may be furthered through the provision of free attendance to such events. In such cases, the Board ruled in Opinion No. 2000-4, "the first, and typically only, question under Chapter 68 is whether these tickets, which are City resources, are being distributed for a **City** purpose." Thus, for example, a gift to a City agency of admission tickets to a cultural institution, which are distributed to homeless children temporarily sheltered by the agency, furthers the agency's purpose of alleviating the misery of homelessness. The critical factor here is that the allotment of blocks of tickets to agency employees or "clients" *must* be

determined by a responsible public servant, *not* by the donor. Were the donor to dictate who should use the free passes, that could render impermissible what would otherwise be a permissible gift to the City, creating an actual conflict of interest -- such as, for example, the distribution of tickets pursuant to the donor's wishes only to those at the agency with whom the donor has business dealings, or who are in a position to affect the donor's City funding. See Opinion No. 2000-4, at pages 13-14.

D. Legislative Appreciation Day

One of the Organizations has in recent years held a "Legislative Appreciation Day," and wishes to continue doing so in the future. This event consists of free admission to the Organization's premises and to any exhibitions currently on display, plus food and drink. The Organization typically invites several hundred people and approximately 150 have attended. The invitation list typically includes elected and appointed officials from the City, State, and Federal governments. This event has been held during the day, and is a stand-alone event, separate from any fundraising event or opening celebration. The Organization would like to continue to invite and provide free admission to this event to public servants, as well as partners or spouses and additional family members.

Unlike those already considered, this event is specifically intended for members of government. Attendance provides an opportunity for networking among elected and appointed officials of various levels and branches of government, and showcases the Organization to the various agencies and entities which it looks to for funding and support. City public servants who attend are thus presumed to be doing so in their official capacities and pursuant to a City purpose. Therefore, inviting and providing admission to public servants for attendance at a

public affair such as Legislative Appreciation Day would not violate the Law, provided that the Organization is the sponsoring entity and the public servants are invited in their official capacities. See Board Rules Sections 1-16 (c)(8) and (9). Providing food and drink to public servants attending this public affair would also be allowed under the Law because the requirements of Board Rules Section 1-16(c)(4) are met. In such circumstances, it would likewise not violate the Law to provide one complimentary guest ticket to the public affair for a partner or spouse of the public servant. See Advisory Opinion 2000-4, at page 11. However, because the Board finds no independent nexus between the nature of this sort of event and any additional family members, it **would violate** the Law for the Organization to provide complimentary guest tickets for Legislative Appreciation Day to additional members of the public servant's family.

E. Educational Symposiums and Conferences

One of the Organizations regularly hosts educational symposiums and conferences for which the public must pay an admission fee. The Organization wishes to invite and provide free admission to public servants, because such events include discussions of issues relevant to the City.

Here, inviting and providing free admission to public servants for attendance at professional or educational programs is permissible pursuant to a specific exception for this type of event in Board Rules Section 1-16(c)(6), provided that the Organization is the sponsoring entity for the program and the public servants are invited in their official capacities. Where such conditions are met, the Organization may invite and provide free admission to public servants without violating the Law.

IV. Conclusion

As set forth above, the Organizations may invite and provide free admission to specific events without violating the Law, so long as in each instance the pertinent requirements of Board Rules Section 1-16 are met. More particularly, the Board has determined that, provided the Organization is the sponsor and public servants are invited in their official capacities: (1) both Organizations may invite and provide free admission to public servants, plus one guest, for their fundraising events, and where a nexus exists between additional guests and the nature of the event, may also provide supplementary tickets for family members; and (2) the Organization which puts on exhibitions and other special events (a) may also invite and provide free admission to public servants, plus one guest, to exhibit openings; (b) may invite and provide free admission during members-only previews and general admission viewing of exhibitions only to that small number of City public servants for whom there is a clear and direct nexus between their official duties and attendance at the exhibition; (c) may provide bundles of free admission tickets to an agency head or his or her designee, accepted as gifts to the City and for use, as allotted by the recipient, in furtherance of a City purpose; (d) may provide bundles of free admission tickets to a public servant, provided they are accepted on behalf of "customers" of the City, for the use of such customers as allotted by the recipient; (e) may invite and provide free admission to public servants, plus one guest, for its Legislative Appreciation Day, but not to additional guests of the public servant; and (f) may invite and provide free admission to public servants for educational symposiums or conferences hosted by the Organization.[3]

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[3] The Board cautions that where, as is typically the case, the sponsoring organization of any of the widely attended events discussed in this Opinion has business dealings with the City agency of the invited City

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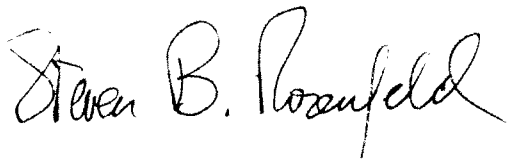
Finally, as the Board noted in Board Rules Section 1-16(d), its opinions speak only to compliance with Chapter 68 and with the Law and the Rule, and not to compliance with laws of other jurisdictions. In particular, New York State's lobbying laws and regulations also apply to City lobbyists, and those lobbyists should take care to conform their conduct not only to the requirements of the Law and the Rule, as interpreted in this opinion, but also to the requirements of the State lobbying laws concerning gifts. See, in particular, Legislative Law Section 1-m.



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Dated: December 12, 2007

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employee, the City employee who *accepts* these free admissions may violate the prohibition in Charter Section 2604(b)(5) against public servants accepting valuable gifts from those doing or seeking business with the City, absent a written determination by his or her agency head pursuant to Board Rules Section 1-01(f)(5) that attendance at the event is in the interests of the City. Absent such a determination, while the lobbyist making such a gift will, as noted in the above discussions, satisfy Board Rules Section 1-16(c)(8), the City employee receiving the gift may violate Chapter 68, except for those elected officials and their designees who fall within the safe harbor of Rules Section 1-01(g), the text of which is set forth in footnote 1 above.