



CITY OF PHILADELPHIA

BOARD OF ETHICS
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**Philadelphia Board of Ethics
Non-Public General Counsel Opinion No. 2014-505**

October 20, 2014

Re: Wedding-Related Gifts Given Between City Employees

Dear City Employee:

You have requested a non-public advisory opinion about how the City ethics laws restrict your ability to give and accept gifts related to the upcoming wedding of your friend, a City employee in your City agency who is marrying an individual who lobbies your City agency. Specifically, you asked whether you may give the couple a wedding gift and whether you may accept a gift from them for being a member of the wedding party. For the reasons discussed below, the City gift law does not prohibit you from providing a wedding gift to the couple or accepting a gift from them, and it does not limit the value of these gifts.

I. Facts Provided

You have provided the facts that are stated here. You are an employee of a City agency and report directly to the head of your City agency. Your primary duty for the head of your City agency is working on City financial matters. You will be a member of the wedding party in the October wedding of a friend, Person A, whom you have known for many years. You do not anticipate that the wedding or the reception, which you plan to attend, will require a ticket or entrance fee. You and Person A grew up in the same area and went to high school together. Person A works for the same City agency as you. Person A's future spouse lobbies officials in your City agency. You would like to give Person A and Person A's future spouse a wedding gift. You also anticipate that they may offer you a gift because you are participating in their wedding as a member of the wedding party.

You interface with many officials in your City agency, including Person A's supervisor, in your work. Person A's work does not overlap with your City work. You and Person A do not seek official action from one another in your jobs with your City agency, and you do not recall working on any projects or official matters with Person A. In the past, Person A may have contacted you to request technical information about the financial information you work with in your City position. Neither you nor Person A are able to affect each other's financial interests through official action. You and Person A do not have the authority to make decisions about hiring or compensation that could affect the other. These are matters only within the purview of the respective supervisors for whom you work. You and Person A socialize outside of work.

The extent of your contact with Person A's future spouse in your work for your City agency is a single request during the last year for information regarding the financial information you work with in your City position. You often respond to similar requests from members of the general public. Person A's future spouse did not ask for you to take any action. Person A's future spouse has not sought any official action from you, and you cannot substantially affect the financial interests of Person A's future spouse through official action as a City employee.

II. Jurisdiction

The Board of Ethics has jurisdiction to administer and enforce all Philadelphia Home Rule Charter ("Charter") provisions and ordinances pertaining to ethical matters, including the City Code gift restriction. Charter §4-1100. The Charter and the Philadelphia Code ("Code" or "City Code") authorize the Board to render advisory opinions concerning a City officer's or employee's proposed future conduct. Charter §4-1100; Code §20-606(1)(d). Board of Ethics Regulation 4 describes the procedures related to seeking an advisory opinion and for requesting reconsideration of a General Counsel opinion. Board Regulation 4, ¶¶ 4.0, 4.24.

III. Discussion

The wedding-related gift-giving scenarios that you have asked about require application of the City Code gift restriction.¹

¹ The Charter gratuity restriction, which prohibits a City employee from soliciting or accepting a gratuity for any act or omission in the course of the employee's public work, is not discussed in detail here because nothing in the facts you provided indicates that the proposed wedding/reception attendance or wedding party gift would be for any of your actions as a City employee. See Charter §10-105.

A. City Code Gift Restriction

In a recent advisory Opinion, the Board explained that the newly-amended City Code gift restriction limits gifts² to City officers and employees from persons (1) who are seeking official action from a gift-receiving City officer or employee; or (2) who have a financial interest at the time, or in close proximity to the time the gift is received, that the gift-receiving City officer or employee is able to substantially affect through official action. Board Opinion 2014-003 at 4; *see also* Code §20-604(1)-(2). The Board referred to these two categories of potential gift-givers by the shorthand “restricted sources” for the sake of convenience. Board Opinion 2014-003 at 4.

A City employee may not accept any gifts of money³ from a restricted source and may only accept non-cash gifts worth \$99 or less in the aggregate in a calendar year. Code §20-604(1). Reciprocally, restricted sources for a City employee may not offer or provide any gifts of money or non-cash gifts worth more than \$99 in the aggregate in a calendar year to a City officer or employee. Code §20-604(2). In contrast, the City gift law does not apply to limit the value of gifts to City employees from persons who are not restricted sources, and such persons may provide gifts of money and non-cash gifts worth more than \$99 in the aggregate in a calendar year to a City employee. Board Opinion 2014-003 at 5-6. For this reason, it is important to determine whether the proposed gift-giving you have asked about would involve restricted sources. It is also necessary to consider whether any exemptions provided by the gift law apply.

1. Attending the Wedding and Reception

You plan to attend Person A’s wedding and reception and to participate in the wedding as a member of the wedding party. The gift restriction lists certain non-cash gifts that a City officer or employee may accept, but not solicit, in values greater than \$99 notwithstanding the fact that the person giving the gift is a restricted source. Board Opinion 2014-003 at 4; *see also* Code §20-604(3). One of the listed exemptions is for the acceptance by a City officer or employee of a gift of free attendance at an event celebrating a major life event of another individual for which attendees do not have to purchase a ticket. Code §20-604(3)(e). The Board has advised that a wedding reception qualifies for the exemption “because marriage is a major life event, and the reception is not a ticketed event.” Board Opinion 2014-003 at 4; *see also* Code §20-601(15) (defining “major life event” to include marriage). Based on the information you have provided, the wedding reception of Person A qualifies for the major life event exemption of the gift

² A gift is anything of value given to or for the benefit of a City officer or employee, unless consideration of equal or greater value is received. Code §20-601(10).

³ Gifts of money include cash, checks, money orders, and pre-paid debt, gift and credit cards. Code §20-601(16).

restriction. Thus, the gift law does not restrict your attending the wedding reception and receiving the food, drink, and entertainment that are offered there.

2. Giving a Wedding Gift to a City Employee

You would like to provide a wedding gift to Person A and Person A's future spouse. Based on the information you have provided, you do not seek official action from Person A in Person A's capacity as an employee of your City agency, and you do not have a financial interest that Person A is able to substantially affect through official action as a City employee. As such, you are not a restricted source for Person A. The fact that Person A's future spouse would also be a recipient of the wedding gift does not implicate the City gift restriction because that individual is not a City officer or employee. See Code §20-601(18) (defining "City officer or employee"). Accordingly, the City gift restriction does not limit the value of the wedding gift you are permitted to give Person A and Person A's future spouse.

3. Receiving a Wedding Party Gift As a City Employee

You anticipate that Person A and Person A's future spouse will give you a gift because you are participating as a member of the wedding party in their wedding. Based on the facts you have provided, neither Person A nor Person A's future spouse has a financial interest that you are able to substantially affect through official action as a City employee. In addition, neither Person A nor Person A's future spouse is seeking from you official action, which is defined as an "act or omission taken by an officer or employee in his or her official capacity that requires discretion and is not ministerial in nature." Code §20-601(17). Your prior interactions with the couple in your official capacity have been limited. Person A may have asked you about technical information regarding the financial information you work with as a City employee, and Person A's future spouse once asked you a question related to the financial information with which you work as a City employee. Past requests for information do not qualify as Person A or Person A's future spouse seeking official action from you. As such, Person A and Person A's future spouse are not restricted sources for you, and the City Code gift restriction does not limit the value of the gift you are permitted to accept from them.

B. The State Ethics Act

The State Ethics Act, 65 Pa.C.S. §1101 *et seq.*, imposes restrictions on public employees related to gifts and financial disclosure that are in addition to and different from those imposed by City ethics laws. The State Ethics Act applies to "public employees," and the determination of whether you are a public employee for purposes of

the Act is based on your job responsibilities.⁴ The Board's authority to give advice regarding the State Ethics Act is limited, and guidance from the Board regarding the State Ethics Act is not binding on any person and does not provide any protection against penalties or sanctions for a violation of the Act. Board Regulation 4, ¶4.4. You may seek and rely upon an opinion from the State Ethics Commission or a non-confidential opinion from the City Solicitor to provide protection from enforcement or penalties imposed for a violation of the Act. *See* 65 Pa.C.S. §§1107(10)-(11), 1109(g). For these reasons, the provisions of the State Ethics Act that may be relevant to your inquiry are merely outlined below.

The State Ethics Act prohibits a public employee from soliciting or accepting a gift based on the understanding that the public employee's official action would be influenced by the gift. 65 Pa.C.S. §1103(b)-(c). In terms of financial disclosure, the State Ethics Act requires a public employee to file an annual statement of financial interests for the preceding year. 65 Pa.C.S. §1104. The State Ethics Act requires disclosure of the sources of gifts worth \$250 or more in the aggregate per calendar year per source, including the value and circumstances of each gift. 65 Pa.C.S. §1105(b)(6). Gifts received from certain close family members and friends are exempted from the disclosure requirement when the circumstances make clear that the motivation for the gift was a personal or family relationship. *Id.* This exemption does not apply to gifts from friends who are "registered lobbyists." *Id.*

IV. Conclusion

Thank you for your concern about compliance with the new City gift law and for seeking advice. Advisory opinions are fact-specific, and this Opinion is predicated on the facts you have provided as stated here. If you have questions about scenarios that vary from these facts, you should ask for specific advice on the application of the law to those particular facts. Requestors of advisory opinions are entitled to act in reasonable reliance on opinions issued to them and not be subject to penalties under the laws within the Board's jurisdiction, unless they have omitted or misstated material facts in their requests. Code §20-606(1)(d)(ii); Board Regulation 4, ¶4.12.

⁴ Under the State Ethics Act, an objective analysis is applied to determine if an individual qualifies as a public employee, which is defined as:

Any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with regard to: (1) contracting or procurement; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.

65 Pa.C.S. §1102. Persons who report directly to heads of agencies are generally considered public employees. 51 Pa. Code §11.1.

Since you requested a non-public opinion, the original Opinion issued to you will not be made public. As required by the City Code, this version of the Opinion that has been redacted to conceal facts that are reasonably likely to identify you is being made public. Please let me know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

Maya Nayak
General Counsel

cc: Michael H. Reed, Esq., Chair