



CITY OF PHILADELPHIA

BOARD OF ETHICS
One Parkway Building
1515 Arch Street
18th Floor
Philadelphia, PA 19102
(215) 686 – 9450
FAX 686 – 9453

Philadelphia Board of Ethics Non-Public Board Opinion 2012-006

January 23, 2013

Re: Fundraising from Vendors for a Professional Conference and Attending Vendor-Sponsored Conference Events

Dear City official:

You have asked several questions related to a professional conference, which you will attend and help run in your official capacity. A non-profit professional association to which your City office belongs holds the conference annually. One set of questions inquires whether you are permitted to solicit current vendors (of the City, your City office, or another City office where you exercise authority) for financial contributions to support the conference. A second set of questions relates to whether you and your staff may attend vendor-sponsored events at the conference and whether disclosure of attendance is required. As discussed in detail in the Discussion section that begins on page 4, the proposed activities are not prohibited under the City Code conflict of interest or gift prohibitions. It is advisable for you to seek advice from the State Ethics Commission on the application of the State Ethics Act as it is substantively different in relevant respects from City ethics provisions.

I. Factual Background

Your authorized representative provided detailed facts about the conference, your duties related to the conference and your duties as a City official, which are summarized in a redacted fashion here.

Participation in the association's activities and attending the conference are considered to be part of your and your staff's City work. For example, you and your staff

will not take vacation time to attend the conference but would attend on work time. Generally, you and your staff have been session presenters at past conferences.

You are a board member and officer of the non-profit professional association that organizes the conference. Your staff may assist you in your duties as a board member of the association. You would assist in planning and running the conference. The conference involves both working sessions and social outings. Conference attendance fees are a few hundred dollars. You and your staff do not personally pay the conference fees; they are paid out of the budget of your City office. Conference participants pay hotel and transportation costs. Some participants bring spouses or children. Guests pay a separate fee. All participants and their guests are included in the dinners, receptions and social events.

In addition to the participant costs, the professional association receives contributions from firms to help underwrite the cost of the conference. Vendors contribute in underwriting the cost of the social events. Vendors submit their contributions to the non-profit, and the non-profit pays for the cost of the events from its treasury. An event may or may not be advertised as “Sponsored by.....”

A room is set aside for vendors to display their products and meet with participants. Participants are not required to meet with the vendors. A vendor supporting the conference may or may not be a vendor with your City office or the City of Philadelphia at the time of the conference. You and your staff have authority to choose and approve contracts with certain vendors of your office. You sometimes have a role in the selection of vendors for one City office other than your own, but you do not have authority to approve contracts or choose vendors for other City departments.

The approximate value of attendance at the vendor-sponsored conference events/social events would be \$75-\$100 for dinners. Lunches and receptions would be a smaller amount. You did not provide an approximate value for the social outings.

The approximate value of financial support for the conference you would be seeking from vendors could range from \$500-\$15,000. Your solicitations for conference financial support could take the form of your name being on a letter that is from all the non-profit’s board members or it could involve you directly contacting vendors yourself. It has been done both ways for past conferences, but the non-profit association prefers the latter.

II. Questions Presented

Under the City's ethics laws, can a City official, as a board member and officer of a non-profit professional association, solicit financial support on behalf of the association for underwriting part of the expense of the association's annual conference? That is, can a City official solicit financial support from current vendors of the City, of the official's City office, or of another City office where the official sometimes has a role in the selection of vendors? If the City official cannot solicit such financial support, can other board members of the professional association, who are not officials or employees in Philadelphia, solicit financial support on behalf of the association for underwriting part of the expense of the annual conference?

Under the City's ethics laws, can a City official and his or her designee attend events at the conference if those events are being underwritten by vendors who have a contract with the official's City office? Can the City official and his or her designee attend events if the sponsoring vendors have a contract with the City of Philadelphia?

If the City official and his or her designee are permitted to attend the events while a vendor underwriting a portion of the cost of the conference has a contract with the City official's office, do the City official and his or her designee need to disclose that they attended the event? If so, on what forms do they disclose and what do they need to disclose? What if the vendor does not have a contract with the City official's office but has a contract with the City of Philadelphia? Do the City official and his or her designee need to disclose that they attended the event? If so, on what forms do they need to disclose and what do they need to disclose?

III. Jurisdiction and Relevant Law

The Board of Ethics has jurisdiction to administer and enforce all Philadelphia Home Rule Charter provisions and ordinances pertaining to ethical matters. Charter §4-1100. The City Code, which applies to you and your staff, prohibits City officers and employees from having conflicts of interest and from soliciting gifts, loans and favors of substantial economic value that might reasonably be expected to influence them. Code §§20-604, 20-607; see Appendix A for the full text of these Code sections.

The Charter and the City Code authorize the Board to render advisory opinions. Charter §4-1100; Code §20-606(1)(d). Although the Charter gives the Board concurrent authority with the Law Department to provide advisory opinions on State law, the Board's advice on the State Ethics Act is limited. *See* Charter §4-1100. Unlike an opinion issued by the State Ethics Commission or a non-confidential opinion issued by the City Solicitor, guidance by the Board regarding the State Ethics Act is not binding on any person and does not provide any protection from penalties or sanctions imposed for a

violation of the Act. Board Regulation 4, ¶4.4; *see also* 65 Pa.C.S. §§1107(10), (11), 1109(g).

Board of Ethics Regulation 4 describes the procedures for seeking an advisory opinion, including how to request reconsideration of an opinion issued by the Board. Board Regulation 4, ¶4.26.

IV. Discussion

Your advice request raises issues under the City Code conflict of interest and gift rules. The end result is that your proposed activity for the conference is permissible and does not require disclosure by you or your staff under the City ethics laws, but you should seek advice as to application of the State Ethics Act.

A. Solicitation of Current Vendors for Financial Support for Conference

Your proposed solicitation of current vendors (of the City, your office, or another City office where you sometimes have a role in the selection of vendors) for financial support for the professional conference is permissible under the City ethics laws.

Conflicts of Interest

The Code's conflict of interest restriction prohibits a City official from taking official action if he or a family member has a financial interest in the action or if a for-profit organization he is a member of has a financial interest in the action. Code §§20-607(a), (b). A financial interest is an interest in which a potential monetary gain or loss is at stake, such as a potential impact on a person's income, compensation, value of assets, wealth, employment prospects, business prospects, or financial relationship with another person. *See* Board Opinion 2012-001 at 5.

You will be planning, running and attending the conference in your official capacity with your City office paying the attendance fees. Vendors will submit contributions to the non-profit professional association, and the association will pay for the cost of conference events out of its treasury. Under these facts, you would not have a personal financial interest in a vendor making a financial contribution to the non-profit professional association to support its conference events. In other words, you will not enjoy a personal financial gain as a result of a vendor's contribution to the professional association. Therefore, your proposed solicitation of current vendors for financial support for the conference would not cause you to have a conflict of interest under Code §20-607(a), which prohibits conflicts arising from an employee's own financial interests. *See* Board Opinion 2009-006 at 4 (advising that no personal financial interest or issue under Code §20-607(a) was present in a proposed arrangement between a City official's office and a private company because the arrangement would not relieve a City official of

any personal expense).

You are a board member and officer of this non-profit professional association. It is significant that the association is a non-profit organization. Your proposed solicitation of vendors would not cause you to have a conflict of interest under Code §20-607(b) as it prohibits conflicts arising from the financial interests of *for-profit* organizations of which an official is a member.

Prohibition on the Solicitation of Certain Gifts, Loans and Favors

City Code Section 20-604 prohibits a City official from soliciting favors, gifts, loans, gratuities and services of substantial economic value that might reasonably be expected to influence one in his position in the discharge of his official duties. Code §20-604. It is important that your proposed solicitation of vendors for financial support for the conference would be for the financial benefit of the non-profit professional association, not for yourself. A personal financial benefit to a City official is a necessary element for a prohibited solicitation or prohibited gift to be present under Code Section 20-604. *See* Board Opinion 2009-006 at 5-7 (concluding that a proposed arrangement would be a gift to the City, not a gift to the City official, and therefore would not be prohibited by Code §20-604); Board Opinion 2009-001 at 3 (same); Solicitor's Opinion 93-8 ("[Code Section 20-604] has consistently been interpreted to prohibit gifts that inure to the personal and private benefit of the City official who receives it, and not to a gift to the City to defray expenses incurred in connection with official duties."); Solicitor's Opinion 93-31 (advising that under the City ethics laws a financial benefit to a City official is necessary for a gift to be prohibited). Your proposed solicitation of vendors is not prohibited by Code Section 20-604 because you would not be seeking a personal financial benefit.

Despite the absence of a Code violation, there may be a public perception that your solicitation would be coercive for vendors over whom you have authority or that you would be using your public office for the financial benefit of an organization to which you belong. *See* Board Opinion 2009-001 at 4 (advising that an appearance of impropriety was present where the head of a City office proposed soliciting a donation of significant value for the City office from a firm that was subject to official action by that office). You may wish to avoid this appearance of impropriety.

If you were to solicit City vendors for financial contributions to the non-profit professional association, then the City's non-competitively bid contract reform law may require the vendors to disclose the solicitation, the amount given in response, and to whom. This disclosure requirement applies to applicants and contractors for non-competitively bid contracts, not to City officials. *See* Code §§17-1402(1)(b)(i)(.4), 17-1402(1)(e)(iii); the text of these Code sections is at Appendix A.

B. Vendor-sponsored Conference Events

You and your employees can attend meals and social events that are part of the non-profit association's conference and that are sponsored and funded by vendors who have contracts with your City office or with the City of Philadelphia. This would not involve a prohibited gift or a conflict of interest under the City Code. *See* Code §§20-604, 20-607.

You will be helping plan and run the conference in your official capacity, and you and your staff will be attending the conference in your official capacities. It is part of your work for your City office and the City. The fees for your attendance will be paid by your City office. Your City office is a member of the non-profit professional association, and all members of the association will be benefiting from the financial support provided by vendors for conference events. In this context of a professional conference, you would not be receiving a personal financial benefit by attending vendor-sponsored conference events. This situation stands in contrast to a vendor separately taking you to a social event for your enjoyment and directly providing you a personal financial benefit. As explained in Discussion Section A, a personal financial benefit or interest would be necessary to cause a conflict of interest or prohibited gift under the City Code.

You are required to file annually the City financial disclosure form. Code §20-610(1). Your attendance at vendor-sponsored conference events does not involve a gift to you and therefore would not result in any gifts that you must report on the City financial disclosure form. *See* Code §20-610(2)(f). In terms of disclosure requirements, the Board also has jurisdiction over the City's lobbying law, the City's campaign finance law, and the portion of the non-competitively bid contract reform law that involves material misstatements of certain required disclosures. Code §§20-606(1)(e), 20-610, 20-613(1)(a); Code Chapters 20-1000, 20-1200. None of these laws have relevant disclosure requirements. As a result, under the City ethics laws you and your staff would not be required to disclose attendance at vendor-sponsored conference events.

C. State Ethics Act

The State Ethics Act imposes restrictions on public officials and employees regarding conflicts of interest, gifts and financial disclosure that are in addition to, and in some cases different from, those imposed by City ethics laws. *See* 65 Pa.C.S. §§1103(a),(b), (c), 1104(a). Some of the differences between the State Ethics Act and the City ethics laws are material to the facts and questions you have presented, and therefore it is best for you to seek advice from the State Ethics Commission. Relevant provisions of the State Ethics Act are outlined below for your information.

A public official has a conflict of interest under the State Ethics Act if he uses the authority of his office or confidential information received through his holding public

office for the private pecuniary benefit of himself, immediate family members, and businesses with which he is associated. 65 Pa.C.S. §1102; *see also* State Ethics Commission Order 09-044 (finding a violation of the State Ethics Act conflict of interest restriction when a public employee used the authority of his public position and access he had to Commonwealth vendors and subcontractors to solicit gifts, sponsorships and discounted services for a business with which he was associated). The term “business” includes non-profit entities. *Rendell v. State Ethics Commission*, 983 A.2d 708, 716-17 (Pa. 2009) (holding that the term “business” as defined in the State Ethics Act should be interpreted to include non-profit entities); State Ethics Commission Advice of Counsel 12-513 at 3 (“A non-profit entity is a ‘business’ as that term is defined by the Ethics Act.”). As a result, a State Ethics Act conflict of interest can arise based on an official’s use of the authority of his office for the pecuniary benefit of a non-profit entity with which he is associated. This is noteworthy given the contrast to the City Code’s conflict of interest restriction and the fact that your questions relate to a non-profit organization.

The State Ethics Act also prohibits public officials from soliciting gifts and things of monetary value based on an understanding that the public official would be influenced by the gift in exercising his official action or judgment. 65 Pa.C.S. §1103(c). The State Ethics Act does not prohibit a public official from accepting “no-strings-attached” gifts, but such gifts can form the basis of a conflict of interest if the public official takes action in furtherance of the interests of the gift giver. State Ethics Commission Advice of Counsel 12-524 at 4. The State Ethics Commission has advised that generally when a public official has received items that could form the basis of a conflict of interest under the State Ethics Act, the official must abstain from acting in matters pertaining to the gift giver. *Id.*

The State Ethics Act requires public officials to file an annual financial disclosure form. 65 Pa.C.S. §1104(a). The reporting requirements of the State form differ from the City form. For example, the State financial disclosure form distinguishes between gifts and transportation, hospitality and lodging, and it requires separate reporting with different thresholds for the two categories. 65 Pa.C.S. §1105(b)(6),(7).

In light of the facts and questions you have presented, it would be worthwhile for you to seek specific guidance on the State Ethics Act from the State Ethics Commission. It is advisable for you to seek either a confidential or a non-confidential advisory opinion issued by the State Ethics Commission, which would provide you a complete defense in any enforcement proceeding initiated by the Commission and is evidence of good faith conduct in any other civil or criminal proceeding, provided you disclose truthfully all the material facts and acted in reliance on the Advice. *See* 65 Pa.C.S. §1107(10), (11). The State Ethics Act would also provide you protection from certain penalties if you seek and rely on non-confidential advice from the City Solicitor. *See* 65 Pa.C.S. §1109(g).

Helpful information about seeking an advisory opinion from the State Ethics Commission is available at this page of the Commission's website: www.portal.state.pa.us/portal/server.pt/community/advisories/11219. As the webpage notes, a request for advice from the State Ethics Commission should be directed to: State Ethics Commission, Attention: Legal Division, Room 309 Finance Building, P.O. Box 11470, Harrisburg, Pa 17108-1470.

V. Conclusion

In this Opinion, the Board of Ethics has addressed whether the proposed future conduct, not any past behavior, is permissible only under the City laws over which the Board has jurisdiction. *See* Code § 20-606(d)(ii); Board of Ethics Reg. 4, §§4.2, 4.3. Ethics advisory opinions are highly fact-specific, and this Opinion is predicated on the facts you provided as stated in the original Opinion.

City officials and employees who want to know whether conduct they are contemplating is permissible should seek and rely on an advisory opinion issued about their specific situations. If you are concerned about particular situations that vary from the facts presented here or that are related to principles described only generally in this Opinion, you should ask for specific advice on the application of the ethics laws to those particular facts.

Thank you for being concerned about compliance with the City's ethics laws and for seeking advice. Since you requested a non-public opinion, the original Opinion will not be made public. As required by the City Code, this version of the Opinion that is redacted to conceal facts that are reasonably likely to identify you will be published on the Board's website. Please let Board Staff know if you have any questions or concerns.

BY THE PHILADELPHIA BOARD OF ETHICS¹

Michael H. Reed, Esq., Chair
Judge Phyllis W. Beck, (Ret.), Vice-Chair
Sanjuanita González, Esq., Member
Brian J. McCormick, Jr., Esq., Member

¹ The Board currently has one vacancy.

Appendix A: Excerpts of Relevant Law

I. City Code § 20-604. Gifts, Loans and Favors to City Personnel.

(1) No member of Council or other City officer or employee, shall solicit, accept or receive any gift, loan, gratuity, favor or service of substantial economic value that might reasonably be expected to influence one in his position in the discharge of his official duties, from any person, firm, corporation or other business or professional organization.

(2) No person, firm, corporation or other business or professional organization shall offer, make or render any gift, loan, gratuity, favor or service of substantial economic value to any member of Council or other City officer or employee which might reasonably be expected to influence such officer or employee in the discharge of his official duties.

II. City Code § 20-607. Conflict of Interest.

(a) Unless there is public disclosure and disqualification as provided for in Section 20-608 hereof, no member of Council, or other City officer or employee shall be financially interested in any legislation including ordinances and resolutions, award, contract, lease, case, claim, decision, decree or judgment made by him in his official capacity, or by any board or body of which he is a member nor shall any financial interest be held by a parent, spouse, Life Partner, child, brother, sister or like relative-in-law, or by any person, firm, partnership, corporation, business association, trustee or straw party for his or her benefit, nor shall a member of Council or other City officer or employee be a purchaser at any sale or vendor at any purchase made by him in his official capacity. This latter prohibition shall apply so as to prevent a parent, spouse, child, brother, sister or like relative-in-law or any person, firm, partnership, corporation, business association, trustee or straw party from being such purchaser or vendor for or on behalf of the member of City Council, City officer or employee.

(b) In the event that a financial interest in any legislation (including ordinances and resolutions) award, contract, lease, case, claim, decision, decree or judgment, resides in a parent, spouse, Life Partner, child, brother, sister, or like relative-in-law of the member of City Council, other City officer or employee; or in a member of a partnership, firm, corporation or other business organization or professional association organized for profit of which said member of City Council, City officer or employee is a member and where said member of City Council, City officer or employee has knowledge of the existence of such financial interest he or she shall comply with the provisions of Section 20-608(a)(b)(c) of this ordinance and shall thereafter disqualify himself or herself from any further official action regarding such legislation (including ordinances and resolutions) award, contract, lease, case, claim, decision, decree or judgment.

(c) No member of Council or other City officer or employee shall become financially interested, subsequent to final action, in any legislation including ordinances and resolutions, award, contract, lease, case, claim, decision, decree or judgment made by him in his official capacity, during his term of office or employment and until two (2) years have elapsed since the expiration of service or employment in the term of office of said member of Council or other City officer or employee.

This prohibition shall apply so as to prevent a parent, spouse, Life Partner, child, brother, sister or like relative-in-law or any person, firm, partnership, corporation, business association, trustee or straw party from becoming financially interested for or on behalf of a member of City Council, City officer or employee within said two (2) year period.

III. City Code § 17-1402. Open and Public Process Required For Non-Competitively Bid Contracts.

(1) A Non-Competitively Bid Contract shall be awarded in compliance with the following:

....

(b) Mandatory Disclosures.

(i) An Applicant must disclose, by completing and signing disclosure forms attached to the application:

....

(.4) The name and title of each City officer or employee who, within two years prior to the date the application must be filed, asked the Applicant, any officer, director or management employee of the Applicant, or any Person representing the Applicant, to give money, services, or any other thing of value (other than a Contribution as defined in § 17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in § 17-1401) given to any Person in response to any such request. The Applicant shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request

....

(e) Every Non-Competitively Bid Contract shall include the following provisions:

....

(iii) The Contractor shall, during the term of such contract and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked the Contractor, any officer, director or management employee of the Contractor, or any Person representing the Contractor, to give money, services, or any other thing of value (other than a Contribution as defined in § 17-1401) to any Person,

and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in § 17-1401) given to any Person in response to any such request. The Contractor shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request. Such disclosure shall be made on a form provided by the City Agency awarding the contract, and the form shall be signed and filed with such agency within five business days after a request was made or a payment in response to a request was made, as the case may be. The City Agency receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.