



CITY OF PHILADELPHIA

BOARD OF ETHICS
ONE PARKWAY BUILDING
1515 Arch Street
18TH Floor
Philadelphia, PA 19102-1504
(215) 686 – 9450
FAX 686 – 9453

Philadelphia Board of Ethics Nonpublic Board Opinion No. 2013-002¹

February 11, 2013

Jeffrey Barg
Senior Manager, Urban Planning and Policy
Pennsylvania Horticultural Society
100 N. 20th Street, 5th Floor
Philadelphia, PA 19102

Re: Gifts / Free Attendance to Flower Show Events

Dear Mr. Barg:

You have requested a nonpublic² advisory opinion on whether there are any issues under the Public Integrity Laws if the Pennsylvania Horticultural Society (“the Society”) were to provide to certain City officials and employees free tickets or free admission to various events associated with the 2013 Philadelphia Flower Show, to be held in the Convention Center on March 2-10, 2013 (including a Preview Party on March 1). This Opinion addresses only issues of prohibited gifts under the City Code.³

¹ On February 20, 2013, the requestor approved the Board releasing, as public, this Opinion.

² See note 1.

³ You have separately asked for a public Board Opinion on issues related to whether the provision of such gifts impacts on the question of whether the Society qualifies as a principal under the Lobbying Chapter, and is thus required to register with the Board and report expenses. The Board expects to consider this separate request in public session at its regular monthly meeting on February 20, 2013.

Executive Summary

Based on the facts that you have provided and for the reasons hereinafter set forth, you are advised that the Pennsylvania Horticultural Society may provide to certain City officials and employees, free of charge, invitations and/or tickets to events connected with the 2013 Philadelphia Flower Show, without violating Code Section 20-604 or causing any of the recipients to violate the Code gift provision.

Introduction

You advise that the Society plans to provide to certain City officials and employees, free of charge, invitations and/or tickets to three different events, as follows:

- 1) General Admission tickets to the Flower Show, \$27 face value each.
- 2) Invitations to a reception and tour of the show. Invited guests will be charged \$20 to attend. City employees invited will not pay.
- 3) Invitations to the Preview Party, \$400 face value each.

You have advised that 5 City officials/employees will receive only 1 General Admission ticket each, for a gift of \$27 to each employee/official.

You have advised that 1 City official (the Mayor) will receive two invitations to the Preview Party (for himself and Mrs. Nutter), for a gift of \$800. If the Mayor attends, it is anticipated that he will make some welcoming remarks on behalf of the City.

You have advised that approximately 11 City officials/employees will be invited *gratis* to two events: (a) the reception and tour, for a gift of \$20 to each employee/official; and (b) the Preview Party, for a gift of \$400 to each employee/official. The gift to each employee/official will be valued at approximately \$420.

You have advised that the 17 City Council Members will be invited *gratis* to two events: (a) the reception and tour, for gifts of \$20 to each Councilmember; and (b) the Preview Party, for a gift of \$400 to each Councilmember. In addition, each Councilmember will receive 6 General Admission tickets for a gift of \$162 to each Councilmember, resulting in a total value of \$582 for each Councilmember.

The Philadelphia Code and the Commonwealth's Ethics Act contain provisions related to gifts to City elected officials, appointed officials, and employees.

Philadelphia Code – Gifts

Section 20-604 of the Code provides:

§ 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.

Code Section 20-601(8) defines “gift” as “A payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value, unless consideration of equal or greater value is received.”

The Philadelphia Flower Show is a major international event. It is the world's oldest and largest indoor flower show and has been held in the City since 1829. The Board of Ethics concludes that providing an official presence at a cultural and tourism event of this importance is a proper function of City government. Therefore, attendance by City officials connected with this event is appropriate and may be provided *gratis* without raising issues of improper gifts to City officials and employees.

It is noted that this Board had previously directed its staff to prepare a proposed Regulation to provide a comprehensive interpretation of various issues that commonly arise under the gift provisions of the Public Integrity Laws. Promulgation of a regulation is a process that maximizes public input and careful review. Generally, public notice is advertised, a public hearing is held, and the proposed regulation is reviewed and approved by the Law Department. The Board prefers to defer any further detailed interpretation of the gifts rules until such a process can be completed.

In view of the above considerations, the Board has reviewed the facts presented by you, and has concluded that, considering all the facts of this particular matter, none of the proposed invitations or free tickets listed above would constitute prohibited gifts under the City Code.

State Ethics Act

The gifts provisions of the State Ethics Act, 65 Pa.C.S.A. Sect. 1103(b) and (c) basically prohibit bribes. That is, there must be an understanding that the public official receiving the gift would be influenced by the gift in exercising his official action or judgment. This does not appear to be an issue from the facts you provide.

For specific guidance on the State Ethics Act, you can 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 act in reliance on the advice. *See* 65 Pa.C.S. §1107 (10), (11). The State Act would also provide you protection from penalties if you seek and rely on non-confidential advice from the City Solicitor. *See* 65 Pa.C.S. §1109(g).

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

Conclusion

Based on the facts that you have provided, you are advised that the Society may provide the invitations and tickets proposed, without violating Code Section 20-604 or causing any of the recipients to violate the Code gift provision. Specific advice concerning the Lobbying Chapter of the Code will be provided in a separate Opinion.

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, this Opinion has been predicated on the facts that were provided to the Board of Ethics. We do not conduct an independent inquiry into the facts. Further, we can only issue advice as to future conduct. Although previous opinions of this office that interpret statutes are guidance as to how this office will likely interpret the same provision in the future, previous opinions do not govern the application of the law to different facts. Ethics opinions are particularly fact-specific, and any official or employee wishing to be assured that his or her conduct falls within the permissible scope of the ethics laws is well-

advised to seek and rely only on an opinion issued as to his or her specific situation, prior to acting. In that regard, to the extent that this opinion states general principles, and there are particular fact situations that you may be concerned about, you are encouraged to contact the Board for specific advice on the application of the ethics laws to those particular facts. For information on requesting reconsideration of an Advisory Opinion, see Regulation No. 4 at Subpart H.

Thank you for being concerned about ethics compliance and for recognizing a situation that could present issues under the ethics laws. Since you have requested nonpublic⁴ advice from the Board of Ethics, we will not make this letter public, but we will be required to make public a revised version, edited to conceal facts that are reasonably likely to identify you and any City officer or employee, as mandated by Code Section 20-606(1)(d)(iii) and Board Regulation No. 4.

By the Board:

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

[There is a vacancy on the Board, due to the resignation of William H. Brown III, Esq.]

⁴ See note 1.