



CITY OF PHILADELPHIA

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Philadelphia Board of Ethics Board Opinion 2013-003

February 20, 2013

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

Re: Lobbying / Free Attendance and Tickets to Flower Show Events

Dear Mr. Barg:

You have requested a public advisory opinion on whether certain actions by the Pennsylvania Horticultural Society (“the Society”) would be considered “lobbying,” such that the Society would qualify as a principal under the Lobbying Chapter of the City Code, and thus be required to register with the Board and report lobbying expenses. Specifically, you ask if it would be lobbying if 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 and a reception on March 8).

Executive Summary

Based on the facts that you have provided, and for the reasons set forth below, you are advised that the Pennsylvania Horticultural Society may provide to certain City officials and employees, free of charge, invitations for them to attend reception events connected with the 2013 Philadelphia Flower Show (the Preview Party and the March 8 reception and tour), without the value of such expenses being considered “lobbying,” such that the Society would qualify as a principal under the Lobbying Chapter of the City Code, and thus be required to

register with the Board and report lobbying expenses. However, please be advised that General Admission tickets do not meet the "reception" exception.

Introduction: Facts

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) Invitations to the Preview Party, including food to be provided, \$400 face value each, based on the ticket price to the public.
- 2) Invitations to an invitation-only reception and tour of the show, including food to be provided at the reception. Invited guests will be charged \$20 to attend. City employees invited will not pay.
- 3) General Admission tickets to the Flower Show, \$27 face value each.

You have also advised as follows:

- 1) Five City officials/employees will receive only 1 General Admission ticket each, for a value of \$27 to each employee/official. The overall total to these recipients will be approximately \$135.
- 2) One City official (the Mayor) will receive two invitations to the Preview Party (for himself and Mrs. Nutter), for a value of \$800. If the Mayor attends, it is anticipated that he will make some welcoming remarks on behalf of the City. The overall total for this recipient will be approximately \$800.
- 3) Approximately 11 City officials/employees will be invited *gratis* to two events: (a) the reception and tour, for a value of \$20 to each employee/official; and (b) the Preview Party, for a value of \$400 to each employee/official. The total to each of these employees/officials will be valued at approximately \$420. The overall total for these recipients will be approximately \$4,620.
- 4) The 17 City Council Members will be invited *gratis* to two events: (a) the reception and tour, for a value of \$20 to each Councilmember; and (b) the Preview Party, for a value of \$400 to each Councilmember. In addition, each Councilmember will receive 6 General Admission tickets for a value of \$162 to each Councilmember, resulting in a total value of \$582 for each Councilmember. The overall total for these recipients of approximately \$9,894.

The total value of the proposed tickets and events from the Society to City officials and employees is \$15,449.

Applicable Law and Analysis

In general, a person or entity that, on its own behalf, engages in “lobbying” of a City official or employee, and if expenditures by that person or entity on lobbying exceed \$2,500 in a quarter, that person or entity must register with the Board of Ethics as a principal, under the Lobbying Code, within 10 days of engaging in lobbying. See Code Sections 20-1202(1) and 20-1204(6). Also see Paragraphs 9.3 and 9.24(F) of Board of Ethics Regulation No. 9.

It is therefore necessary to determine whether it is “lobbying” if the Society were to provide the free tickets or free admission to various 2013 Flower Show events that you have described to certain City officials and employees. It is also necessary to determine whether any of the exemptions or exceptions in the Lobbying Code and Regulation 9 apply to the facts you have described.

The definitions of the terms “lobbying” and “gift” are central to this analysis. “Lobbying” is defined in Code Section 20-1201(18) and Para. 9.1(X) of Regulation 9 as “[a]n effort to influence legislative action or administrative action” by direct or indirect communication, incurring office expenses, and “providing any gift, hospitality, transportation or lodging to a City official or employee for the purpose of advancing the interest of the lobbyist or principal.” (Emphasis added.) Thus, a person or entity who provides a gift to an applicable City official or employee under circumstances that indicate a purpose of advancing the interest of the donor is “lobbying” even if there is no communication or expense related to any communication with the recipient City official or employee regarding any specific City official action.

A “Gift” is defined in Code Section 20-1201(12) and Para. 9.1(R) of Regulation 9 as “[a]nything that is received without consideration of equal or greater value” The free tickets and admissions to the Flower Show events are things that are “received without consideration of equal or greater value” and are therefore within the definition of “gift” in the Lobbying Code and Regulation 9. Further, because these gifts, which total in excess of \$2,500, are being given “to a City official or employee for the purpose of advancing the interest of the lobbyist or principal,” they would generally be expenditures sufficient to trigger lobbying registration and reporting requirements in 2013 for the Society as required under Code Sections 20-1203(2)(e) and 20-1203(2)(i).

However, the Lobbying Code, as interpreted in Regulation 9 at Paragraph 9.17(A), contains an exception for attendance by an official at a reception, under specific circumstances, as follows:

9.17 Reporting Expenses for Gifts, Hospitality, Transportation and Lodging.

(A) In accordance with Code Section 20-1203(2)(e), each expense report must include any expenditure on any gift . . . provided to a City official or employee, where the fair market value of the gift . . . received exceeds the value of the cost borne by the official or employee.

EXCEPTION: When a City official or employee attends a reception in connection with his or her public office or employment at the invitation of and hosted by an organization and, at the reception, receives food, beverage, entertainment, and admission without charge, the fair market value of the same shall not be considered a gift to the individual official or employee within the meaning of Code Chapter 20-1200. Accordingly, the reception host is neither required to report the related expenditure on any expense report required to be filed under this Regulation or City Code Chapter 20-1200 nor to include it in the calculation of any reporting thresholds under this Regulation or City Code Chapter 20-1200. Provided, however, that if lobbying covered by Code Chapter 20-1200 occurs at such a reception, such lobbying activity and any related expenditure must be reported pursuant to Chapter 20-1200 and this Regulation.

Although this provision is under the caption of “Expense Reporting,” it is important to note that the exception also provides that “the reception host is neither required to report the related expenditure . . . nor to include it in the calculation of any reporting thresholds under this Regulation or City Code Chapter 20-1200.” Thus, expenditures that meet this exception need not be included in the calculation of the \$2500 threshold for determining whether the Society must register as a principal.

Accordingly, if the invitations to the reception and tour and to the preview party of the Flower Show described above meet the “reception” exception at Paragraph 9.17(A), and if the Society has done no other lobbying so far in 2013 (or if any such lobbying has not reached the \$2500 threshold), then the Society need not yet register with the Board, for 2013, as a principal under the Lobbying Chapter of the City Code.

Definition of "Reception"

The term "reception" is not defined in Chapter 20-1200 of the Code, nor in Regulation 9. The Statutory Construction Act provides that, where not otherwise defined, "words and phrases shall be construed according to rules of grammar and according to their common and approved usage." 1 Pa.C.S. §1903(a). The Merriam-Webster dictionary defines "reception" as "a social gathering often for the purpose of extending a formal welcome." The Society calls the March 8 event a "reception" and it is limited to those invited, as appropriate for a reception. The March 1 "Preview Party" is also limited by the price of admission, and we are advised that the Mayor will make welcoming remarks. We are advised that The Philadelphia Flower Show is the world's largest indoor flower show, annually attracting 275,000 visitors from all 50 states. Every year the show generates \$63 million of economic activity for the Greater Philadelphia region, including hundreds of jobs, more than 22,000 hotel room stays, and \$8 million in tax revenue. Accordingly, this event is unique, and the Board's conclusion as to this matter is particularly limited to these unique facts.

Applying the above considerations, the Board concludes that the March 8 "reception and tour" and the March 1 "Preview Party" are each a "reception" as that term is used in Code Chapter 20-1200 and in Regulation 9. Accordingly, the Board concludes that the exception quoted above from Paragraph 9.17(A) of the Regulation applies and the provision of admission and tickets to City officials and employees for their own official attendance¹ at either event is not "lobbying" under the Code and the value of these expenses need not count in calculating whether the Society has passed the \$2500 threshold for registration with the Board as a principal.

However, General Admission tickets would not meet this exception. Even if used personally by any Councilmember, the Flower Show itself is plainly not a "reception." The value of the tickets to each Councilmember is \$162. Accordingly, since the total value of such tickets for all 17 Councilmembers would be \$2,754, and the five tickets to other employees would add \$135, that total would exceed the \$2500 threshold and require registration and reporting by the Society.

Conclusion

Based on the facts that you have provided, you are advised that the Society may provide the invitations proposed for the two receptions, without the value of such expenses

¹ In the case of the Mayor, attendance of the First Lady of Philadelphia as well would be considered part of the "reception exception."

being considered “lobbying,” such that the Society would qualify as a principal under the Lobbying Chapter of the City Code, and thus be required to register with the Board and report lobbying expenses. General Admission tickets do not meet the “reception” exception. This Opinion does not address other law related to gifts to public officials and employees.

In keeping with the concept that an advisory opinion of this Board 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 and lobbying 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 laws under our jurisdiction 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.

Since you have requested public advice from the Board of Ethics, we will make this letter public, 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.]