



CITY OF PHILADELPHIA

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**Philadelphia Board of Ethics
Non-Public Board Opinion No. 2014-003**

September 17, 2014

Re: Wedding-Related Gifts

Dear City Employee:

You have requested a non-public advisory opinion about how the City ethics laws apply to a number of gift-giving scenarios that are related to your upcoming wedding. You are a City employee, and you plan to have City officers and employees attend your wedding reception. You anticipate that you will receive wedding gifts from these guests. The City gift law limits your ability to accept gifts from persons who are seeking official action from you or who have a financial interest you can substantially affect through official action. Based on the facts you have provided, it does not appear that any such persons are among the proposed guests you have identified. As a result, the City gift ordinance does not restrict your acceptance of gifts from these guests. In addition, the gift law permits you to provide free attendance at your wedding reception to any City officer or employee.

I. Jurisdiction

The Board of Ethics has jurisdiction to administer and enforce all Philadelphia Home Rule Charter (“Charter”) provisions and ordinances pertaining to ethical matters. Charter §4-1100. The Charter and the 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 for seeking an advisory opinion and for requesting reconsideration of an advisory opinion issued by the Board. Board Regulation 4, ¶¶ 4.0, 4.26.

II. Questions Presented

1. Does the City gift law permit you to invite City officers and employees to attend your wedding reception?

Yes, you are permitted to invite City officers and employees to attend and receive hospitality at your wedding reception, even if you are seeking official action from them or you have a financial interest they are able to substantially affect through official action.

2. Does the City gift law permit you to provide a non-cash gift worth less than \$99 to a City employee who works for the head of your City agency and who is a member of your wedding party?

Yes, the City gift law permits such a gift.

3. Does the City gift law permit you to accept wedding gifts from guests who include your superior, your co-workers, and other City officials?

Yes, you are permitted to accept wedding gifts from the guests you have identified without restriction under the City gift law.

III. Facts Provided

You provided detailed facts about your City employment and your wedding guests that have been redacted here. You are a City employee, and you work for a City official who is your immediate superior (“Superior”). Your Superior makes hiring decisions for the unit you work in and sets your salary. You report directly to your Superior and communicate with your Superior personally about your City work. Your Superior sends you to do certain work outside the office. You make recommendations to your Superior about events to attend.

You will be getting married in the fall of 2014. You plan to invite approximately 130 people to the wedding. You plan to host a wedding reception that will include dinner, dancing, and entertainment. You have not given your wedding guests any specific instructions concerning gifts.

You plan to invite your Superior to your wedding reception. You would like to invite two other City officials who work in your agency. You do not interact in an official capacity with either of these City officials. You also anticipate inviting two work colleagues from your unit, each of whom is a City employee who reports to your Superior. You work with these colleagues and pass information and transmit documents to one another as part of your duties.

You have invited Person A, a friend whom you have known since high school, to be a member of your wedding party and to attend your wedding reception. Person A is a

City employee who works for the head of your City agency. You have informal contact with Person A around the agency where you work, but you do not seek assistance from Person A in an official capacity. Your City work and Person A's City work do not overlap. You would like to give Person A a non-cash gift worth less than \$99 for being a member of your wedding party.

You do not intend to invite any officials from other City agencies or any City or State registered lobbyists to your wedding.

IV. Discussion

The wedding-related gift-giving scenarios that you have asked about require application of the City gift law that is found at Code Section 20-604 and was amended effective March 31, 2014.

A. The City Code Gift Restriction

The City gift ordinance restricts the acceptance of gifts by City officers and employees that are given by certain persons. Reciprocally, the ordinance restricts the offering or giving of gifts by certain persons to City officers or employees. 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). Attendance at your wedding, which will include food, drink and entertainment that you will provide to guests, will be a gift, just as the items of value you will receive from wedding guests and will give to members of the wedding party will be gifts.

The text at the heart of the City gift restriction provides:

(1) No City officer or employee shall accept or receive gifts worth more than \$99.00 in the aggregate per calendar year or any gifts of money¹ from any person who is seeking official action² from that officer or employee or who has a financial interest³ at the time, or in close proximity to the time the gift is received, which the officer or employee is able to substantially affect through official action. An officer or employee may not solicit gifts of any value from a person who is seeking official action from that officer or employee or who has a financial interest the officer or employee is able to substantially affect through official action.

¹ Gifts of money include cash, checks, money orders, and pre-paid debit, gift and credit cards. Code §20-601(16).

² Official action is an act or omission taken by a City officer or employee in his or her official capacity that requires discretion and is not ministerial in nature. Code §20-601(17).

³ A financial interest is an interest involving money or its equivalent or an interest involving any right, power or privilege that has economic value. Code §20-601(9).

(2) No person shall offer, make or render gifts worth more than \$99.00 in the aggregate per calendar year or any gifts of money to any City officer or employee if the person is seeking official action from that officer or employee or has a financial interest at the time, or in close proximity to the time the gift is received, which the officer or employee is able to substantially affect through official action.

Code §20-604(1)-(2).

Thus, the gift law only limits gifts to City employees from persons (1) who are seeking official action from a gift-receiving City 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 employee is able to substantially affect through official action. We will refer to these two categories of potential gift-givers by the shorthand “restricted sources” for the sake of convenience. A City employee may not accept any gifts of money from a restricted source and may only accept non-cash gifts worth \$99 or less in the aggregate in a calendar year. In order to answer the questions you have posed, we must determine whether the proposed gift-giving that you describe would involve any restricted sources or implicate any exemptions provided by the gift law.

1. Inviting City Officers and Employees to Your Wedding Reception

The gift restriction lists certain non-cash gifts that a City officer or employee may accept, but not solicit, notwithstanding the fact that the person giving the gift is a restricted source. Code §20-604(3). The Board interprets this list of exemptions to mean not only that City employees may accept such gifts in values greater than \$99 annually, but likewise that restricted sources may offer or give these gifts to City officers and employees in values above the \$99 annual limit.

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). Your wedding reception qualifies for this exemption because marriage is a major life event, and the reception will not be a ticketed event. Code §20-601(15). For these reasons, the gift law does not prohibit you from inviting any City officers or employees to attend and receive hospitality at your wedding reception, and it does not prohibit them from accepting the hospitality you will provide. This is the case regardless of the value of the dinner and

entertainment you provide and regardless of whether you or your guests who are City officers and employees are restricted sources for one another.⁴

2. Giving a City Employee a Gift for Being a Member of the Wedding Party

Person A works for the head of your City agency and is a member of your wedding party. You have asked whether you can provide Person A a non-cash gift worth less than \$99 for being a member of your wedding party. We note that the \$99 limit applies to the aggregate value of gifts from a single source in a calendar year, so even though this particular gift would be worth less than \$99 it is possible that the \$99 limit could be exceeded by other gifts you may give Person A in 2014. Even if that were the case, based on the facts you have provided, you are not a restricted source for Person A because you are not seeking official action from Person A, and Person A is not able to take official action as a City employee that substantially affects your financial interests. Accordingly, your proposed gift to Person A does not raise an issue under the City gift law.

3. Accepting Wedding Gifts As a City Employee

You anticipate that you could receive gifts from your wedding guests, who include your superior, co-workers, and other officials in your City agency. We examine below whether any of these individuals is a restricted source for you.

i. Your Immediate Superior

You anticipate that your immediate superior could give you a wedding gift. Your Superior oversees and directs all of your work activities. *See* Code §20-601(26) (defining superior in relevant part as “an officer or employee whose official duties include directing or evaluating the performance of an officer or employee”). A superior directing and instructing a subordinate employee to carry out his or her official duties is not engaged in “seeking official action” from that subordinate. Furthermore, based on your description of your job duties and your interactions with your Superior, it does not appear that you are able to take official action that substantially impacts your Superior’s financial interests. Consequently, your Superior is not a restricted source for you,⁵ and the

⁴ For example, you would be a restricted source for your Superior because your Superior is able to substantially affect your financial interests by evaluating your work, setting your salary, and deciding to retain you as a City employee.

⁵ We do not suggest that a superior could never be a restricted source for a subordinate. Circumstances, different from those you have described, could arise in which a superior is a restricted source for a subordinate by virtue of seeking official action from the subordinate or having a financial interest the subordinate is able to substantially affect through official action.

gift restriction does not limit the value of the wedding gift you are permitted to receive from your Superior.

ii. Co-Workers

You anticipate that the two colleagues from your unit you plan to invite to your wedding reception may give you wedding gifts. Based on the facts you have provided about your respective duties and interactions at work, neither of these co-workers has a financial interest that you are able to substantially affect through official action. Although you work alongside these two colleagues and you pass information to one another as part of your duties, in the interactions you have described they are not seeking official action from you. These two co-workers, therefore, are not restricted sources for you, and the gift restriction does not limit the value of the wedding gifts you are permitted to receive from them.

iii. Other Guests

You anticipate that you could receive wedding gifts from Person A and the two City officials who work in your agency you are inviting to your wedding. Based on the facts you have provided, none of these individuals seek official action from you or have a financial interest you are able to substantially affect through official action. Because they would not be restricted sources, the gift restriction would not limit the value of the wedding gifts you would be permitted to receive from these guests.

B. The State Ethics Act

The State Ethics Act, 65 Pa.C.S. §1101 *et seq.*, imposes restrictions on public employees regarding 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.⁶ The Board’s authority to provide advisory

⁶ Under the State Ethics Act, an objective analysis is applied to determine whether 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; *see also* 51 Pa. Code §11.1 (providing more detailed guidance on job duties that cause individuals to qualify as public employees); State Ethics Commission Advice of Counsel ##-### (relevant advisory opinion).

opinions on State law is limited. Board Regulation 4, ¶4.4. For this reason, we merely outline below the provisions of the State Ethics Act that may be relevant to your inquiry. You can seek advice concerning the application of the State Ethics Act to your situation from the State Ethics Commission or the City Law Department, either of which can provide binding guidance that provides protection from penalties or sanctions imposed for a violation of the Act. 65 Pa.C.S. §§1107(10)-(11), 1109(g).

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(a). Gifts worth \$250 or more in the aggregate per calendar year per source must be disclosed, 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.*

V. 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. 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.

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

BY THE PHILADELPHIA BOARD OF ETHICS⁷

Michael H. Reed, Esq., Chair
Judge Phyllis W. Beck, (Ret.), Vice-Chair
Brian J. McCormick, Jr., Esq., Member
Father C. Kevin Gillespie, Member

⁷ Board Member Sanjuanita González, Esq., did not participate in the approval of this Opinion.