

May 24, 2005

**Philadelphia Board of Ethics
Opinion No. 2005-01**

Evan Meyer, Senior Attorney
Law Department, 17th Floor
One Parkway Building
1515 Arch Street
Philadelphia, PA 19102

Re: ESP II Advisory Board Seat Expenses

Dear Mr. Meyer:

You have asked for an advisory opinion to assist you in providing legal advice to Anthony Johnson, Chief Investment Officer of the Philadelphia Board of Pensions and Retirement. Mr. Johnson has requested an opinion as to whether the ethics laws would restrict his ability to accept free meals, travel, and accommodations, and a monetary payment into the Pension Fund, in connection with his attending meetings of an advisory board on which you serve in connection with his role as Chief Investment Officer of the City's Pension Fund.

You report that you have been advised of the following facts: that the City's Pension Fund is an investor in European Strategic Partners II ("ESP II") a private equity limited partnership focusing on international investment opportunities. The City's Pension Fund thus became a limited partner. The City's Pension Fund was given a seat on the Advisory Board along with seven other limited partners. In general, Advisory Board members watch over the investments on behalf of all Limited Partners (LPs), offer varied opinions and viewpoints on investments, and act as sources for deal flow. You advise that Pension Board Staff (presumably Mr. Johnson himself) currently represents the Board on about ten Advisory Boards. Both Staff and the Pension Fund's alternative investment advisor, Franklin Park, attend as many annual meetings as possible, which often coincide with Advisory Board meetings. Advisory Board meetings can be quarterly, semi-annually, or at the very least annually. They also occur as necessary when a decision must be made regarding an investment. Our vote counts, but our attendance can be done by conference call. That is how General Partners (GPs) often organize Advisory Board meetings. However, there are times when our presence is preferred, particularly when the Advisory Board meetings occur during an annual meeting. Annual meetings consist of several presentations by the General Partners on the health of the fund and presentations by the underlying companies on their progress.

The size of an investor often dictates who gets an Advisory Board seat, but sometimes it is based on the relationship between the LP and the GP. For example, the City's Pension Fund was the first major investor to sign on to ESP I, and they agreed to give the Pension Fund a seat and a vote on the Advisory Board.

The Advisory Board meets twice a year (Scotland in June and London in December), and ESP II pays for a representative of each member to attend, including airfare, accommodations and 3,000 British Pounds. The Pension Board's legal advisor for investments, Divisional Deputy City Solicitor Henry Schwartz, advised that the 3,000 pounds "would go into the BPR treasury." It is not clear whether this refers to the assets of the Pension Fund that are invested in order to provide for future benefits, or the budget of the Board of Pensions that is used to pay the salaries and other expenses of Board administration, or some other account.

With regards to the provision of free food and meetings, you have stated that Mr. Johnson has advised as follows:

Typically, meals are served during the meetings. However, the evening dinners are more social. We have the opportunity to meet other LPs, casually talk to the GPs, and hear a keynote speaker discuss a topic that is related to investments or the political environment.

Expenses necessary to attending Advisory Board meetings

With respect to the airfare, accommodations, and meals during the meetings, it is not clear that these represent gifts. They could arguably be considered to be compensation or reimbursement of expenses associated with being a member of the Advisory Board. This would be considered "outside employment" if Mr. Johnson personally were the member. However, it appears that the seat on the Advisory Board more properly belongs to the City's Pension Fund, rather than Mr. Johnson personally. In that case, it becomes a question of whether the Pension Fund should be accepting these benefits and selecting Mr. Johnson to be the recipient of them. Since this is the same question as whether to accept a "gift to the City," we will apply that analysis.

The Board of Ethics adopted this policy in its Opinion No. 2004-02:

A gift may be accepted as a "gift to the City," if the following procedure is followed:

1. The gift must not simply be offered to and accepted by the City employee receiving the benefit of the gift. Ideally, a private entity wishing to make a gift to the City, such as attendance at a dinner or conference by certain mid-level managers, will make the offer to the appointing authority of any officials invited to attend. . . . That appointing authority should then make the decision as to which City employee/official is the logical person to represent the City at the dinner or conference or the like. However, an invitation extended directly to the official who is invited may be acceptable as a “gift to the City” if that official’s appointing authority approves acceptance of the invitation and is able to articulate a defensible justification why the invited official is the logical City employee to utilize that benefit, and if point #2 below is also met.

2. The approving official must be able to articulate a defensible justification as to a legitimate governmental purpose of the City that is advanced or assisted by the acceptance of this gift. In making this determination, the official must review the full facts of the extent and value of the gift. For example, if more than one official is a recipient, is the number of recipients appropriate? Does the gift include unnecessary extras unrelated to the governmental purpose? In determining whether a gift is justifiable, the official should consider whether the City would be willing to expend funds out of the City budget for a similar purpose.

In this matter, we conclude that “the approving official” is the Board of Pensions & Retirement. We believe that the Board should carefully consider the matter of these trips and consider whether it does not create a situation where, if the selection of an investment results in the Pension Fund having a seat on an advisory board that allows the Chief Investment Officer to make occasional expenses-paid trips to Europe, that might skew the judgment of the Chief Investment Officer as to which investments to recommend to the Pension Fund.

Nevertheless, we conclude that if the Pension Board decides that these limited partnership investments are being appropriately selected, and that it is important for the Chief Investment Officer to hold a seat on the Advisory Board and attend meetings, in order to appropriately monitor the investments of the Pension Fund, the Pension Board may accept the free travel, accommodations, and accompanying meals¹ as a “gift to the City.”

Absent such a determination, we conclude that the free travel, accommodations, and accompanying meals would be a personal gift to Mr. Johnson, which would be prohibited,

¹ The “accompanying meals” would include the “more social” evening dinners, which Mr. Johnson has advised you are provided by the conference host and are open to all the conference attendees.

not only by Executive Order No. 002-04, but also by Section 20-604 of the Philadelphia Code. Moreover, the receipt of such gifts would raise significant issues under Sections 1103(b), (c), and (d) of the State Ethics Act, 65 Pa.C.S. §§1103(b)-(d), and Section 10-105 of the Home Rule Charter.

The “stipend” of 3000 British Pounds

You advise that Mr. Johnson has stated that, in addition to airfare, accommodations, and meals, ESP II includes in the travel expenses a payment of 3000 British pounds. Under current foreign exchange rates, this represents in excess of \$5700 U.S. We presume that this payment is a fee paid to the Board of Pensions & Retirement and represents an investment return, much the same way that the Pension Fund receives fees for securities lending, directed brokerage commissions, and dividends on stocks. So long as none of this money personally benefits Mr. Johnson, we find that the payment raises no issues. However, we note that the receipt of this money provides a ready fund for the Pension Fund to pay the costs for any meals or other travel expenses that Mr. Johnson may incur on these trips, where it may be appropriate to decline an offer to have the expense paid by or the service provided by an outside source.

Sincerely,

Charisse R. Lillie
Chair