



# CITY OF PHILADELPHIA

BOARD OF ETHICS  
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**This Opinion is out-of-date because the City gift ordinance was significantly amended in March 2014.**

## Philadelphia Board of Ethics Formal Opinion No. 2012-004

October 17, 2012

Honorable Stephanie Singer  
Office of the City Commissioners  
Room 130 City Hall  
Philadelphia, PA 19107

### Re: Gift / Travel Reimbursement / Pew Foundation

Dear Chair Singer:

You have requested a formal advisory opinion on whether there are any issues under the Public Integrity Laws if you were to accept reimbursement from the Pew Foundation for transportation to a meeting of Election Directors of major US jurisdictions in Washington, D.C. on September 21, 2012.

### Executive Summary

Given the fact that your office provides no oversight over, contracts with, or other official action affecting the Washington DC office of the Pew Foundation, the Board finds that the proposed reimbursement is not a gratuity “for an act or omission in the course of [your] public work,” and there is no issue under Charter Section 10-105. For the same reason, the reimbursement cannot “reasonably be expected to influence” you, and thus there is no issue under the City Code’s gift provision. Accordingly, you are advised that you may accept the proposed reimbursement.

## Introduction

You advise that Pew has invited an employee of the City Commissioners' Office to "Pew's convening of election officials from the nation's largest counties and jurisdictions here at Pew's offices in Washington DC" and has offered to reimburse all participants for travel and lodging expenses. We are advised that the invitation, from David Becker, the Director, Election Initiatives, Pew Center on the States, was extended to the 15 largest jurisdictions in the country, one person from each. You advise that you would merely attend this conference, and are not a speaker, committee member, or otherwise providing services to the conference. You advise that you would not be seeking reimbursement for accommodations and that the only reimbursement would be for travel to Washington, D.C. of about \$250.<sup>1</sup>

As an elected official in City elective office, you are an officer of the City, as that term is used in the Public Integrity Laws. The Philadelphia Home Rule Charter, the Philadelphia Code, and the Commonwealth's Ethics Act contain provisions related to gifts to City elected officials.

## Philadelphia Home Rule Charter – Gratuities

Charter Section 10-105 provides, in relevant part:

### § 10-105. Gratuities.

No officer or employee of the City and no officer or employee whose salary or other compensation is paid out of the City Treasury shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work.

There is no indication in the facts that you have provided that the offer from the Pew Foundation to pay your expenses is in any way occasioned by, connected with, or in appreciation for any prior act or omission in your public work. Indeed, although we understand that the Pew Charitable Trusts are headquartered in Philadelphia, the email inviting you to this meeting came from the office of the Pew Center on the States in Washington, DC. Moreover, given that the function of the Office of the City Commissioners is primarily to serve as the Board of Elections for Philadelphia, it would appear that the official duties of your office would rarely, if ever, directly impact on the

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<sup>1</sup> Although you requested an advisory opinion prior to the September 21 Washington conference, and the Board considered this request at its September 19 meeting, the Board deferred this Opinion for further consideration. Accordingly, you have advised that you intended to pay for your travel and retain the receipts, pending issuance of this Opinion.

interests of the Pew Foundation. Nevertheless, you have advised our staff that you had previously had an informational meeting in City Hall with David Becker (who invited you to the Washington conference) to discuss various voting-related initiatives of the Pew Foundation. Also, the fact that Pew has invited you to this meeting in your official capacity is somewhat of a nexus between your official responsibility and the interests of Pew. That said, there is a legitimate governmental purpose of the City that is advanced by the acceptance of the reimbursement, namely, the opportunity for your office to learn how other large jurisdictions administer elections. Under these circumstances, we conclude that the proposed reimbursement is not a gratuity “for an act or omission in the course of [your] public work.” Accordingly, Charter Section 10-105 would not prohibit you from accepting reimbursement from Pew for your train fare.

### 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.”

One question under Code Section 20-604 is whether the gift is offered under circumstances that “might reasonably be expected to influence one in [your] position in the discharge of [your] official duties.” As the Board has previously stated, this means that we must determine whether the relationship between the donor and the recipient officer or employee, considering the recipient’s official duties, is such that the gift might reasonably be expected to influence the recipient in the discharge of his or her official duties. Formal Opinion No. 2009-001 at 3. In other words, we look at whether the official is in a position to take action that could affect the gift giver. This determination is

an objective one. The Board of Ethics does not evaluate the actual integrity of a particular officer. Rather, the consideration is whether an officer in that City position has the capacity to take official action that would affect such a donor. As discussed above, there would be little official action that your office could take that would affect the interests of Pew Foundation, except your attendance itself at this conference. Accordingly, the Board concludes that the “reasonably expected to influence” element of the test is not met, and, even if the reimbursement can be considered to be a gift to you, it is not prohibited under Code Section 20-604.

In light of the above conclusion, it is not necessary for the Board to reach the question of whether the reimbursement is a gift “of substantial economic value.” Neither this Board nor the City Solicitor has ever issued a ruling that establishes the threshold dollar amount for “substantial economic value.” Recognizing that such guidance may be helpful to City employees, we have directed our staff to begin work on a regulation addressing this and other issues raised by the various “gifts” provisions of the Public Integrity Laws.

#### 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 you may accept the offer of reimbursing your travel expenses to this conference, under the terms that you have outlined.

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.

Thank you for being concerned about ethics compliance and for recognizing a situation that could present issues under the ethics laws. Since you have not requested nonpublic advice from the Board of Ethics, we will make this letter public, as required by Code Section 20-606(1)(d)(iii).

By the Board:



Richard Glazer, Esq., Chair  
Michael H. Reed, Esq., Vice-Chair  
Judge Phyllis W. Beck (Ret.), Member  
Sanjuanita González, Esq., Member

[There is a vacancy on the Board, due to the resignation, on July 30, 2012, of William H. Brown III, Esq.]