

This Opinion is out-of-date because the City gift ordinance was significantly amended in March 2014.



CITY OF PHILADELPHIA

BOARD OF ETHICS
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**Philadelphia Board of Ethics
Non-Public Board Opinion 2013-006**

July 17, 2013

Re: Fundraising Event for a High-Level City Official to Pay Personal Debts

Dear Attorney:

You have requested a non-public advisory opinion on behalf of your client, a high-level City official (the “Official”), concerning a proposed fundraising event to collect money to pay her personal debts. You seek advice regarding the Official accepting unlimited gifts of money at the event from various people, including friends, City elected officials, acquaintances, and persons with whom she has no direct relationship. You have asked for guidance on how to comply with the Public Integrity Laws and in particular the City Code gift restriction.

The prospect of an important, high-level City official soliciting and accepting unlimited gifts of money through a fundraising event to pay personal debts is of great concern to us. The event you have proposed creates a significant risk for violations of the City Code gift restriction. It may also create the harmful public perception that access to or action by a powerful public official could be gained in this way. Personal gifts of money to powerful government officials evoke a specter of corruption and arouse public suspicion because they harbor the possibility of undue influence. Any appearance of the purchase of influence or the possible use of government power for personal gain is damaging to public confidence in City government. Due to the risks of the City gift restriction being violated and a public perception of impropriety, the Board of Ethics believes the proposed fundraising event is inadvisable, and we do not endorse such a course of action.

If your client nevertheless chooses to pursue a personal fundraising event, there are several restrictions she must follow in order to comply with the Public Integrity Laws. These restrictions are summarized here and are later discussed in greater detail:

- The Official or others soliciting on her behalf may not solicit or accept a gift of money, no matter how small, if it is solicited or given for an act or omission in the course of the Official's public work.
- The Official may not solicit or accept fundraising event donations of \$250 or more from the following sources (hereinafter, collectively "Prohibited Sources"), who would include the following:
 - i. A person who has interests the Official or her agency has the ability to affect through official action (other than interests shared by a large class of persons)
 - ii. A person seeking, or who has sought in the last six months, official action from the Official or from her agency
 - iii. A person doing business or seeking to do business with the Official's agency
 - iv. A person who conducts activities regulated by the Official's agency
 - v. A person who represents other persons who seek official action from the Official or her agency, who do business with her agency, or who conduct activities regulated by her agency
 - vi. Officials and employees of the Official's agency
 - vii. City officials and employees with whom the Official interacts in the course of her official duties
 - viii. A lobbyist, lobbying firm, or principal registered, or required to register, with the City or an individual who engages in lobbying subject to the City lobbying law at Code Chapter 20-1200.
- The Official or others acting on her behalf may not ask a Prohibited Source to give whatever amount of money he or she wishes to give. They must inform any Prohibited Sources whom they solicit that the sources cannot give the Official donations or other gifts worth \$250 or more in the aggregate in a calendar year.
- The Official may not have a Prohibited Source host a personal fundraising event for her.
- The Official may not have a Prohibited Source solicit or collect for her fundraising event total donations worth \$250 or more.

- The Official must disclose on her City financial disclosure form all money donations and other gifts from donors who give gifts worth \$200 or more in the aggregate per calendar year.
- The Official must disclose on her City financial disclosure form all gifts from hosts of the fundraising event who give gifts worth \$200 or more in the aggregate per calendar year. This would include the amounts the hosts donated to the Official, helped collect from others, and contributed to the event.
- The Official should keep detailed records of the fundraising event including the identity of the donors and their addresses, amounts of donations, and the costs and contributions of hosts or any others who assist with the event.
- The Official should seek advice regarding the State Ethics Act from the State Ethics Commission or the City Solicitor, especially with regard to the issues that follow in the bullets below.
- In conducting the fundraising event to collect money to pay her personal debts, the Official must comply with the State Ethics Act mandate that she not use the authority of her public office for her private pecuniary benefit.
- The Official must abstain from acting in matters pertaining to donors to the extent their gifts of money form the basis of a conflict of interest under the State Ethics Act.
- The Official must disclose on her State financial disclosure form gifts from donors who give gifts worth \$250 or more in the aggregate per calendar year as required by the State Ethics Act.

I. Factual Background¹

Person A and Person B, friends of the Official, would like to host a fundraising event and give the proceeds to the Official. Each donor could give whatever amount he or she wishes, and no set range or limit is anticipated for the gifts of money. The hosts would make solicitations by sending an email invitation to the event and following up with telephone calls. The event would be held at Person A's home. Checks would be made out to the Official and would be collected by the hosts and/or the Official. Cash would not be accepted.

¹ Your specific responses to questions posed by Board Staff provide additional facts and are available at Appendix A.

The gift givers would include individuals, not entities. It is possible that City elected officials and others in City government, including colleagues of the Official, may be invited and may attend the fundraising event, but the hosts and the Official would not solicit them for contributions or expect them to make any. However, if City elected officials or others in City government, including colleagues of the Official, offered to make or made donations, the hosts and the Official would accept them. The hosts might solicit persons known to them but unknown to the Official.

The Official would direct how the money that was raised through the fundraising event would be used. The money could be used to pay personal debts and other personal expenses of the Official.

You have informed us that Person B is a City lobbyist. Based on lobbying disclosure reports and other publicly available information, it appears that Person B is an official at a lobbying and community relations firm. This firm is engaged by a principal that has recently lobbied the Official's agency and the Official.

II. Jurisdiction and Relevant Law

The Board of Ethics has jurisdiction to administer and enforce all Philadelphia Home Rule Charter provisions and ordinances pertaining to ethical matters. Charter §4-1100. The City Code prohibits City officers and employees from soliciting gifts, loans, gratuities, favors, or services of substantial economic value that might reasonably be expected to influence those in their positions in the discharge of their duties. Code §20-604. The Charter prohibits City officers and employees from soliciting or accepting any compensation or gratuity in the form of money or otherwise for any act or omission in the course of their public work. Charter §10-105. The City Code requires certain City officials to file an annual statement of financial interests. Code §20-610.

The Charter and the City Code authorize the Board to render advisory opinions. Charter §4-1100; Code §20-606(1)(d). Board of Ethics Regulation 4 describes the procedures for seeking an advisory opinion, including how to request reconsideration of an opinion issued by the Board. Board Regulation 4, ¶4.26.

IV. Discussion

The Board finds the proposed fundraising event you have described to be ill-advised because it creates a serious risk for generating violations of the City Code gift restriction as well as an appearance of impropriety.

City Code Gift Restriction

City Code Section 20-604 prohibits a City official from soliciting gifts,² loans, gratuities, favors, or services of substantial economic value that might reasonably be expected to influence one in her position in the discharge of her official duties. Code §20-604(1). This Code Section also prohibits persons from offering, making, or rendering gifts, loans, gratuities, favors, or services of substantial economic value that might reasonably be expected to influence an official in the discharge of her official duties. Code §20-604(2). Two components – the value of a gift and the circumstances of the person giving it with respect to an official’s position – must be analyzed under this gift restriction, which requires both substantial economic value and a reasonable expectation of influence to be present for a solicitation or a gift to be prohibited. The analysis is objective, meaning we do not evaluate the integrity or financial circumstances of the gift-receiving official or the integrity or motivations of the gift giver. *See* Board Opinion 2012-004 at 3-4; Board Opinion 2009-001 at 3.

A. Substantial Economic Value

In terms of the value of the fundraising event gifts, your proposal of unlimited gifts of money, in which a single individual could be asked for or could give thousands of dollars or more, would create a strong potential for undue influence or the appearance of such influence and would necessarily exceed the gift restriction’s “substantial economic value” threshold. As discussed at the Board’s June public meeting, the Board is actively in the process of formulating a regulation that interprets Code Section 20-604. Our plan has been to set a specific value for “substantial economic value” through a regulation with the benefit of public input that the regulation process allows. A preliminary draft of the regulation that the Board expects to approve for public comment soon will set \$250 as the “substantial economic value” threshold and as the annual aggregate limit on gifts from a single gift giver who is, as is explained below, a prohibited source. Having a fundraising event with no donation limit creates the risk that the City gift restriction would be violated in cases where a prohibited source donates and reaches or exceeds the annual aggregate limit of \$250.

² The City Code’s definition of “gift” exempts political contributions reported as required by law; commercially reasonable loans made in the ordinary course of business; and gifts received from an official’s immediate family, which includes a spouse and minor children, or from any relative within the third degree of the official or the official’s spouse or a spouse of such relative. Code §20-601(8). Therefore, these avenues for raising funds fall outside the City Code gift restriction. Although the Code provides an exemption for gifts from family members, it does not provide one for gifts from friends or acquaintances. *See id.*

B. Might Reasonably Be Expected to Influence

A determination that a gift “might reasonably be expected to influence” one in an official’s position in the discharge of her official duties involves examining whether, in light of the official’s position and job duties, she is in a position to take official action that could affect or impact the interests of the gift giver. Board Opinion 2012-004 at 3-4; *see also* General Counsel Opinion 2010-510 at 4-5; General Counsel Opinion 2010-501 at 3. You stated that those invited and giving money at the fundraising event would be individuals who care about the Official personally and who would give without financial or political motive, and you also stated that the Official may accept money from individuals with whom she has no direct personal relationship. The representation that donors will have a caring motivation for giving the Official money is not relevant to whether there might be a “reasonable expectation of influence” under Code Section 20-604. Rather, we must look to whether the potential donors are likely to have interests that could be subject to official action by the Official or by the Official’s agency. *See* Solicitor’s Opinion 95-12 (concluding that a gift from a traveling circus would not be reasonably expected to influence an official because there was “no threat of an influence on official action” since the official’s agency probably could not significantly impact an organization that was in town less than two weeks per year); prior advisory Ethics Board Opinion E81-04 (advising that the Code gift restriction prohibited an official from accepting a gold watch from a local citizens organization because those who funded the gift by attending a dinner event included individuals and organizations that either directly or indirectly had and could be expected to have matters before the official’s agency).

The gift regulation the Board is currently working on will identify as prohibited sources certain categories of persons for whom a reasonable expectation of influence would exist. These persons are prohibited from giving gifts of substantial economic value to a City official, and an official would be prohibited from soliciting or accepting gifts of substantial economic value from them. The preliminary draft of the regulation that the Board expects to approve for public comment soon will identify the following persons as prohibited sources:

- i. A person seeking, or who has sought in the preceding six months, official action from the officer or employee or the officer’s or employee’s agency;
- ii. A person doing business or seeking to do business with the officer’s or employee’s agency;
- iii. A person conducting activities regulated by the officer’s or employee’s agency;
- iv. A person who has interests the officer or employee has the ability to affect through official action, but not when such interests are shared by a large class of persons;

- v. A person who represents other persons who seek official action from, do business with, or conduct activities regulated by the officer's or employee's agency;
- vi. A City superior, subordinate, or co-worker, including other City officials and employees who work in the same agency or with whom an officer or employee interacts in the course of his or her official duties; or
- vii. A lobbyist, lobbying firm, or principal registered, or required to register, with the City or an individual who engages in lobbying subject to the City lobbying law at Code Chapter 20-1200.

The Official may not solicit or accept gifts worth \$250 or more from any of these prohibited sources in a calendar year, including gifts they solicit or collect from others on her behalf. Accordingly, the Official or others acting on her behalf may not ask a prohibited source to give whatever amount of money he or she wishes to give. They must inform any prohibited sources whom they solicit that the sources cannot give the Official donations or other gifts worth \$250 or more in the aggregate in a calendar year.

Colleagues, subordinates, other employees of the Official's agency, and other City officials and employees with whom the Official interacts in the course of her duties are all Prohibited Sources. As explained below, Person B is also a Prohibited Source. It is not clear based on the facts you have presented whether any of the other people who would be solicited or who would donate are Prohibited Sources. We err on the side of caution and believe that it is reasonable to assume in the absence of contrary facts that there is a risk that other Prohibited Sources could be included and that, particularly in the absence of a limit, the gift restriction could be violated.

C. Prohibited Source as Event Host Would Violate Gift Restriction

You have explained that the hosts of the personal fundraising event would send invitations, follow up with phone calls, provide an event space, solicit people to make donations to the Official, and collect checks. Based upon these facts, the hosts would effectively be giving the Official all the money the hosts have solicited and collected from others as well as the value of what he or she has spent or contributed through hosting, assuming he or she is not reimbursed. The Board believes it is reasonable to conclude that a host of this fundraising event will easily give a value of \$250 or more. As a result, a Prohibited Source may not host this fundraising event.

The Official is in a position to take official action that impacts Person B's interests because Person B is an official at a lobbying firm that has a client that lobbies the Official's agency and the Official. You have also informed us that Person B is a City lobbyist. Accordingly, Person B is a Prohibited Source.³ Person B may not host the

³ It is unclear based on the information you provided whether Person A would be a Prohibited Source.

proposed fundraising event, and the Official may not accept \$250 or more worth of monetary donations or other gifts from Person B, including those that Person B solicits or collects from others, in a calendar year.

Other Relevant City Laws

Charter Section 10-105 prohibits a City official from soliciting or accepting a gratuity for any act or omission in the course of her public work. Charter §10-105. Under this provision, the Official may not solicit or accept a gift of money, no matter how small, if it is solicited or given for her official action. You have stated that those soliciting would not mention official actions the Official has taken or could take in the future.

The Official is required to file an annual City financial disclosure form. Code §20-610(1). This form requires the disclosure of gifts valued at \$200 or more in the aggregate from a single source in a calendar year. Code §20-610(2)(f). Gifts of money from donors and hosts who give gifts worth \$200 or more in the aggregate per calendar year would need to be disclosed, including the names and addresses of the donors and the circumstances of each gift. A host would presumably exceed the \$200 threshold and would give reportable gifts consisting of any money gift he or she gives, plus the amounts he or she has helped collect and has spent on and contributed to the hosting of the fundraising event, unless he or she is reimbursed for those costs or contributions. If the Official decides to pursue a personal fundraising event, she should keep detailed records in order to aid her compliance with financial disclosure requirements.

The City's non-competitively bid contract reform law requires certain vendors to disclose any solicitations by a City officer to give things of value to any person and also to disclose the amount given in response and to whom. This disclosure requirement applies not to City officials, but to applicants and contractors for non-competitively bid contracts and to persons seeking or receiving certain forms of financial assistance from the City. *See* Code §§17-1402(1)(b)(i)(.4), 17-1402(1)(e)(iii), 17-1404(3). The Finance Department administers this law, and you should contact Deputy Director of Finance T. David Williams at the Finance Department if you would like more information.

State Ethics Act

The State Ethics Act imposes restrictions on public officials and employees regarding gifts, conflicts of interest, and financial disclosure that are in addition to, and in some cases different from, those imposed by City ethics laws. *See* 65 Pa.C.S. §§1103(a),(b), (c), 1104(a). Some of the differences between the State Ethics Act and the City ethics laws are material to the facts and questions you have presented, and therefore it is best to seek advice from the State Ethics Commission or the Law Department for definitive guidance on the application of the Act to these facts. Although the Charter

gives the Board concurrent authority with the Law Department to provide advisory opinions on State law, the Board's authority to give advice regarding the State Ethics Act is limited. *See* Charter §4-1100. Unlike an opinion issued by the State Ethics Commission or a non-confidential opinion issued by the City Solicitor, guidance from the Board regarding the State Ethics Act is not binding on any person and does not provide any protection from penalties or sanctions imposed for a violation of the Act. Board Regulation 4, ¶4.4; *see also* 65 Pa.C.S. §§1107(10), (11), 1109(g). For this reason, we only outline below provisions of the State Ethics Act we believe to be relevant.

The State Ethics Act prohibits public officials from using the authority of their office for their private pecuniary benefit. 65 Pa.C.S. §1103(a). The State Ethics Act also prohibits public officials from soliciting gifts and things of monetary value based on an understanding that the public official would be influenced by the gift in exercising her official action or judgment. 65 Pa.C.S. §1103(c). Although the State Ethics Act does not prohibit a public official from accepting "no-strings-attached" gifts, such gifts can form the basis of a conflict of interest if the public official takes action in furtherance of the interests of the gift giver. State Ethics Commission Advice of Counsel 12-524 at 4 (advising that a prohibited conflict of interest would be present under certain circumstances if an official were to accept airfare of unspecified cost to the Dominican Republic from a non-profit and then take official action with respect to that non-profit). The State Ethics Commission has advised that generally when a public official has received items that could form the basis of a conflict of interest under the State Ethics Act, the official must abstain from acting in matters pertaining to the gift giver. *Id.* ("While the receipt of an item of de minimis value would not, in and of itself, create a conflict of interest as to action involving the donor . . . the decision as to whether a conflict is presented by the receipt of item(s) is determined on a case by case basis.").

The State Ethics Act requires public officials to file an annual financial disclosure form. 65 Pa.C.S. §1104(a). The reporting requirements of the State form differ from the City form. For example, the State form requires the disclosure of gifts valued in the aggregate at \$250 or more per year, but it does not require reporting of gifts from relatives or friends "when the circumstances make it clear that the motivation for the action was a personal or family relationship." 65 Pa.C.S. §1105(b)(6). The Act specifies that "the term 'friend' shall not include a registered lobbyist or an employee of a registered lobbyist." *Id.*

In light of the unique fact pattern you have presented, it would be worthwhile for the Official to seek specific guidance on the State Ethics Act from the State Ethics Commission if she decides to pursue a personal fundraising event. A confidential or a non-confidential advisory opinion issued by the State Ethics Commission would provide her a complete defense in any enforcement proceeding initiated by the Commission and would be evidence of good faith conduct in any other civil or criminal proceeding, provided she disclosed truthfully all the material facts and acted in reliance on the advice.

See 65 Pa.C.S. §1107(10), (11). Helpful information about seeking an advisory opinion from the State Ethics Commission is available at this page of the Commission’s website: www.portal.state.pa.us/portal/server.pt/community/advisories/11219. The State Ethics Act would also provide protection from certain penalties if the Official seeks and relies on non-confidential advice from the City Solicitor. *See* 65 Pa.C.S. §1109(g).

V. Conclusion

In this Opinion, the Board of Ethics has addressed whether the proposed future conduct, not any past behavior, is permissible only under the City laws over which the Board has jurisdiction. *See* Code § 20-606(d)(ii); Board of Ethics Reg. 4, ¶¶4.2, 4.3. Ethics advisory opinions are highly fact-specific, and this Opinion is predicated on the facts you provided as stated here. If you are concerned about particular situations that vary from the facts presented here or that are related to principles described only generally in this Opinion, you should ask for specific advice on the application of the ethics laws to those particular facts.

Thank you for being concerned about compliance with the City’s ethics laws and for seeking advice. 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 the requestor is being published on the Board’s website. Please let Board Staff know if you have any questions or concerns.

BY THE PHILADELPHIA BOARD OF ETHICS⁴

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

⁴ Board Member Sanjuanita González, Esq., participated in consideration of this Opinion, but she was not present for the approval vote.

Appendix A
Official's Responses to Questions
Posed by Board Staff to Official's Attorney

1. Q: Please describe the event. Will it be a \$50 per ticket dinner? Or is something quite different contemplated?

A: The event is not contemplated as a \$50-per-ticket dinner. What is contemplated is that one of the hosts would open his or her home to an event where people would be invited and asked to contribute to the Official personally.

2. Q: Who are the friends who would like to host the event? Please describe the history of their relationships with the Official. For example, when they met, whether they have worked together or currently work together, etc.

A: The friends who would like to host the event are Person A and Person B. Person A met the Official in the 1990s. They worked together in various capacities. Person A and the Official do not currently work together. Person B met the Official in the mid-1980s. They have not worked together but Person B informally advises the Official.

3. Q: Would hosts or gift givers include anyone with whom the Official currently has a working relationship? For example, others in City government.

A: Neither the hosts nor invited guests would include any colleagues of the Official or others in City government. Is it possible that elected officials might attend the event, but they would not be solicited for contributions and none are expected. *[It was subsequently clarified that the first line of this response is not correct and that it is possible that colleagues of the Official and others in City government may be invited and may attend the fundraising event, and if they offered to make or made donations, the hosts and the official would accept them.]*

4. Q: The request says the proceeds will be given "in part" to help the Official pay debts. What else would proceeds be used for?

A: Use of the proceeds would be directed by the Official. Funds could be used for other personal expenses of the Official.

5. Q: The request refers to the acceptance of money from persons with whom the Official has no direct relationship. What does that mean?

A: That means that the hosts might solicit contributions from persons known to them but unknown to the Official.

6. Q: How much money would each person be giving? What is the range of anticipated gifts? Would there be a limit?

A: Each person would give however much they wished to give. No set range or limit is anticipated.

7. Q: Who would be making the solicitations? Please describe how the solicitations would be made. Would action the Official has taken or could take be mentioned as part of the solicitations?

A: Person A and Person B would make the solicitations by sending an email invitation to the event at Person A's home and following up with telephone calls. This would be a personal solicitation and would not mention official actions the Official has taken or could take in the future.

8. Q: Would cash be given? To whom would checks be made out?

A: No cash would be accepted. Checks would be made out to the Official.

9. Q: Would money be given directly to the Official or would it be given to a person who would then give it to the Official? Or is some other path for the money anticipated?

A: Checks would be collected by the hosts and/or the Official.

10. Q: Would the gift givers include both individuals and entities?

A: Gift givers would include only individuals.

11. Q: Is the Official able to take official action that impacts the hosts, gift-givers, or those who will be solicited? Has she taken official action on their behalf or that impacts them in the past two years (aside from their membership in a large class)?

A: It is contemplated that those invited to this event would be persons who care about the Official personally and would be giving her a gift without any financial or political motive.

12. Q: Are the hosts, gift givers, or those who will be solicited likely to have interests before the Official or her agency? In other words, would the hosts or gift givers be seeking or subject to official action from the Official or her agency at the time of giving the gift or within one year before or after giving the gift?

A: Please see the response to Question 11.

13. Q: Would the hosts or gift givers be individuals or entities that represent other people who seek official action from the Official or from her agency?

A: Please see the response to Question 11.

14. Q: Would the hosts or gift givers include people or entities that hold or seek contracts with the City in which the Official's agency plays any role in the creation of the contracting opportunity or the contract award process?

A: Please see the response to Question 11.

15. Q: Would the hosts or gift givers include holders of contracts or providers of services to the Official's agency?

A: Please see the response to Question 11.

16. Q: Would the hosts or gift givers include lobbyists or principals under the City's lobbying law?

A: Person B is a registered lobbyist.

17. Q: Would the names of all hosts and gift givers and amounts given be made public after the event?

A: Yes. *[It was subsequently clarified that this response meant that the names of the gift givers and amounts would be made public after the event as required by law, such as the financial disclosure laws.]*