



CITY OF PHILADELPHIA

BOARD OF ETHICS
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**Philadelphia Board of Ethics
Non-Public Board Opinion No. 2015-001**

July 29, 2015

Re: Solicitation of Contributions to Non-profit for Official Event

Dear City Official:

You have requested a non-public advisory opinion about how the City ethics laws apply to your sending a letter to businesses requesting that contributions be made to a non-profit entity to support an annual community event that you and your City office host. The City gift and conflict of interest restrictions do not prohibit your sending the letter, although an appearance of impropriety exists with respect to certain proposed recipients of the solicitation letter.

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. Facts Provided

You are currently an official of the City of Philadelphia. You wish to partner with a local non-profit entity (“the Organization”) to host an event in which you will offer free information on educational and related social services in the City. The Organization has for decades provided assistance on these kinds of issues. The proposed event will include food and entertainment to be provided free of charge to the public.

You state that to pay for this free public event, you and the Organization would like to raise funds from private entities. The Organization has asked you to send letters to local businesses asking them to contribute monetary donations to fund the event.

You have advised that neither you nor any employee in your office has any official or financial connection to the Organization. To pay for the proposed event, you wish to raise funds by sending a letter to approximately 40 private businesses throughout the City of Philadelphia. The letter will identify four different levels of sponsorship ranging from several hundred to several thousand dollars. Level 1, level 2, and level 3 sponsors will receive printed acknowledgement on event signage, websites, and other social media sites. You provided a draft of the proposed letter that appeared on City letterhead.

You stated that many of the businesses that will receive letters from you are not seeking official action from you or your office, nor is it anticipated that they will be seeking any official action from you or your office. A number of the businesses are very large regional or national companies with financial interests that may be affected by City-wide decisions in which you and your office are involved. You stated that participation in the event provides these businesses with visibility in the community.

You stated that a couple of businesses that are on your list to solicit are currently seeking action from you or your office. You also stated that you and your office have previously taken official action that impacted the particular financial interests of a few of the businesses that would receive letters. You further clarified that a number of the businesses conduct certain activities continually such that they are likely to seek official action from you or your office in the future. Additionally, some of these businesses have previously asked you or your office to take official action that impacts them.

Your primary objective in sending the letters is to assist the Organization in raising money to pay for the event. The Organization will handle all funds and payments received from sponsors, and you indicate in your proposed letter that checks should be made payable to the Organization. You have advised that neither you nor your office will receive any funds or monetary benefit or be involved in paying any of the event vendors.

III. Discussion

Your advice request requires application of the City Code gift and conflict of interest restrictions. As discussed below, your proposed activity of sending a letter soliciting local businesses to contribute to the Organization to support an event you host is permissible under these restrictions but creates an appearance of impropriety.

A. The City Code Gift Restriction

The City gift ordinance restricts the solicitation of gifts by City officers and employees from persons: (1) who are seeking official action from them; or (2) who have a financial interest that they are able to substantially affect through official action. Code § 20-604(1). A City officer or employee may not accept any gifts of money from these two categories of persons and may only accept non-cash gifts worth \$99 or less in the aggregate in a calendar year. *Id.*

A gift is defined as a “payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value given to, or for the benefit of, an officer or employee, unless consideration of equal or greater value is received.” Code § 20-601(10). Your proposed solicitation of monetary contributions from local businesses to the non-profit Organization is not a solicitation by you for a gift that would be given to you or for the benefit of yourself.¹ Your solicitation of monetary contributions from businesses to the Organization would be considered a gift to you if you received a financial benefit from it, but that is not the case under the facts presented. *See* Code § 20-604(4)(b) (“A gift to another person is a gift to an officer or employee if the officer or employee solicits the gift and receives a financial benefit from it.”).² Although the contributions you solicit will support the event that you host, you will not realize a personal financial benefit from the event or from the contributions that businesses may make to the Organization to support the event. As a result, you would not be soliciting a gift as defined by the City gift ordinance, and the gift restriction does not prohibit you from sending the proposed solicitation letter.

B. The City Code Conflict of Interest Restriction

The Code conflict of interest restriction prohibits a City official from being financially interested in official action taken by the official or by a body of which the official is a member if the official or a family member has a financial interest in the action or if a for-profit organization of which he or she is a member, or a member of that organization, has a financial interest in the action. Code § 20-607. In the event of a

¹ In contrast to the situation you present, if a gift that is prohibited by the gift restriction is offered to a City officer or employee, the officer or employee is prohibited from suggesting or requesting an alternative recipient, including a non-profit organization. *See* Code § 20-604(4)(c).

² The Code gift restriction was substantially re-written in an amendment that became effective March 31, 2014. Interpretation of the gift restriction as it previously existed at Code Section 20-604 also required a personal financial benefit to a City official as a necessary element for a prohibited solicitation or prohibited gift to be present. Board Opinion 2012-006 at 5 (citing Board Opinions and Solicitor’s Opinions).

conflict of interest, a City official is required to file a public letter disclosing the conflict and disqualifying himself or herself from official action regarding the related matter. Code §§ 20-607, 20-608.

You would be taking official action by sending the proposed solicitation letters to local businesses because sending the letter qualifies as a non-ministerial act taken by you in an official capacity. Code § 20-601(17) (defining “official action” as an “act or omission taken by an officer or employee in his or her official capacity that requires discretion and is not ministerial in nature”).³ You would not, however, have a financial interest in this official action. A financial interest is an interest in which a potential monetary gain or loss is at stake, such as a potential impact on a person’s income, compensation, value of assets, wealth, employment prospects, business prospects, or financial relationship with another person. *See* Board Opinion 2012-001 at 5; Code § 20-601(9) (defining “financial interest” as an “interest involving money or its equivalent or an interest involving any right, power or privilege that has economic value”).

You will be asking businesses to make contributions to the Organization, which will handle all contributions and funding for the event. You have stated that you do not have a financial interest in the Organization and will not enjoy a personal financial gain as a result of the businesses’ contributions to the Organization. Under these facts, you would not have a personal financial interest in encouraging a business to make a financial contribution to the Organization to support this community event that you host. Therefore, your proposed solicitation of local businesses for financial support for the Organization and for the event would not cause you to have a conflict of interest under Code Section 20-607(a), which prohibits conflicts arising from a City officer’s or employee’s own financial interests. *See* Board Opinion 2012-006 at 4 (advising that no conflict of interest was present under Code § 20-607(a) for City official’s proposed solicitation of vendors for financial support for a non-profit professional association’s conference); Board Opinion 2009-006 at 4 (advising that no conflict of interest was present under Code § 20-607(a) in a proposed arrangement between a City official’s office and a private company because the arrangement would not relieve a City official of any personal expense).

Additionally, the Organization is a non-profit to which you do not have an official or financial connection, such as being a board member or officer. Given these facts, your proposed solicitation of businesses would not cause you to have a conflict of interest under Code Section 20-607(b), which prohibits conflicts arising from the financial interests of members of for-profit organizations of which a City official is a member. *See* Code § 20-607(b) (requiring disqualification from official action where City employee

³ The conclusion in General Counsel Opinion 2012-505 that a City official’s decision to use City letterhead to send a solicitation letter was not “official action” predated this term being defined in the City Code and is not valid.

has knowledge that a financial interest resides in a “member of a partnership, firm, corporation or other business organization or professional association organized for profit of which said City [employee] is a member”).

C. The Home Rule Charter Gratuity Restriction

The Charter gratuity restriction prohibits a City official from soliciting or accepting a gratuity for any act or omission in the course of the official’s public work. Charter § 10-105. An official may not solicit or accept a thing of value if it is solicited or given for his or her official action. Although you and your office have previously taken official action with respect to some of the businesses that will receive letters, the facts you provided and the draft solicitation letter do not indicate that your proposed solicitation is connected to or requested in appreciation for acts taken in your official capacity with respect to these businesses. *See* Board Opinion 2012-004 at 2-3 (advising no Charter § 10-105 violation where trip being offered is not “in any way occasioned by, connected with, or in appreciation for any prior act or omission in the course of [the requesting official’s] public work”) (emphasis in original). As a result, the proposed solicitation letter does not present an issue under the Charter gratuity restriction.

D. Appearance of Impropriety

While we conclude that your proposed solicitation of businesses would not violate the City ethics laws described above, we believe that your proposed solicitation creates an appearance of impropriety. The Board has previously explained an “appearance of impropriety” as follows:

Situations in which there is no conflict of interest or prohibited gift under the letter of the law can nevertheless create appearances of impropriety. Although the ethics laws do not prohibit appearances of impropriety, and an enforcement action could not be brought based on an appearance of impropriety, such appearances can undermine public confidence in government. There is no formal definition of “appearance of impropriety” in the laws under which this Board has jurisdiction, but generally there is an appearance issue any time there is a possible public perception that improper influence was being exerted upon or by a public official or that a public official’s personal interest in a matter is so substantial that it would be difficult to resist the temptation to act in favor of that interest.

Board Opinion 2009-001 at 4. We make two recommendations to mitigate the appearance of impropriety that we perceive under the facts you have presented. We identify certain

categories of businesses to avoid soliciting as well as problematic language to omit from the proposed solicitation letter.

The proposed solicitation letter states that you need the requested financial support to produce your event. You have indicated that some of the forty businesses to which you will send the solicitation letter are currently seeking official action from you or your office, some have previously sought official action from you or your office, and some will presumably seek official action from you or your office in the future. Your solicitation of these businesses for sizeable monetary contributions to support an event you host could be viewed by the public as coercive for these businesses or as an opportunity for the businesses to use money to gain influence with you. *See* Board Opinion 2013-006 at 1 (describing damage to public confidence in government created by public perception that money can be used to purchase influence and gain access to or action by a city official); Board Opinion 2012-006 at 5 (noting possible public perception that City official's solicitation would be coercive for vendors over whom the official had authority); Board Opinion 2009-001 at 4 (advising that an appearance of impropriety was present where the head of a City office proposed soliciting a donation of significant value for the City office from a firm that was subject to official action by that office).

This appearance of impropriety is greatest for businesses that are currently seeking official action from you or your office. Notably, certain City ethics restrictions treat persons who are seeking official action from a City official as specific populations that the official may not solicit for gifts for themselves or, in the case of elected officials, for political contributions. *See* Code § 20-604(1); Board Opinion 2014-002 at 4-5. Even though these ethics laws are not violated by the facts you present, sending the solicitation letter to businesses that are seeking official action from you or your office is contrary to the policy underlying these restrictions.

An appearance of impropriety is also present for businesses that have recently sought official action from you or your office, such as within the last year, or that are likely to do so in the future. We recommend that to avoid an appearance of impropriety you should not solicit: (1) any businesses that are currently seeking official action from you or your office; (2) any businesses that have sought official action from you or your office in the last year; or (3) any businesses that you or your office have reason to believe will seek official action from you or your office in the foreseeable future.

Additionally, we recommend that the solicitation letter not use language such as “*I need the financial support*” and “*contribute to my efforts*” because this characterizes the contributions as being for you or benefiting you.

E. Code Chapter 17-1400: Non-Competitively Bid Contracts & Financial Assistance

Code Chapter 17-1400 requires certain vendors to disclose any solicitations by a City officer to give things of value to any person and to disclose the amount given in response and to whom. This disclosure requirement applies not to you or other City officials but rather 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 information about how this law could require some businesses that receive your letter to disclose your solicitation and any contributions made in response.

F. The State Ethics Act

The Public Official and Employee Ethics Act (“State Ethics Act”), 65 Pa. C.S. § 1101 *et seq.*, contains restrictions that are separate from and in addition to those imposed by City ethics laws. 65 Pa. C.S. §§ 1102, 1103(a), (f). The Board’s authority to provide advice on the State Ethics Act is limited, and guidance from the Board regarding the State Ethics Act is not binding on any person and does not provide any protection against penalties or sanctions for a violation of the Act. Board Regulation 4, ¶ 4.4. You can seek advice concerning the application of the State Ethics Act to your situation from the State Ethics Commission or the City Solicitor. An opinion from the State Ethics Commission or a non-confidential opinion from the City Solicitor provides protection from certain enforcement or penalties imposed for a violation of the Act. 65 Pa. C.S. §§ 1107(10),(11); 1109(g). For these reasons, provisions of the State Ethics Act that might be relevant to your inquiry are merely outlined below.

The State Ethics Act applies to public officials, which the Act defines in relevant part as: “[a]ny person elected by the public or elected or appointed by a governmental body or an appointed official in the executive, legislative or judicial branch of this Commonwealth or any political subdivision thereof . . .” 65 Pa. C.S. § 1102. A public official has a conflict of interest under the State Ethics Act if the public official uses the authority of his or her office or confidential information received through his or her holding public office for the private pecuniary benefit of himself or herself, immediate family members, and businesses with which the public official is associated. 65 Pa.C.S. § 1102. The term “business” includes non-profit entities. *Rendell v. State Ethics Commission*, 983 A.2d 708, 716-17 (Pa. 2009) (holding that the term “business” as defined in the State Ethics Act should be interpreted to include non-profit entities); State Ethics Commission Advice of Counsel 12-513 at 3 (“A non-profit entity is a ‘business’ as that term is defined by the Ethics Act.”). As a result, a State Ethics Act conflict of interest can arise based on an official’s use of the authority of his or her office for the pecuniary

benefit of a non-profit entity with which he or she is associated. This includes any non-profit in which the official or a member of the official's immediate family is a director, officer, owner, employee or has a financial interest. 65 Pa. C.S. § 1102. 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 his or her official action or judgment. 65 Pa.C.S. § 1103(c).

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Thank you for your concern about compliance with the City ethics laws 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 issued to you will not be made public. As required by the City Code, this version 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 ETHICS

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