



CITY OF PHILADELPHIA

BOARD OF ETHICS
One Parkway Building
1515 Arch Street
18th Floor
Philadelphia, PA 19102
(215) 686 – 9450
FAX 686 – 9453

**Philadelphia Board of Ethics
Non-Public Board Opinion No. 2017-002**

September 21, 2017

**Re: City Form Disclosure Required for Tickets Received by an Elected
Official from the Mayor’s Office to Distribute to Constituents**

Dear City Elected Official:

You have requested a non-public advisory opinion regarding your financial disclosure obligations if you receive free event tickets valued at more than \$200 from the Mayor’s Office to distribute to constituents. As previously conveyed to your Office by telephone, you would be required to disclose such tickets in the gifts section of the City of Philadelphia Statement of Financial Interests.

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 Philadelphia Code (“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 related to seeking an advisory opinion and for requesting reconsideration of an advisory opinion issued by the Board. Board Reg. 4 ¶¶ 4.0, 4.26.

FOR PUBLIC RELEASE

II. Facts Provided By Requestor

You are a City elected official. The Mayor's Office informed a member of your staff that it is making available event tickets so that you may distribute these free event tickets to your constituents. The value of the event tickets in the aggregate is more than \$200. You provided a copy of a sample event ticket.

III. Question Presented & Brief Answer

If a City elected official receives free event tickets valued at \$200 or more from the Mayor's Office to distribute to constituents, is the elected official required to disclose the tickets in the gifts section of the City of Philadelphia Statement of Financial Interests?

Yes. On the City of Philadelphia Statement of Financial Interests, a City elected official is required to disclose in the gifts section such tickets received from the Mayor's Office for distribution to the official's constituents.

IV. Discussion

The Code mandates that certain City officials, including City elected officials, and all members of City boards and commissions annually file the City of Philadelphia Statement of Financial Interests ("City Form") disclosing information for the prior calendar year. *See* Code §§ 20-305, 20-610(1). By virtue of your City position, you are required to file the City Form.¹ *See* Code §§ 20-305, 20-610(1). The City Form generally must be filed on or before May 1 of each year the filer holds City office and in the year after leaving office.² *See* Code § 20-610(1). Filed City Forms are available to the public through the Department of Records. *See* Code § 20-610(4).

In relevant part, Code Section 20-610(2)(f) requires disclosure of the following on the City Form:

¹ You are also required to file the State Ethics Commission Statement of Financial Interests. *See* 65 Pa. C.S. §§ 1102, 1104.

² The May 1 deadline does not apply in two circumstances. First, if May 1 does not fall on a business day, the deadline is the next day after May 1 that the City is open for business. Second, in the initial year of holding City office, an individual who takes office less than thirty days before May 1 or on or after May 1 of the calendar year is required to file the City Form within thirty days of taking office. *See* Code § 20-610(1). For instance, if an individual is appointed to City office on May 5, the individual has thirty days from May 5 to file the City Form.

The name and address of any person from whom a gift³ or gifts valued in the aggregate at two hundred (\$200) dollars or more were received, and the value and the circumstances of each gift.

Code § 20-610(2)(f). Under the facts provided, each element of this provision is satisfied. Here, you would be receiving gifts in the form of event tickets, valued in the aggregate at more than \$200, from the Mayor's Office, which as a subdivision of the City of Philadelphia fulfills the definition of person⁴ under the Code. Although you do not plan to use the event tickets personally, you would have the ability to decide whether to accept the tickets at all and the ability to direct how and to whom the tickets are dispensed. It follows that for financial disclosure purposes, such tickets would be considered disclosable gifts received by you.⁵

By way of comparison, under The Public Official and Employee Ethics Act ("State Ethics Act"), tickets provided to a public official by any source other than a governmental body for distribution to the official's constituents are considered hospitality⁶ to the official that is subject to financial disclosure. *See* State Ethics Comm'n Opinion 99-1020-R. In State Ethics Commission Opinion 99-1020-R, the Commission advised that such tickets are provided to the official by virtue of his or her position as a government official and stated that where the "official has discretion to give the tickets to himself or herself, family or friends, or to any others whom he or she chooses . . . the tickets clearly constitute hospitality to the [public] official." *Id.* at 8. The Commission explained that multiple benefits may arise from a single ticket, including use of the ticket,

³ The Code defines the term "gift" in relevant part 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).

⁴ The Code defines the term "person" as a "business, individual, corporation, non-profit, union, association, firm, partnership, committee, political committee, club, or other organization or group of persons." Code § 20-601(20). As a governmental organization and municipal corporation, the City of Philadelphia satisfies this definition. *See* Consolidation Act of 1854.

⁵ In the context of various local public integrity laws, tickets given to an elected official that the official does not personally use and gives to constituents are considered gifts or hospitality received by the official. *See* Code § 20-604(3)(1) (tickets elected official receives from restricted source and provides to members of the public are permissible gifts for the official to accept under City gift ordinance exception); State Ethics Comm'n Opinion 99-1020-R (tickets public official receives and gives to constituents constitute hospitality to the official for purposes of financial and lobbying disclosures); *see also* Board Opinion 2013-003 at 3, 5 (tickets City official receives from principal and does not personally use are considered gifts that the principal has provided to a City official under the City Lobbying Law).

⁶ Under the State Ethics Act, the term "hospitality" includes meals, beverages, and recreation and entertainment. *See* 65 Pa. C.S. § 13A03. The term does not include gifts, transportation or lodging. *See id.*

generation of the constituent’s goodwill toward the official, and advancement of the original ticket giver’s interests. *Id.*

Notably, the State Ethics Act contains language that exempts from financial disclosure hospitality that a public official receives from a governmental body. *See* 65 Pa. C.S. §§ 1102, 1105(b)(7); State Ethics Comm’n Advice of Counsel 92-577 at 5. In relevant part, the State Ethics Act requires a filer to disclose:

The name and address of the source and the amount of any payment for or reimbursement of actual expenses for transportation and lodging or hospitality received in connection with public office or employment where such actual expenses for transportation and lodging or hospitality exceed \$650 in an aggregate amount per year. This paragraph shall not apply to expenses reimbursed by a governmental body

65 Pa. C.S. § 1105(b)(7) (emphasis added). The State Ethics Commission has advised that under this provision, a filer is not required to disclose reimbursements and payments for transportation, hospitality, or lodging received from any governmental body. *See* State Ethics Comm’n Advice of Counsel 92-577 at 5 (travel expenses public official received from Latvian government are not required to be disclosed).

In contrast to the State Ethics Act, which has language exempting from disclosure hospitality received from a governmental body, Code Section 20-610 provides no exemption regarding disclosure of gifts beyond the limited exclusions built into the definition of gift⁷ itself. As such, Code Section 20-610(2)(f) requires the disclosure of event tickets valued in the aggregate at \$200 or more that you receive from the Mayor’s Office to give to constituents. The Code financial disclosure provision requires filers to disclose the value and circumstances of each gift received from a person where the \$200 threshold for gifts from that person was met or exceeded in the relevant calendar year. Therefore, if you choose to accept the event tickets, you have the opportunity to explain in the gifts section of the City Form that the tickets received from the Mayor’s Office were subsequently provided to constituents.

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⁷ The Code provides that the term “gift” “shall not include a political contribution otherwise reportable as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a Family member of the individual or from a relative within the third degree of consanguinity of the individual or of the individual’s spouse or Life Partner, or from the spouse or Life Partner of any such relative.” Code § 20-601(10).

Thank you for your concern about compliance with the City financial disclosure requirements and for seeking advice. Advisory opinions are fact-specific, and this Opinion is predicated on the facts you provided, the details of which have been redacted here. You are entitled to act in reasonable reliance on this Opinion and not be subject to penalties under the laws within the Board's jurisdiction, unless you have omitted or misstated material facts in your request. Code § 20-606(1)(d)(ii); Board Reg. 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 the Opinion that has been redacted to conceal facts that are reasonably likely to identify you is being made public. Please let Board Staff know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

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