



CITY OF PHILADELPHIA

BOARD OF ETHICS
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**Philadelphia Board of Ethics
Non-Public General Counsel Opinion No. 2014-501**

May 7, 2014

Re: Accepting Travel & Other Items Related to Conference Presentation

Dear City Official:

You have requested a non-public advisory opinion about whether the City ethics laws permit you to accept an out-of-state non-profit organization's offer to pay for airfare and accommodations for you to attend one day of its annual conference, including a cocktail reception and dinner banquet. You would serve as a panel presenter at a one-hour session of the conference, discussing topics both related and unrelated to your City service. The City Code gift restriction does not prohibit you from accepting this offer. The gift restriction and other relevant rules are discussed in detail below.

I. Facts Provided

You have provided the facts that are stated here. The not-for-profit organization (the "Foundation"), which is based outside Pennsylvania, has invited you to be a presenter at an annual conference it hosts for participants in its programs. The Foundation is not seeking official action from you or your City agency and has no interest in any official action taken by you or your agency. A number of years ago you worked with the Foundation as a mentor for some of its program participants.

More specifically, the Foundation has invited you to join a panel of presenters at its annual conference, a multi-day event that is held at a conference center that is out of state. The main emphasis of the conference is to build a community for the Foundation's program participants so that they can serve as resources and networks for one another. This year's annual conference has a theme. The conference will look at the theme through a variety of perspectives, including during a multi-part series of sessions to be

held on a single afternoon of the conference. The conference will offer sessions with panels of presenters on topics related to exploring the theme through different academic disciplines. The panels of presenters will consist of experts in the field and alumni program participants who are working in the discipline.

The Foundation has asked you to be a presenter for one of these topical sessions, which will be held for one hour in the afternoon, exploring the theme's relationship to your professional field and specifically in a discipline related to your City work. You note that while your presentation is likely to be mostly about the theme's relationship to your broader professional field, it may also include the role of the theme in the discipline that is connected to your work at your City agency.

The Foundation has offered to arrange and pay for your roundtrip air travel and your overnight accommodations at the conference site. On the evening of your presentation, you would be given free attendance to the annual conference cocktail reception and dinner banquet.

II. Jurisdiction and Relevant Law

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. Philadelphia Code Section 20-604¹ prohibits a City officer or employee from accepting all cash gifts and any non-cash gifts that are worth more than \$99 in the aggregate in a calendar year from a person who is seeking official action from the officer or employee or who has a financial interest the officer or employee can substantially affect through official action. Code §20-604(1). An officer or employee is also prohibited from soliciting a gift of any value from these categories of potential donors. 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 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 a General Counsel opinion. Board Regulation 4, ¶4.24.

¹ Amended by Bill No. 140054-A, effective March 31, 2014.

III. Discussion

A. City Code Gift Restriction

A gift is anything of value given to, or for the benefit of, a City official, unless consideration of equal or greater value is received. Code §20-601(10). You have not provided the value of the items the Foundation is offering, but it appears that the Foundation giving you airfare, accommodations, and free cocktail reception and banquet attendance involves a gift to you that is worth more than \$99. The City Code prohibits a City official from accepting non-cash gifts worth more than \$99 in the aggregate in a calendar year from a person who is seeking official action from the official or who has a financial interest that the official can substantially affect through official action. Code §20-604(1). You have stated that the Foundation, with which you had a relationship prior to your City service, is not seeking official action from you or your City agency and has no interest in any official action taken by you or your agency. Consequently, the Code gift restriction does not prohibit you from accepting the Foundation's offer of airfare and other conference-related items.

B. Other Relevant City Laws: Gratuity Restriction & Financial Disclosure

The Charter has a gratuity restriction that 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. Under the circumstances you have described, the Foundation's offer of airfare, accommodations, and reception and banquet attendance is not a gratuity for acts you have taken as a City official at your agency. Accordingly, the Charter gratuity restriction does not prohibit you from accepting the Foundation's offer of airfare and other conference-related items.

The City Code requires you to file an annual City financial disclosure form. Code §20-610(1). The Code requires you to disclose the source, value, and circumstances of any gifts you receive from sources that have given you gifts worth \$200 or more in the aggregate during the prior year. Code §20-610(2)(f). Therefore, if you accept the Foundation's offer and the airfare and other conference-related items taken together are worth \$200 or more, you should disclose these items on the gift section of the City financial disclosure form that is due May 1, 2015.

C. The State Ethics Act

The State Ethics Act, 65 Pa.C.S. §1101 *et seq.*, imposes restrictions on public officials and employees regarding gifts, honoraria, and financial disclosure that are in addition to and different from those imposed by City ethics laws. The Board's authority to provide advisory opinions on State law is limited. Board Regulation 4, ¶4.4. For this

reason, the provisions of the State Ethics Act that may be relevant to your inquiry are merely identified below. You can seek advice concerning the application of the State Ethics Act to your situation from the State Ethics Commission or the City Law Department, either of which can provide binding guidance that provides protection from penalties or sanctions imposed for a violation of the Act. 65 Pa.C.S. §§1107(10) and (11), and 1109(g).

The State Ethics Act requires you as a public employee/official to file an annual statement of financial interests for the preceding year. 65 Pa.C.S. §1104. The State Ethics Act requires you to disclose the sources of gifts worth \$250 or more in the aggregate, including the value and circumstances of each gift. 65 Pa.C.S. §1105(b)(6). Under the State Act, the term “gift” does not include hospitality, transportation, or lodging. 65 Pa.C.S. §13A03. The State Act separately requires disclosure of the source and amount of any payment for or reimbursement of actual expenses for transportation, lodging, or hospitality received in connection with public office or employment where the expenses exceed \$650 in the aggregate for the calendar year. 65 Pa.C.S. §1105(b)(7).

In addition, the State Ethics Act prohibits the acceptance of an honorarium, which the Act defines as a “[p]ayment made in recognition of published works, appearances, speeches and presentations, and which is not intended as consideration for the value of such services which are nonpublic occupational or professional in nature.” 65 Pa.C.S. §1102. Excluded from the definition of honorarium, and therefore permitted under the Act, is a payment that is legitimately intended as consideration for the value of services provided when the services are undertaken in the public official’s private professional capacity and are not related to the official’s public position. State Ethics Commission Opinion 13-005 at 5-6.

Helpful information about seeking an advisory opinion from the State Ethics Commission is available at the following website: <http://www.ethics.state.pa.us/portal/server.pt/community/advisories/11219>.

IV. Conclusion

Thank you for being concerned about compliance with the City’s ethics restrictions and for seeking advice. Advisory opinions are fact-specific, and this Opinion is predicated on the facts you have provided as stated here. 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. If a City officer or employee, other than the requestor, would like to know how the laws apply to his or her individual situation, he or she should request an advisory opinion.

Since you requested a non-public opinion, the original Opinion will not be made public. As is required by the City Code, this version of this Opinion, which has been

redacted to conceal facts that are reasonably likely to identify you, will be made public. Please let me know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

Maya Nayak
General Counsel

cc: Michael H. Reed, Esq., Chair