



# CITY OF PHILADELPHIA

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## **Philadelphia Board of Ethics Non-Public Board Opinion No. 2022-007**

May 18, 2022

**Re: Application of City Gift and Gratuity Rules to Reward Program Administered by City Entity**

Dear Requestor:

You have requested a non-public advisory opinion on behalf of a City entity (the “City Entity”) regarding the application of the Home Rule Charter’s prohibition on gratuities (Charter Section 10-105) to a proposed employee rewards program. As discussed below, Charter Section 10-105 would not prohibit the proposed rewards program.

### **I. Jurisdiction**

The Board of Ethics is charged with administering, interpreting, and enforcing all Philadelphia Home Rule Charter and City Code provisions pertaining to ethical matters, including the prohibition on gratuities found at Charter Section 10-105. *See* Charter Section 4-1100. The Charter and the Ethics Code authorize the Board to render advisory opinions concerning a City officer’s or employee’s proposed future conduct. Board Regulation No. 4 describes the procedures related to advisory opinions, including for requesting reconsideration of an advisory opinion issued by the Board.

### **II. Background**

The City Entity reviews, monitors and analyzes the work of certain City employees. The City Entity proposes to administer a program to recognize City employees for a job well done by presenting honorees with a certificate and a commendation letter to the head of their agency. Any member of the public could nominate a City employee based on a particular accomplishment or service. The City Entity would review and approve these nominations.

Importantly, for purposes of this Opinion, the City Entity would also like to award honorees with a gift card (valued less \$20) to a local store in addition to the certificate and letter mentioned above. The City Entity would pay for the gift cards from its own budget.

### III. Relevant Law and Discussion

Two provisions of the City's Ethics Laws are relevant to the question before us. The first is Code Section 20-604 which restricts, and in some cases prohibits, gifts to City employees. A gift is anything of value given to or for the benefit of a City officer or employee, unless consideration of equal or greater value is received. *See* Code §20-601(10). Code Sections 20-604(1) and (2) prohibit monetary gifts to City employees from persons (1) who are seeking official action from a gift-receiving City employee; or (2) who have a financial interest at the time, or in close proximity to the time the gift is received, that the gift-receiving employee is able to substantially affect through official action. *See* Board Op. 2014-003. A gift card is a monetary gift. Notably, however, Section 20-604(3) lists several exceptions to this restriction, including, at 20-604(3)(m), for gifts from a government entity. Since the City Entity would purchase the gift cards in order to give them to honorees, the cards would be gifts from a government entity (the City Entity) and therefore would not be prohibited by Code Section 20-604.

The second provision we must consider is the ban on gratuities found at Section 10-105 of the City's Home Rule Charter, which provides:

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. Provided, however, that the head of any department, board or commission of the City or other agency receiving appropriations from the City Treasury may permit an employee to receive a reward publicly offered and paid, for the accomplishment of a particular task.

As the annotation explains, City officials are paid with public funds, and should never be induced to “do that which [they] ought to do or not do that which [they are] not supposed to do” by something outside of such publicly funded compensation. The annotation further explains, however, that “[a]n exception is recognized and permitted in instances of a special reward authorized by the head of an agency for special accomplishments, such as the apprehension of a criminal, acts of particular courage and bravery, the devising of new methods or inventions to effect economies in the expenditure of City funds, and the like.”

Because the gift cards would be given to City employees in recognition of a particular action by them, they would appear to be covered by the prohibition set forth in the first sentence of Section 10-105.<sup>1</sup> *See* Board Op. 2015-001 at 5 (citing Board Op. 2012-004 at 2-3). Giving the gift cards to the City employees would be permissible, however, if the exception set forth in the second sentence of Section 10-105 applies.

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<sup>1</sup> We note that the City Solicitor has opined that Section 10-105 only prohibits payments from a source outside of City government. *See* Solicitor's Opinion (unnumbered) (July 30, 2010) (citing Solicitor's Opinion No. 99-34 (Oct. 7, 1999) at 442.) Because we find that the exception set forth in the second sentence of Section 10-105 applies in this case, we do not need to address this question.

The Board has not previously addressed the application of this exception. We do not read it to require that the City agency offering the reward determine in advance the exact nature of the task or how the accomplishment of it must be distinguished from others performing the same task. Moreover, while any member of the public may make a nomination, the ultimate selection of recipients and distribution of the reward is solely within the control of the City Entity. Thus, the City Entity's proposed reward program is both publicly offered and publicly paid. As such, based on the plain language of Section 10-105 and in keeping with the explanation in the annotation, we find that the City Entity's proposal to enhance its reward program with gift cards is a "reward publicly offered and paid, for the accomplishment of a particular task" that fits within the exception and is therefore permissible.

#### **IV. Conclusion**

Based on the information provided, you are advised that the City Entity's proposal to enhance its rewards program by giving City employee gift cards is not prohibited by Charter Section 10-105.

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Thank you for your concern about compliance with the City's Ethics Code and for seeking advice. Advisory opinions are fact-specific, and this Opinion is predicated on the facts you have provided. 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. § 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 Ethics Code, a version of the Opinion that has been redacted to conceal facts that are reasonably likely to identify you is being made public. If you have any questions, please contact General Counsel staff.

BY THE PHILADELPHIA BOARD OF ETHICS

*/s/ Michael H. Reed, Esq.*

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