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Formal Advisory Opinion 2003-1 No Waiver of Rental Fees for Personal Use of Public Property

Opinion Summary

A city official is not entitled to a reduction or waiver of any rental fee for the personal use of parks property or for the use of any other private person or entity on terms that are not available to the general public.

Question Presented

May the Department of Parks, Recreation and Cultural Affairs waive or reduce the rental fee for its facilities, equipment, parks, and services when members of the Atlanta City Council reserve the property for their own personal use or for the use of a family member, friend, constituent, non-profit organization, or for-profit organization?

Discussion

The Acting Commissioner of the Department of Parks, Recreation and Cultural Affairs seeks an opinion on whether she may waive or reduce the rental fee when a city council member seeks to reserve a parks facility on behalf of a constituent. In addition, she requests that the Board of Ethics address whether the rental fee may be waived or adjusted in four other hypothetical situations, including when the council member seeks the rental for his or her personal use or on behalf of a friend or family member, non-profit organization, or any other organization. None of the facts presented in the commissioner's request deal with the use of the city-owned or city-sponsored property to conduct official city business.

Section 110-3 of the Atlanta City Code establishes a detailed fee schedule for the department to follow in charging for the use of city parks, facilities, equipment, and programs. Specifically, the schedule lists the fees for renting department equipment, ball fields, recreation centers, picnic pavilions, and the Atlanta Cyclorama and other facilities; obtaining park vending and concession permits; participating in athletic and aquatic training programs, summer camps, youth sports, and after-school programs; using the city swimming pools, tennis courts, or golf courses; and visiting the Cyclorama. The code permits the department to charge a reduced fee to tax-exempt organizations, city residents, children, and senior citizens in specific situations. Only one subsection exempts any fee; the rental fees for the Water Works Lodge do not apply to "city departments and agencies using the facility for city-sponsored purposes." See section 110-3 (j). After reviewing section 110-3, the Board of Ethics concludes that the code's fee schedule does

not set out any express waiver or reduction of the rental fees charged to any city official or employee due to his or her position or status with the City of Atlanta.

The Standards of Conduct in the Atlanta City Code prohibit the use of city property and services for the private advantage of any person or entity. Section 2-811 provides:

No official or employee shall request, use or permit the use of any publicly owned or publicly supported property, vehicle, equipment, labor or service for the private advantage of such official or employee or any other person or private entity. However, no official or employee is prohibited from requesting, using or permitting the use of any city-owned or city-supported property, vehicle, equipment, material, labor or service which as a matter of city policy is made available to the public at large or which is provided as a matter of stated public policy for the use of officials and employees in the conduct of official city business.

The Board interprets the term “private advantage” to mean private or personal use or gain.

Applying this interpretation, section 2-811 prohibits city employees from allowing city officials to use public property for their own private gain or for the private gain of any other individual or organization. The same code provision also prohibits any city official from requesting use of city property for his or her own personal use or for the use of any other person or private entity.

The section’s second sentence creates an exception to this general prohibition against the private use of public property. It permits city officials and employees to use city-owned or city-sponsored property for any purpose -- public or private -- when city policy permits members of the general public to use the property. The second sentence further permits city officials and employees to use city property and services when it is the city’s stated public policy to allow their use of the property while conducting official city business. The Board finds that neither of these permitted uses applies here because the commissioner’s hypothetical facts do not show that the general public can receive a reduction or waiver of a rental fee or that any city official is seeking to use the city’s property for official city business.

Based on the relevant code provisions, the Board of Ethics concludes that a city official is not entitled to a reduction or waiver of any rental fee for the personal use of parks property, except on the same terms available to the general public. In addition, the city’s ethics code does not allow a fee waiver or reduction when the official seeks use of a parks facility, equipment, or service on behalf of a constituent, family member, friend, or private organization for a matter unrelated to official city business. In that event, the official would be violating the prohibition in section 2-811 against use of public property for the private advantage of the official, other person, or private entity. Therefore, it is the Board’s opinion that the parks department may not waive or adjust the rental fee required by the fee schedule in the city code when a member of the Atlanta City Council makes the reservation for his or her own personal use or for the use of any other individual or private entity.

Adopted August 21, 2003

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