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Formal Advisory Opinion 2005-2

Solicitations by City Employees in an Official Capacity for Employee Prizes and Awards

Opinion Summary

City of Atlanta employees may solicit donations on behalf of the city or their agency for gifts to be awarded employees from any individual or organization that is not a prohibited source or targeted solely because it is doing business with the city. City employees who solicit donations on behalf of the city or their agency for a city program or project must report the gifts received to the Board of Ethics by filing an online city gift report form.

Question Presented

When may city employees in their official capacity solicit donations or contributions for employee awards from individuals, companies, and organizations that may be a prohibited source?

Facts

The Ethics Office has received several inquiries concerning the solicitation of donations from prohibited sources for employee prizes and awards as a way to reward employees for exemplary performance or as an incentive to encourage their attendance at a city-sponsored event. The Ethics Officer has generally advised that employees may solicit door prizes and awards from companies that are not a prohibited source, but should not solicit donations from companies with whom they or their department does business. Given the frequency of the requests, the Ethics Officer has collected examples of solicitations for employee prizes and awards for the Board of Ethics to consider.

1. Traditionally, during National Corrections Officer and Nurses Week in May, the Department of Corrections hosts a luncheon where it presents individual and team awards to its employees in recognition of their outstanding performance. Historically, the department has sought household items, complimentary massages, restaurant vouchers, and other goods and services from local businesses to give as door prizes to persons attending the luncheon. None of the companies do business with the

department, although the donors located within the city limits may be required to obtain city permits and licenses from other departments. The Chief of Corrections has requested a formal advisory opinion from the Board concerning whether the department may solicit donations from area businesses, both within the city limits and the metropolitan Atlanta area, to give away as door prizes at the annual luncheon.

2. The Department of Aviation operates a Hartsfield-Jackson Atlanta International Airport Customer Service Recognition Program. Started prior to the 1996 Olympics, the airport-wide program is designed to reward airport employees who exhibit exemplary customer service skills. Department senior staff and employees involved in administering the program are not eligible for the prizes, but other city employees are eligible and have occasionally won an award. The department administers the program in conjunction with the Airport Customer Service Focus Group, which is composed of representatives of the airlines, concessionaires, governmental agencies, and service providers. Twice a year the department solicits donations from companies doing business with the airport. The prizes include airline tickets, tickets to sports events, gift certificates to restaurants or stores, company souvenirs, hotel vouchers, and gift baskets. The focus group selects the winners for the monthly awards and the annual prize. The Ethics Officer wrote an informal advisory letter in October 2003 that stated city employees could not receive gifts or door prizes donated by companies that do business with the city, but did not address the issue of solicitations.

3. The Department of Finance holds open enrollment meetings every fall to advise employees and retired employees about health care and other employee benefits. The Employee Benefits Division previously asked the various city vendors to donate gift cards to give away as door prizes to encourage attendance at the meetings, but stopped the practice after the city's adoption of a new rule on gifts in 2002.

Discussion

Code Provisions on Soliciting and Receiving Gifts

The City of Atlanta's Charter gives the city unlimited authority to accept gifts when given to the municipal corporation. The charter's list of powers grants the city the authority to "accept or refuse gifts, donations, bequests, or grants from any source for any purpose related to the powers and duties of the city and the general welfare of its citizens, on such terms and conditions as the donor or grantor may impose." Atlanta City Charter § 1-102 (7).

The Standards of Conduct in the Code of Ordinances address the solicitation and reporting of gifts received on behalf of the city in two sections. Section 2-818 on solicitations prohibits city officials and employees from soliciting or accepting anything of value in exchange for a vote, decision, or favorable action, but states that it does not prohibit gifts accepted on behalf of the city in certain situations.

No official or employee shall solicit or accept anything of value, in any form whatsoever, calculated to influence a vote, decision, or the exercise of official authority in any manner involving the city; provided, however, nothing in this section shall prohibit any official or employee from accepting a gift on behalf of the city which is properly reported to the board of ethics and the department on administrative services for addition to the inventory of property of the city.

See Atlanta, Ga. Code § 2-818. Consistent with this provision, section 2-801's definition of banned gratuities has an exception for gifts to the city. To meet this exception, the gift or thing of value must be offered to the city, accepted on behalf of the city, and remain the property of the city "provided that the recipient complies with the provisions governing solicitations found at section 2-818." See § 2-801 (8). The latter part of section 2-818 states that the section does not prohibit officials or employees from accepting a gift on behalf of the city when the gift is properly reported.

Relying on section 2-818, the Board in a previous opinion concluded that an employee may not personally solicit funds from a prohibited source for a charitable or professional organization. See FAO2004-6, Solicitation of Charitable Contributions from a Prohibited Source. The rationale for that decision was that an employee's solicitation from prohibited sources might pressure a city vendor or contractor to make a donation to maintain the city's work or gain additional work and would create the perception that the donor made the contribution as a personal favor to retain the employee's good will. In addition, there was no reporting mechanism that allowed for the Ethics Office or general public to monitor the solicitation of gifts by employees in their personal capacity. The situation is different, however, when the employee is soliciting a donation in an official capacity on behalf of the city for an official city project, program, or event.

Construing sections 2-818 and 2-801 together, these provisions prohibit officials and employees from soliciting personal gifts or anything of value as a quid pro quo for some favorable action, but allow city officials and employees to solicit on behalf of the city under certain conditions. The employee must solicit in an official capacity, the gift must not be intended to influence any official action, it must be given to the City of Atlanta or an agency of the city rather than to an individual or third party, and it must be publicly disclosed. To satisfy the public reporting requirements, the Ethics Office has developed a city gift report form for employees to complete and a way for the general public to review online the information disclosed in the reports. See exhibit 1.

General Guidelines for Solicitations by City Officials and Employees

To implement these code sections, the Board of Ethics believes that limitations need to be placed on certain solicitations by city employees and officials because they create a conflict of interest or the appearance of impropriety. When a city employee solicits donations for employee prizes and awards, the distinction between gifts to the city and gifts to the individual becomes blurred. Although the solicitor is acting in an official capacity in seeking contributions for a city-sponsored program, the ultimate recipient of the gift is another city employee. This type of solicitation is subject to abuse if not properly monitored.

Furthermore, when a city employee solicits a donation from a business that has interests that may be affected by the employee's performance of his or her official duties, it creates what one state ethics commission has called an "inherently exploitable" situation that raises questions about the official's impartiality and has the potential for serious abuse. As a result, many jurisdictions place limitations on solicitations by officials and employees; these restrictions may prohibit solicitations from companies during the bid or negotiation process, prohibit solicitations from companies regulated by a department, or prohibit solicitations from companies doing business with a department.

Considering these factors, the board believes the following general guidelines on solicitations for employee prizes and awards will help city officials and employees comply with the city's ethical standards on solicitations:

- Solicitations are permitted if sought from businesses that are not a prohibited source.
- Solicitations may be requested from persons, businesses, and entities that are, or may be, a prohibited source if the solicitation is part of a broad public appeal for support.
- Solicitations should not be made when the solicitor knows that the person, business, or entity is currently bidding on a city project or is actively negotiating with the city about a bid, business, or contract.
- Any solicitations should be made on behalf of an official city project or program and not on behalf of independent organizations or third parties.
- If donations and contributions are received on behalf of the City of Atlanta as a result of a solicitation, then the individuals involved in the solicitations must publicly disclose the gifts by filing an online gift report form.

In addition, the Board recommends that the city adopt a policy that requires city employees to obtain the approval of his or her department or agency head before soliciting goods, services, or funds on behalf of the City of Atlanta.

Applying the Guidelines to Specific Programs or Events

Based on these standards and guidelines, the Board considers the three situations described earlier:

1. The Department of Corrections may solicit donations from area businesses, both within the city limits and the metropolitan Atlanta area, to give away as door prizes to employees and guests at the annual luncheon since any solicitation from a prohibited source is part of a broader campaign for donations from stores, restaurants, and companies. The Chief of Corrections or a designated employee is required to file a city gift report form within 30 days of the event or the receipt of the final gift in each year in which the donations are solicited.
2. The Department of Aviation's solicitation of donations for its customer service award program is problematic, as currently structured, since it targets airport contractors, retailers, and airlines, and there has been no public reporting of the donations. The department could address the problem in several ways. It could seek donations from a much broader group of companies and publicly disclose the gifts, give the responsibility for organizing the program to the customer service group or another airport-wide group and divorce itself totally from the solicitation process, or establish an account into which individuals and companies could make anonymous contributions to the program. In that event, the gifts donated to the program would still need to be disclosed, even when the donor's identity remains unknown.
3. The Department of Finance's employee who makes recommendations about employee benefits may not solicit door prizes for current and retired employees from health care and other benefits providers. As part of its request for proposal or contract negotiations, however, the department may seek a provision requiring the providers to donate small gifts or gift cards as incentives to encourage attendance at the open enrollment meetings.

This opinion does not address solicitations made by city employees in an official capacity for programs that benefit city residents or the public in general.

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City of Atlanta Board of Ethics

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