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Formal Advisory Opinion 2007-2 Disclosure of Reasonable Hosting Expenses Paid by Non-City Sources

Opinion Summary

City officials and employees must disclose their travel and other reasonable hosting expenses received from any source other than the City of Atlanta by filing the online Expense Reimbursement Report.

Question Presented

Are city officials and employees required to file a disclosure form when their travel and other hosting expenses are paid or reimbursed by a non-city source that is not a prohibited source?

Facts

The Code of Ethics requires city officials and employees to disclose expense reimbursements that are allowed under the “reasonable hosting expenses” exception to the ban on gratuities. See Atlanta, Ga., Code § 2-815. Reasonable hosting expenses include travel, meals, lodging, and conference registration. See § 2-801. Because there is a need for clear, uniform rules on the filing of city-mandated travel disclosure reports, the Ethics Officer has requested that the Board of Ethics adopt a formal policy requiring disclosure of city-related travel that is funded by non-city sources, including prohibited sources.

Background on Travel Disclosure

In 1998, the City of Atlanta enacted an ordinance that required city officers and employees to disclose all city-related travel by filing an annual travel disclosure statement with the Municipal Clerk. Atlanta, Ga., Code § 2-45. The ordinance provided that any officer or employee who failed to file a travel disclosure statement would not receive advances or reimbursements for further travel, was required to repay any city-paid travel funds, and was subject to reprimand by the City Council. See Ordinance 98-O-0116 (Sept. 8, 1998). Although a few persons complied with the disclosure law, a majority of officers and employees did not. There is no record in the City Council's minutes that it ever reprimanded any officer or employee for the failure to file a travel disclosure statement.

Following the 2001 municipal elections, the Code of Ethics was revised through the joint efforts of the Mayor's Ethics Task Force and the City Council "to establish and reinforce high ethical standards." See Ordinance 02-O-0377 (April 10, 2002). As part of these efforts, the code was amended to prevent city officials and employees from receiving travel reimbursements from prohibited sources, including contractors, except in limited circumstances. Disclosure was required in those circumstances. See Code §§ 2-801, 2-815.

In 2006, the Committee on Council held work sessions to eliminate redundant, conflicting, and obsolete language between the Charter and Code of Ordinance. At the request of Councilmember Felicia Moore, the Board of Ethics reviewed the conflicts of interest provisions in the Charter, Code of Ethics, and other parts of the Code of Ordinances. Among the provisions considered were the overlapping travel disclosure requirements.

The Board recommended that the Council follow the provision in the Code of Ethics and require disclosure of all city travel paid by a non-city source. See Board of Ethics Minutes (May 18, 2006). The rationale was that officials and employees already file an expense report with the finance department when the city pays for their travel, making the disclosure of all city-related travel redundant. In addition, the Board favored the online travel reimbursement form which provides the public with easy, web-based access to information about city-related travel paid by a source other than the city. Subsequently, the City Council adopted the Board's recommendation and repealed section 2-45. See Ordinance 06-O-1035 (May 16, 2006).

Discussion

The Code of Ethics prohibits officials and employees from receiving personal gifts or other things of value from a prohibited source, such as a city contractor. There is an exception for "reasonable hosting expenses" that applies primarily to travel in an official capacity. The exception states that the term "gratuity" does not include:

- (5) Reimbursements from **non-city sources** of reasonable hosting expenses, including travel, meals, and lodging, provided to an official or employee in connection with speaking engagements, participation on professional or civic panels, teaching, or attendance at conferences in an official capacity; provided, however, that receipt of such reimbursements is subject to the reporting requirements governing disclosure of expense reimbursements found at section 2-815.

(Emphasis supplied.)

Section 2-815 states that officials and employees must report reimbursements authorized under section 2-801 within 30 days of receipt. The disclosure must include the person's name and position with the city; name and address of persons providing reimbursements; date, location, and subject matter of the "conference, speaking engagement, or event;" and the amount received for travel, meals, lodging, and other expenses. The online Expense Reimbursement Report in the Electronic Filing System was developed to enable individuals to comply with this law.

The Board of Ethics has previously considered the reasonable hosting expenses exception in two opinions that address the type of event for which officials and employees may accept a gift of travel from a prohibited source. In the first opinion, the Board concluded that a fact-finding trip to observe a best-practices program does not fall within the travel exception for panel participation. FAO 2004-5 (July 15, 2004). In the second opinion, the Board determined that a sales presentation at a business meeting was not a “speaking engagement.” See FAO 2006-2 (Feb. 23, 2006).

Based on the language in the code and the legislative changes made in 2006, the Ethics Officer has advised officials and employees to disclose any travel made in an official capacity when paid by a source other than the City of Atlanta. The rationale is that the travel exception to the ban on gratuities uses the term “non-city source,” rather than “prohibited source,” and therefore requires disclosure when reasonable hosting expenses are paid by any source other than the City of Atlanta.

Similarly, the Board of Ethics believes that the better policy is to require city officials and employees to publicly disclose when they receive expense reimbursements from a person, business, or entity other than the City of Atlanta for travel conducted in an official capacity. This interpretation provides for more transparency in city operations and more certainty and uniformity in the filing of disclosure reports.

Under this rule, the disclosure rules on travel and expense reimbursements are relatively straightforward.

1. Officials or employees may accept expense reimbursements from prohibited sources for travel and other reasonable hosting expenses when provided to the individuals in their official capacity in connection with (a) speaking engagements, (b) teaching, (c) attending a conference, and (d) participating on a panel.

Example: A city employee may accept expense reimbursements from a city vendor to participate in a professional conference’s panel discussion on practical ways to use the vendor’s product.

Example: A city council member may accept airfare and reimbursements for hotel expenses and meals to participate in an airline’s inaugural flight from the City of Atlanta to another international city when the official is scheduled to speak at a ceremony to celebrate the new route.

2. Officials or employees may accept expense reimbursements from non-city sources that are not prohibited sources for travel and related expenses when provided to the individuals in their official capacity for the conduct of official city business, such as training, trade missions, or the review of another city’s program or project.

Example: A city council member may accept expense reimbursements from a national civil rights organization for a fact-finding visit to a national museum that serves as a possible model for an Atlanta civil rights museum.

Example: A recreation department employee may accept airfare, lodging, and meals from the National Football League's Youth Football Fund to attend a national summit of municipal employees from the 32 NFL team cities to develop a strategic plan to promote youth football.

Example: A city planner may accept expense reimbursements for airfare, hotel expenses, and meals from another city to participate in a peer review of that city's planning and historic preservation program.

Example: An assistant city solicitor may accept reimbursement from the Prosecuting Attorneys' Council of Georgia for travel and registration fees to attend a semi-annual conference on changes in federal and state criminal law.

3. Individual officials or employees who accept payment or expense reimbursements from a source other than the City of Atlanta must disclose the expenses on the online Expense Reimbursement Report within 30 days of the event of the receipt of the reimbursement. See attached example.

This disclosure requirement applies to any payments of expenses or reimbursements received on or after December 1, 2007. To assist officials and employees with the filing requirement, the Ethics Officer should devise a system for notifying all city officials and employees about the travel disclosure requirement at least once a year.

The Board will address in separate opinions who is a prohibited source and when the City or one of its departments may accept gifts of travel from a prohibited source.

Conclusion

In summary, a city employee who travels on city business either files an expense report with the city finance department when the city is the source of payment or files an online report in the Electronic Filing System when the city is not the source of the payment. If the non-city source is a prohibited source, travel expenses may be paid in four limited situations: a speaking engagement, teaching, participating on a panel, or attending a conference. If the non-city source is not a prohibited source, there is no restriction on the purpose of the trip.

Adopted November 15, 2007

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