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Formal Advisory Opinion 2003-3 Honoraria

Opinion Summary

City officials and employees may not accept any honorarium as personal income from any entity seeking official action from the city, doing business or seeking to do business with the city, or registered as a lobbyist. If an honorarium is given from one of these prohibited sources or for services performed on city time, the official or employee must either return the payment to its source or have the honorarium made payable to the City of Atlanta and delivered to the city's general fund. When an honorarium is accepted on behalf of the city, the official or employee must acknowledge that fact to the donor and must complete a gift disclosure report.

Question Presented

When a prohibited source gives a payment of money or other gift for an appearance, speech, article, or other service, may a city official or employee (a) personally accept the honorarium, (b) donate the honorarium to the City of Atlanta, or (c) donate the money to the charity of his or her choice?

Facts

1. A captain in the fire department is asked to conduct a safety class for employees of a company that does business with the city. He asks whether he can teach the class during his off-duty hours and be paid individually for his efforts.
2. An employee in the Department of Watershed Management gives a talk one Saturday to a national environmental education group. She considers the workshop to be part of her official duties and takes compensatory time for it. A week later the sponsoring group sends her a thank you note and a gift card to a local bookstore. She asks whether she may use the gift card to purchase books for her department.
3. A commissioner is given a \$300 "incentive fee" for participating in a three-hour focus group on a Saturday. Due to the city's ban on honoraria, the commissioner declines the personal payment and directs that the check be made payable to the City of Atlanta. She asks whether she can donate the honorarium to the charity of her choice.

Discussion

In 2002, the Mayor's Ethics Task Force recommended that certain city employees be prohibited from receiving any honoraria as outside income. The Atlanta City Council subsequently enacted a provision banning honoraria to any city official or employee from a prohibited source. The ban is intended to prevent individuals, companies, and entities that are outside city government from exercising, or appearing to exercise, an improper influence over city officials and employees by paying them for their services.

The honoraria ban is found in section 2-820 (e) of the Code of Ethics, which states: "Officials and employees other than the mayor may not accept honoraria from a prohibited source." The code defines "honorarium" as "a payment of money or anything of value for any service, including . . . an appearance, speech or article . . . if the subject matter is related to the official's or employee's official duties or the payment is made because of the official's or employee's status with the city."¹ A "prohibited source" is defined as any person, business, or entity that is seeking official action from the city, seeking to do business or does business with the city, represents a client who is seeking official action or business, has interests that may be substantially affected by an official's or employee's official duties, or is a registered lobbyist under state law. See City Code of Ordinances § 8-201. The mayor is prohibited from accepting honoraria as outside income from any source. See § 2-820 (d).

1. The first factual scenario raises a question concerning whether the captain can receive personal income for teaching a class on fire safety. Since the class is an appearance or speech about a subject matter that is related to the captain's official duties with the Atlanta Fire Department, any payment for his services comes within the code's definition of an honorarium. Moreover, because the payment would come from a company doing business with the city, the Code of Ethics precludes the captain from accepting the honorarium as individual or personal income.

The second scenario raises an issue concerning whether the ban on honoraria extends to a payment or gift received from an entity other than a prohibited source. The environmental group that gave the gift card to the city employee does not do business with the city, does not seek official action from the city, and is not a registered lobbyist under state law. Therefore, it is not a prohibited source. Nevertheless, the employee may not keep the card for her own personal use.

The Code of Ethics generally prohibits the use of public property for private gain. Section 2-811 states that no employee shall use "publicly supported property, . . . labor or service for the private advantage of such official or employee." This provision would preclude an official or employee from receiving a personal payment or gift for a speech given on city time or prepared using city labor or equipment. Because the watershed management employee gave a talk related to her official duties and she took compensatory time from her city job to perform the service, she would not be entitled to keep any honorarium, such as the gift card. See § 2-811.

2. Although the Code of Ethics prohibits individual employees and officials from personally accepting honoraria from a prohibited source or for publicly supported services, it does not address what an employee should do when offered an honorarium or gift. As the facts in this opinion illustrate, honoraria may be offered to city officials and employees for activities that

¹ An "honorarium" does not include an "award, plaque, certificate, memento, novelty or similar item given in recognition of the recipient's civic, charitable, political, professional, or public service."

benefit the city. The Board of Ethics does not believe that city officials and employees should be precluded from giving speeches, writing articles, making appearances, or providing other services solely because of the ban on accepting personal income from honoraria.

City officials and employees, however, need to exercise care if they are given an honorarium for their services. They first need to determine whether the source of the payment is a prohibited source. If the payment is from a prohibited source, they have used city resources, or they have performed the service on the city's time, they should not accept any cash or check made payable to them individually. A personal payment would not only violate the Ethics Code, but probably would also be considered personal income for federal income tax purposes. Any individual honorarium prohibited under the code should be returned to its source within 30 days of its receipt.

A different situation is presented when the honoraria is donated to the City of Atlanta, rather than to specific individuals, for services provided as part of the officials' or employees' official duties. The Board of Ethics does not consider an honorarium to be prohibited when the payment is made directly to the city and delivered within 30 days for donation to the general fund. In that event, the city is receiving the payment as a gift for the services of its employees or officials. When an honorarium is accepted on behalf of the city, the official or employee must acknowledge that fact to the donor and must complete a gift disclosure report. See § 2-818.

3. In the final scenario, the commissioner asks whether it is permissible to donate any honorarium to a charitable organization, rather than the city. Because it would be difficult to structure the transaction so that the donation could be made without any personal payment or benefit to the individual official or employee, the Board has concluded that the Code of Ethics does not permit an employee to accept an honorarium from a prohibited source or for publicly supported services and then donate it to the charity of his or her choice.

Adopted November 20, 2003

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