



CITY OF ATLANTA

BOARD OF ETHICS
Michael D. Johnson, Chairperson
John D. Marshall, Vice-Chairperson
Chuck Barlow
Gloria Bromell-Tinubu
Leah Janus
Seth Lynn
Robert B. Remar

68 MITCHELL STREET SW, SUITE 3180
ATLANTA, GEORGIA 30303-0312
(404) 330-6286
FAX: (404) 658-7720

ETHICS OFFICE
Ginny Looney
City Ethics Officer
glooney@atlantaga.gov

Formal Advisory Opinion 2004-6 Solicitation of Charitable Contributions from a Prohibited Source

Opinion Summary

A city employee may not personally solicit funds or other financial support from a prohibited source for a charitable or professional organization.

Question Presented

May a city department head personally seek charitable contributions for a non-profit organization from firms that are under contract with the department or would like to do business with it?

Facts

Two department heads in the executive branch have inquired whether they may solicit funds from prohibited sources on behalf of a charity and a non-profit, professional organization.

- The city attorney asked whether she could solicit funds from law firms and other legal service providers to support an in-state meeting of the International Municipal Lawyer's Association. The law firms either do business with the city through her department or want to do business with the city.
- The commissioner of the Department of Watershed Management asked whether he and another department employee could seek charitable contributions from firms under contract with his department as part of a fundraiser to benefit the Muscular Dystrophy Association.

Both questions involve solicitations made by a city employee in his or her personal capacity. Thus, this opinion does not address when a city employee may solicit funds in an official capacity on behalf of the City of Atlanta as part of his or her official duties.

Discussion

The Code of Ethics prohibits city employees from soliciting things of value in exchange for favorable consideration of a pending matter. Section 2-818 states:

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 of administrative services for addition to the inventory of property of the city.

Implicit in this prohibition is that an employee may not personally solicit a gift or donation from a person or entity that has an interest in a matter pending before the employee.

In addition, the code prohibits city employees from accepting a gratuity, defined as “anything of value given by or received from a prohibited source.” Atlanta, Ga. Code § 2-801 (g). A prohibited source is any person or entity that does business with the city, seeks business or official action from the city, is a registered lobbyist, or has interests that may be substantially affected by the employee’s performance of his or her official duties. Although there are eleven exclusions to the definition of a “gratuity,” none of the exceptions applies to a charitable contribution. See FAO 2003-3 (3).

Based on these provisions, the Board concludes that the code prohibits a city employee from personally soliciting a charitable contribution from a prohibited source on behalf of a non-profit group, professional organization, or other private entity. A solicitation may place pressure on a contractor or vendor to make a donation to maintain its current level of business with the city or gain additional work. Moreover, any donation creates the perception that the giver made the contribution as a personal favor to the employee to maintain good relations with him or her and the department. Finally, the board believes that this no-solicitation policy should help assure citizens that the city evaluates a bid, proposal, product, or service based on its price and merits, rather than any employee’s personal interest.

This opinion is consistent with the federal government’s guidelines on private fundraising activities by employees. The Office of Government Ethics advises that an employee in the executive branch may engage in fundraising activities in a personal capacity if the employee does not use his official title, position, or authority; personally solicit support from a subordinate; or personally solicit funds from any person who is known to be a prohibited source. OGE Adv. Op. 93 x 19 (Aug. 25, 1993). Other cities also prohibit employees from personally soliciting money or items for a charity from a vendor or contractor with whom the employee works. See, e.g., http://www.ci.seattle.wa.us.ethics/et_faq03.htm; www.co.honolulu.hi.us/ethics/gifts.htm.

Adopted September 23, 2004

City of Atlanta Board of Ethics

Michael D. Johnson, Chair
Chuck Barlow
Leah Janus
John D. Marshall
Robert B. Remar