

**BOARD OF ETHICS
OF THE CITY OF PHILADELPHIA**

J. Shane Creamer, Jr.
Executive Director
Board of Ethics
of the City of Philadelphia

V.

Celena Morrison

Respondent.

Matter No: 2106ET19

Date of Issuance: April 25, 2022

FINAL DETERMINATION

On June 9, 2021, the Executive Director of the City of Philadelphia Board of Ethics initiated an administrative enforcement proceeding against Respondent Celena Morrison alleging violations of the City’s Ethics Code. At Respondent’s request, the Board held a hearing on December 15, 2021. This Final Determination constitutes the Board’s adjudication of the matter. As described in more detail herein, we find that the Executive Director has not proved a violation of the Ethics Code by Respondent.

I. JURISDICTION

Philadelphia Home Rule Charter Section 4-1100 provides that the Board of Ethics “shall administer and enforce all provisions of this Charter and ordinances pertaining to ethical matters,” including the City’s Ethics Code, which is set forth at Philadelphia Code Chapter 20-600 and includes, at Section 20-604, limitations on gifts to City employees.

II. ADMINISTRATIVE ADJUDICATION OF POTENTIAL VIOLATIONS

Home Rule Charter Section 4-1100 provides that the Board “shall conduct its enforcement activities either by bringing enforcement actions in the Court of Common Pleas or, if authorized by Council by ordinance, administratively adjudicating alleged violations and imposing civil penalties and other remedies for violations.” Code Section 20-606(1)(h) authorizes the Board to administratively adjudicate alleged violations of the laws within its jurisdiction.

Pennsylvania’s Local Agency Law, 2 Pa.C.S. § 105 et seq., sets forth the essential rules and procedures for adjudications conducted by a municipal administrative agency. Board Regulation No. 2 provides detailed procedures and requirements for such adjudications. Notably, in order to comply with the due process requirements articulated by the Pennsylvania Supreme Court in *Lyness v. Commonwealth*, 529 Pa. 535 (1992), Regulation No. 2 mandates that the Board “shall maintain a separation between the adjudicative functions and the investigatory or prosecutorial functions.” As a result, the individual members of the Board, any Hearing Officer in a particular case, and the General Counsel are part of the adjudicative function, while the Executive Director and Enforcement Staff assisting them are part of the prosecutorial function. At all times, the Board, its Hearing Officer, and Board Staff take care not to commingle the adjudicatory and prosecutorial functions of the agency.

Paragraph 2.16 of Regulation No. 2 provides that the Board may “appoint a Hearing Officer to oversee pre-hearing disclosures, preside over a hearing, and prepare Findings of Fact and Conclusions of Law for the Board’s consideration.” On March 17, 2021, the Board appointed Louis S. Rulli, the Practice Professor of Law and Director of the Civil Practice Clinic and Legislative Clinic at the University of Pennsylvania School of Law, to serve as a Hearing Officer. Mr. Rulli presided over the hearing in this case as well as all pre-hearing matters.

III. PROCEDURAL HISTORY

The Executive Director initiated this administrative enforcement proceeding by serving a Notice of Administrative Enforcement Proceeding (“Notice”) on Respondent on June 9, 2021. (Docket No. (“Doc.”) 1.) The Notice alleged that Respondent had violated Philadelphia Code Section 20-604(1) (Gifts, Loans, and Favors to City Personnel) and Philadelphia Code Section 20-610 (Statement of Financial Interests). (Notice at ¶¶ 34-58.) On July 15, 2021, the Executive Director filed and served an Amended Notice of Administrative Enforcement Proceeding (“Amended Notice”) withdrawing the alleged violation of Section 20-610. (Doc. 9; *see also* Doc. 8, 10.)

Respondent, who was unrepresented during the Executive Director’s investigation and the initial stages of the enforcement action, obtained counsel who filed a Response to the Amended Notice (“Response”) on her behalf on September 30, 2021. (Doc. 21, *see also* Doc. 12, 13.) On December 15, 2021, the Board held a hearing on the matter. A court reporter was present to transcribe the hearing, which was conducted in person. (*See* Doc. 33.) On January 14, 2022, the parties filed post-hearing briefs, which included proposed findings of fact and conclusions of law. (Doc. 34 and 35.) Upon consideration of the testimony and documents accepted into evidence at the hearing and the post-trial submissions, the Hearing Officer submitted a recommendation to the Board on March 3, 2022. A copy of that recommendation is attached hereto as Exhibit A.

Board members have reviewed the pleadings, the evidence of record, relevant legal authority, and the recommendation of the Hearing Officer and deliberated among themselves in Executive Session. The factual and legal conclusions below constitute the final adjudication of this matter by the Board.

IV. FACTUAL BACKGROUND

Respondent Celena Morrison has served as Executive Director of the Mayor's Office of LGBT Affairs since March 2, 2020. (Doc. 27, Stipulations of the Parties ("Stip.") at ¶¶ 2, 3.) Prior to joining the City, Respondent worked at the Mazzoni Center and the William Way Community Center. (Doc. 33, Transcript of December 15, 2021, Hearing ("Tr.") at 185:1-21, 187:14-15.)

As Executive Director of the Office of LGBT Affairs, Respondent works both within City government and with external stakeholders to support the City's LGBT communities. (Tr. at 131-138; *see also* Stip. at ¶ 4.) Her responsibilities include policy development, furthering the City's diversity and equity goals, and serving as a liaison between LGBT communities and City government. (Stip. at ¶ 4.)

Kendall Stephens is a student and transgender community advocate. (Stip. at ¶ 5; Tr. at 19:11-16.) She and Respondent were long-time personal friends. (Stip. at ¶ 6.) When Respondent needed temporary housing in July or August of 2020, she stayed with Ms. Stephens for approximately two weeks. (Tr. at 22:18-24, 139:16-140:9, 196:16-197:13.) While the exact dates of this stay are unclear, it ended sometime before [REDACTED] August 16, 2020. (Doc. 33-1, Transcript of May 3, 2021, Sworn Statement of Celena Morrison ("Stmt.") at 46:7-13.)

Ms. Stephens was involved with Hearts on a Wire, an organization that supports incarcerated LBGTQ individuals. (Tr. at 24:6-22.) Ms. Stephens sought a meeting with Respondent, in Respondent's role as a representative of the Office of LGBT Affairs, in the hopes of obtaining resources or funding for Hearts on a Wire. (*Id.* at 85:4-17.) Ms. Stephens testified that she spoke with Respondent as early as April or May 2020 about Hearts on a Wire, but she did not identify any interactions with Respondent regarding the organization between then and August 10, 2020. (*Id.* at 25:2-8.)

On August 10, 2020, Ms. Stephens sent Respondent and several other individuals an email in which she asked for a meeting to discuss Hearts on a Wire. (Doc. 33-3.) In her email, Ms. Stephens stated that she and Respondent had previously discussed Hearts on a Wire. (*Id.*) After several others on the chain replied regarding their interest or availability, Respondent replied to the group on August 19, 2020, noting her availability after 1:00 p.m. on August 28, 2020. (Doc. 33-4.) The record contains no evidence of communications between Respondent and Ms. Stephens (or anyone else) regarding Hearts on a Wire after her August 19, 2020, email.

The night of August 24, 2020, Ms. Stephens was attacked by a group of assailants that allegedly used transphobic and derogatory slurs during the attack. (Stip. at ¶ 8.) Respondent was on the phone with Ms. Stephens just before the attack, and Ms. Stephens called her back after the attack. (*Id.* at ¶ 9; Tr. at 86:10-18.) Respondent, by this time residing with her former partner, drove to Ms. Stephens' home but discovered that Ms. Stephens had gone to the police station. (Tr. at 144:4-13.)

Respondent arrived at the police station to find Ms. Stephens distraught. (Tr. at 144:17-24, 210:1-10.) Ms. Stephens felt that the responding officers trivialized the attack. (Stip. at ¶ 10.) Respondent attempted to defuse the situation. (Tr. at 144:17-24, 210:1-10.) She asked at least one officer about Police Directive 4.15, a protocol for respectful interactions with transgender individuals, and tried to get information about what happened. (*Id.* at 144:17-145:20, 211:5-11.) Respondent testified that even before she worked for the City, she routinely mentioned Directive 4.15 when interacting with police. (*Id.* at 146:3-9, 211:5-11.) Respondent did not identify herself as a City official and no evidence indicates that the officers she spoke with knew Respondent was a City employee. (*Id.* at 146:15-21, 211:2-4.)

On August 25, 2020, Respondent sent Ms. Stephens a text message in which she stated: “I just want you to know that I love you as a sister and I have your back as my sister and as a member of this community. I have your back in my professional position as well and we will not take this lying down.” (Stip. at ¶ 11; Doc. 33-6.) Respondent also sent Ms. Stephens’ husband, Avery Shaw, contact information for the Philadelphia Police Department’s LGBT liaison. (Stip. at ¶ 13; Doc. 33-6.) Respondent further promised to call the Police Department on Ms. Stephens’ behalf. (*Id.*)

Later that same day, Lauren Cox, Deputy Communications Director in the Mayor’s Office, sent Respondent an email in which she asked for assistance responding to a press inquiry about the attack on Ms. Stephens. (Doc. 33-20.) Although Respondent expressed discomfort given her personal relationship with Ms. Stephens, she reviewed and approved a statement drafted by Ms. Cox. (Doc. 33-18, Doc. 33-19, Doc. 33-20; Tr. at 232:15-234:6.)

Shortly after the attack, Ms. Stephens set up a GoFundMe campaign to raise money for medical and other expenses related to her recovery from injuries suffered in the attack. (Tr. at 41:9-23, 110:12-17; Doc. 33-10.) The fundraiser raised more than \$35,000. (*Id.*; Stip. at ¶ 17.) The evidence presented does not specify when Ms. Stephens created the GoFundMe account, how long it took to reach \$35,000 in donations, or when those funds were disbursed to Ms. Stephens.

After the August 24, 2020, attack, Respondent served as a liaison between Ms. Stephens and City officials. (Stip. at ¶ 15.) Specifically, Respondent relayed Ms. Stephens’ contact information to Police Department officials so that she could pursue a complaint against the responding officers. (*Id.*) Deputy Police Commissioner Robin Wimberly, of the Department’s Office of Professional Responsibility, sent an email to Respondent’s City email address on September 2, 2020, to make sure Ms. Stephens had information about how to file a complaint against the responding officers. (Doc. 33-7.)

Deputy Commissioner Wimberly followed up with another email to Respondent on September 9, 2020, asking whether Ms. Stephens had changed her mind about filing a complaint. (Doc. 33-7.) On September 10, 2020, Respondent replied to say that Ms. Stephens still wanted to pursue a complaint. (*Id.*) At Ms. Stephens' request, Respondent forwarded Ms. Stephens' contact information to Deputy Commissioner Wimberly. (*Id.*) On September 15, 2020, the Deputy Commissioner emailed Respondent to say she had walked Ms. Stephens through the complaint process. (*Id.*)

Respondent also relayed information, at Ms. Stephens' request, to the District Attorney's Office. (Stip. at ¶ 16.) On August 28, 2020, Assistant District Attorney and Director of Diversity and Inclusion Adam Geer sent Respondent an email at her City email address, asking for a call to discuss Ms. Stephens' case. (Doc. 33-8.) Respondent replied with her availability, and the two apparently spoke on the telephone. (*Id.*; Tr. at 153:24-154:15.)

On September 2, 2020, Respondent emailed ADA Geer, attaching screenshots depicting one of the alleged attackers and a link to an interview Ms. Stephens gave about the attack. (Doc. 33-8; Stmt. at 37:9-39-3.) Ms. Stephens had asked Respondent to pass this information on to the District Attorney's Office. (*Id.*) ADA Geer replied later that day, thanking Respondent for the information, and saying he had forwarded it to the assigned detective. (Doc. 33-8.)

On September 23, 2020, Ms. Stephens gave Respondent a cashier's check for \$4,000. (Stip. at ¶ 19; Doc. 33-12.) That same day, Respondent and Ms. Stephens signed a document in which they agreed that the \$4,000 Ms. Stephens gave Respondent was a no-interest loan that Respondent would repay in monthly installments over the course of a twelve-month period. (Stip. at ¶ 18; Doc. 33-11.) Respondent admits that she received the loan and that it was a gift for purposes of the City's Ethics Code. (Doc. 35, Respondent's Post-Hearing Brief ("Resp. Br.") at 21, ¶ 112.) However, the parties dispute the circumstances of how the loan was requested and provided.

Respondent testified that while she stayed with Ms. Stephens in August of 2020, they discussed Respondent's desire to find her own apartment. (Tr. at 198:21-201:10.) According to Respondent, Ms. Stephens offered a loan to cover the costs of securing an apartment and asked how much Respondent would need. (*Id.* at 200:17-23.) Respondent testified that Ms. Stephens showed her envelopes containing cash and claimed that she had \$200,000 hidden in her closet. (*Id.* at 167:18-168:15.) Respondent calculated that she would need \$4,000. (*Id.* at 156:6-16; Stmt. at 49:10-50:9.) She testified that Ms. Stephens agreed to loan her that amount. (Tr. at 201:6-16; Stmt. at 45:22-24.) Respondent specifically denied that she solicited the loan from Ms. Stephens. (Tr. at 156:1-5, 199:1-201:5; Stmt. at 45:14-24.)

Ms. Stephens, in contrast, testified that Respondent solicited the loan from her after seeing that the GoFundMe campaign raised over \$35,000. (Tr. at 44:2-8, 110:2-11.) Ms. Stephens denied that she offered the loan to Respondent in August or that she had ever claimed to have large amounts of cash in her closet. (*Id.* at 58:18-59:23, 104:23-105:10.)

The friendship between Respondent and Ms. Stephens apparently deteriorated after the loan was made on September 23, 2020 as a result of an October 2020 press conference regarding violence against transgender women. (Tr. at 238:4-7, 246:21-247:9.) Ms. Stephens believed that, as a transgender victim of violence, she should have been invited to attend the press conference. (*Id.* at 98:19-23, 101:3-21.) Respondent noted that the press conference was convened by the District Attorney's Office because a transgender woman was murdered. (*Id.* at 238:8-24.)

Whatever the reasons, there was a rapid breakdown of communications between Ms. Stephens and Respondent. (Tr. at 238:4-7, 246:21-247-9.) Respondent did not make the first scheduled payment on the loan. (*Id.* at 49:24-50:4.) Ms. Stephens testified that she threatened to sue Respondent for the loan balance. (*Id.* at 52:24-53:18.) Respondent ultimately repaid the \$4,000 in a check conveyed to Ms. Stephens in April 2021. (Tr. at 163:5-21; Doc. 33-13.)

V. POSITIONS OF THE PARTIES

Each party has had several opportunities to articulate their positions on both the law and the facts. We summarize these positions below.

a. Executive Director

The Amended Notice alleges that Respondent violated Section 20-604(1) by “soliciting, accepting, and receiving” a monetary gift from Ms. Stephens, someone who was “actively seeking official action” from Respondent. (Doc. 9, Amended Notice (“Am. Not.”) at ¶ 34.) The gift in question was the \$4,000 no-interest loan from Ms. Stephens. (*Id.* at ¶ 35.)

The Amended Notice alleges that Ms. Stephens was seeking official action from Respondent when she (1) “solicited and advocated” for Respondent and the Office of LGBT Affairs to work with Hearts on a Wire “throughout August 2020” and (2) “sought and reasonably believed” that Respondent would support and advocate for her in interactions with City officials regarding the assault of August 24, 2020. (Am. Not. at ¶¶ 37-38.) The Amended Notice alleges that Ms. Stephens was a “prohibited source” under Section 20-604(1) because she was “actively seeking official action” from Respondent. (*Id.* at ¶ 49.)

At the hearing, the Executive Director stated that the gift rule prohibits City officials from “soliciting, accepting, or receiving monetary gifts from any person who is seeking official action from that official at the time or in close proximity to the time the gift is received.” (Tr. at 15:23-16:6.) In his post-hearing brief, the Executive Director argued that Respondent “solicited, accepted and received a no-interest loan in the amount of \$4,000 from Ms. Stephens in September 2020, ‘at the time or in close proximity to the time’ that Ms. Stephens was seeking ‘official action’ from Ms. Morrison...” (Doc. 34, Executive Director’s Proposed Findings of Fact and Conclusions of Law (“E.D. Br.”) at 20, ¶ 9.)

More specifically, relying on Ms. Stephens' testimony at the hearing, the Executive Director asserts that Respondent solicited the loan from Ms. Stephens after the latter's GoFundMe campaign raised over \$35,000. (E.D. Br. at 10, ¶ 43.) He further asserts that Respondent's testimony that Ms. Stephens offered her the loan in August before the creation of the GoFundMe account is not credible and that Respondent "lied under oath about the 'cash in the closet' story." (E.D. Br. at 12, ¶¶ 51-53.) The Executive Director further argues that, even if the Board believes Respondent's version of events, calculating and communicating an amount for the loan constitutes solicitation for the purposes of Section 20-604(1). (*Id.* at 22-23.)

b. Respondent

Respondent acknowledges that she received a monetary gift from Ms. Stephens in the form of a no-interest loan. (Resp. Br. at 21, ¶ 112.) She testified that while she was staying with Ms. Stephens in July or August 2020, Ms. Stephens offered to lend her money to help her rent her own apartment and asked how much Respondent would need for that purpose. (*Id.* at 3-4, ¶ 12-15.) Respondent told Ms. Stephens that she would need around \$4,000. (*Id.* at 3-4, ¶ 15.) Respondent admits that she signed a loan agreement and received a cashier's check in that amount from Ms. Stephens on September 23, 2020. (Stip. at ¶¶ 18, 19.)

Respondent argues, however, that she was permitted to accept a loan from Ms. Stephens because Ms. Stephens was not seeking official action from her "at or around the time [she] received the loan." (Resp. Br. at 21, ¶ 113.) Specifically, Respondent argues that Ms. Stephens' request for a meeting regarding Hearts on a Wire was not a request for official action because it did not require any exercise of discretion on her part. (*Id.* at 21, ¶ 116.) Respondent further argues that Ms. Stephens sought Respondent's intervention after the August 24, 2020, attack as a friend, not as a City official. (*Id.* at 22, ¶¶ 118-120.)

With respect to her actions as a liaison between Ms. Stephens and City officials, Respondent argues that she simply relayed information as requested by officials at the Police Department and District Attorney's Office, and that such tasks were ministerial. (*Id.* at 23, ¶¶ 125-130.)

VI. RELEVANT LAW

a. Standards for Administrative Adjudication

In its adjudicative role, the Board must “determine, by a preponderance of the evidence, whether a violation of applicable law has occurred.” Reg. 2, ¶ 2.20. The Executive Director bears the burden of proof and must establish each element of each alleged violation. *See Hui v. City of Philadelphia Parking Auth.*, 913 A.2d 994, 1000-01 (Pa. Commw. Ct. 2006). The Board's findings of fact must be supported by substantial evidence. *Monaghan v. Bd. of Sch. Dir.*, 618 A.2d 1239, 1243-44 (Pa. Commw. Ct. 1992). Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Mrs. Smith's Frozen Foods Co. v. Workmen's Comp. Appeal Bd. (Clouser)*, 539 A.2d 11, 14 (Pa. Commw. Ct. 1988); *see also Bonatesta v. N. Cambria Sch. Dist.*, 48 A.3d 552, 558 (Pa. Commw. Ct. 2012).

Under Pennsylvania's Local Agency Law, the Board is not “bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonably probative value may be received.” 2 Pa.C.S. § 554. The Pennsylvania courts have held, however, that where hearsay evidence is properly objected to, it is not competent evidence to support a finding of fact. *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Commw. Ct. 1976). Hearsay admitted without objection may support a finding only if it is corroborated by other probative evidence. *Six L's Packing Co. v. Workers' Comp. Appeal Bd. (Williamson)*, 2 A.3d 1268, 1275 (Pa. Commw. Ct. 2010) (citing *Walker*, 367 A.2d at 367, 370).

b. Ethics Code Restrictions on Gifts

Section 20-604(1) of the Philadelphia Code provides:

No City officer or employee shall accept or receive gifts worth more than ninety-nine dollars (\$99) in the aggregate per calendar year or any gifts of money from any person who is seeking official action from that officer or employee or who has a financial interest at the time, or in close proximity to the time the gift is received, which the officer or employee is able to substantially affect through official action. An officer or employee may not solicit gifts of any value from a person who is seeking official action from that officer or employee or who has a financial interest the officer or employee is able to substantially affect through official action.

Section 20-601(10) defines “gift” as

[a] payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value given to, or for the benefit of, an officer or employee, unless consideration of equal or greater value is received. ‘Gift’ shall not include a political contribution otherwise reportable as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a Family member of the individual or from a relative within the third degree of consanguinity of the individual or of the individual's spouse or Life Partner, or from the spouse or Life Partner of any such relative.

The Ethics Code defines “money or monetary gift” as “[c]ash, checks, money orders, or the equivalent, including pre-paid debit or gift or credit cards.” Code § 20-601(16). “Official action” is defined as “[a]n act or omission taken by an officer or employee in his or her official capacity that requires discretion and is not ministerial in nature.” Code § 20-601(17). To “solicit” is “[t]o directly or indirectly request, ask, appeal for, or demand any gift” as defined by the Ethics Code. Code § 20-601(24).

VII. ANALYSIS

We begin our analysis by examining Code Section 20-604(1), the provision that the Executive Director alleges Respondent violated. The first sentence of 20-604(1) provides that a City employee may not “accept or receive...any gifts of money from any person who is seeking official action from that officer or employee or who has a financial interest at the time, or in close proximity to the time the gift is received, which the officer or employee is able to substantially affect through official action.” Thus, a City employee is prohibited from accepting or receiving monetary gifts from two classes of person: (1) a person who is seeking official action from that employee or (2) a person who has a financial interest at the time, or in close proximity to the time, the gift is received, which the officer or employee is able to substantially affect through official action.

Critically for our analysis, the phrase “in close proximity to the time the gift is received” only applies to a person who has a financial interest the officer or employee is able to affect. It does not apply to someone who is seeking official action but does not have a financial interest the City employee is able to affect through official action.

Aside from the fact that this reading is compelled by the syntax of the relevant sentence, we note that the Board explicitly set forth this reading in Board Opinion 2014-003 at page 4:

Thus, the gift law only limits gifts to City employees from persons (1) who are seeking official action from a gift-receiving City employee; or (2) who have a financial interest at the time, or in close proximity to the time the gift is received, that the gift-receiving employee is able to substantially affect through official action.

The Executive Director has not alleged that Ms. Stephens was a person whose financial interests Respondent could affect through official action. Accordingly, if we are to find a violation based on the first sentence of Section 20-604(1), the Executive Director must prove, by a preponderance of the evidence, that Respondent either accepted or received the loan from Ms. Stephens at a time when Ms. Stephens was seeking official action from Respondent.

The second sentence of Section 20-604(1) provides that a City employee “may not solicit gifts of any value from a person who is seeking official action from that officer or employee or who has a financial interest the officer or employee is able to substantially affect through official action.” Again, the Executive Director has not alleged that Ms. Stephens was a person whose financial interests Respondent could affect through official action. Moreover, unlike in the first sentence of Section 20-604(1), the second sentence does not include the phrase “in close proximity.” Accordingly, we may only find a violation based on the second sentence of Section 20-604(1) if the Executive Director proves, by a preponderance of the evidence, that Respondent solicited the loan from Ms. Stephens at a time when Ms. Stephens was seeking official action from Respondent.

a. Was Ms. Stephens Seeking Official Action from Respondent?

The evidence in this case presents several time periods during which Ms. Stephens may have sought official action by Respondent.

i. August 10-19, 2020 - Hearts on a Wire

As discussed on pages 4 and 5, above, from August 10 through August 19 of 2020, Respondent and Ms. Stephens communicated about the organization Hearts on a Wire. While Respondent seems to suggest that Ms. Stephens lacked authority to request official action on behalf of Hearts on a Wire (*see* Resp. Br. at 4, ¶ 20), Ms. Stephens’ position with the organization (or lack thereof) is not relevant. The relevant question is whether Ms. Stephens asked Respondent to take action in her official capacity that required discretion and was not ministerial.

Ms. Stephens sought a meeting with the Office of LGBT Affairs to explore opportunities for that office to support the work of Hearts on a Wire. Respondent admits that taking such meetings was part of her official responsibilities. (Tr. at 137:5-24.) Respondent argues, however, that she *always* accepted requests to meet with groups interested in working with her City office. (Tr. at 205:7-206:2, 207:4-15.) While we have no reason to doubt that this was Respondent's practice, the implementation of that practice is itself an exercise of discretion. Nor can we conclude that a meeting at which Respondent's role is to determine whether her City office should work with an organization is ministerial. Rather, we find that a request for a meeting intended to result in services, funding, or other action by a City office or official is seeking official action for purposes of Section 20-604.

We note, however, that the record does not include any evidence of any request from Ms. Stephens to Respondent regarding Hearts on a Wire after August 19, 2020.

ii. August 24-25, 2020 - Police station and follow-up texts

It is not clear from the evidence of record whether Ms. Stephens asked Respondent to come to the police station or speak to Police Department personnel after Ms. Stephens was attacked on August 24, 2020. Both parties admit that Respondent and Ms. Stephens were close friends and Respondent had been in contact with Ms. Stephens immediately before and after the attack, providing several reasons for Respondent to go to the police station despite the late hour.

As discussed on page 5, above, Respondent testified that while at the police station, she never identified herself as a City official. While Respondent mentioned Police Directive 4.15, she testified that she always does so when interacting with the police and did so before joining the Office of LGBT Affairs. Ms. Stephens did not testify that, while at the police station, she asked Respondent to act on her behalf. Based on the evidence presented, we cannot conclude that Ms. Stephens was seeking official action from Respondent at the police station on August 24, 2020.

Texts from Respondent to Ms. Stephens the next day, however, show that Respondent's involvement in the situation quickly evolved. Respondent volunteered to support Ms. Stephens in both her personal and professional capacity. Respondent proactively sent Mr. Shaw the contact information for the Police Department's LGBT liaison. We have no evidence that Ms. Stephens declined Respondent's offer of assistance. Thus, as described more fully below, Respondent's actions in relation to Ms. Stephens' attack involved official action beginning on August 25, 2020.

iii. August 25, 2020 - Press inquiry

As discussed on page 6, above, the day after the attack, Deputy Communications Director Lauren Cox sent Respondent an email in which she asked her for information before responding to a reporter's inquiry about the attack on Ms. Stephens. Respondent explained the situation to Ms. Cox and stated that she was uncomfortable giving details because of her friendship with Ms. Stephens. Ms. Cox ultimately drafted a general statement that Respondent reviewed and approved.

Ms. Stephens had no role in this interaction. It is possible that she spoke to the reporter who contacted Ms. Cox, but the evidence does not establish that Ms. Stephens asked Respondent to provide (or withhold) information in response. While Respondent's decision about what to include in her statement was official action in that it required an exercise of discretion and was not ministerial, the record does not include any evidence that Ms. Stephens sought this action from Respondent.

iv. August 28 through September 2, 2020 - District Attorney's Office

ADA Geer contacted Respondent via email on August 28, 2020, asking to discuss the attack on Ms. Stephens, and he and Respondent spoke by phone later that day. The record does not offer any information about that conversation.

The next interaction was Respondent's email of September 2, 2020, attaching information at Ms. Stephens' request. Later that day, ADA Geer thanked Respondent and said he had passed on the information to the assigned detective. The record does not contain any further communication between Respondent and ADA Geer, or between Respondent and anyone else from the District Attorney's Office regarding the assault on Ms. Stephens.

The record does include a September 2, 2020, email from Respondent to her friend Mary Groce in which Respondent stated "I have been working hard with the Police Commissioners and the District Attorney's Office to get all of this taken care of." (Doc. 33-9.) In her sworn statement, Respondent explained that this statement was made in reference to connecting Ms. Stephens to resources and about her interactions with the police following the attack. (Stmt. at 43:22-44:16.)

Respondent was acting in her official capacity in her interactions with the District Attorney's Office. She used her City email address. ADA Geer contacted Respondent not just because of Respondent's relationship with Ms. Stephens, but because of Respondent's City role. The information Respondent forwarded came from Ms. Stephens and was provided to the District Attorney's Office at Ms. Stephens' request. Based on the evidence presented, including the text messages Respondent sent Ms. Stephens after the attack and the email from Respondent to Ms. Groce, we conclude that Ms. Stephens was seeking official action from Respondent with regard to the District Attorney's Office.

v. September 2 through 10, 2020 - Philadelphia Police Department

On September 2, 2020, Deputy Police Commissioner Robin Wimberly sent Respondent an email asking if Ms. Stephens knew how to file a complaint against police. We do not know what led to this outreach. The record also contains no evidence of interactions between Respondent and Deputy Commissioner Wimberly between this initial email and an email Deputy Commissioner Wimberly sent Respondent on September 9, 2020.

In the September 9, 2020 email, Deputy Commissioner Wimberly asked whether Ms. Stephens had changed her mind about filing a complaint against police. On September 10, 2020, Respondent sent the Deputy Commissioner an email saying that Ms. Stephens did want to pursue a complaint and was passing on, at Ms. Stephens' request, Ms. Stephens' contact information. On September 15, 2020, Deputy Commissioner Wimberly sent Respondent an email in which she stated that she had walked Ms. Stephens through the complaint process.

As in her interactions with the District Attorney's Office, Respondent was acting in her official capacity in communicating with Deputy Commissioner Wimberly. The parties stipulated that Respondent acted as a liaison with the Police Department regarding the August 24, 2020 attack on Ms. Stephens. Based on this stipulation and the evidence presented, including the text messages Respondent sent Ms. Stephens after the attack and the email to Ms. Groce, we conclude that Ms. Stephens sought official action from Respondent with regard to her interactions with the Philadelphia Police Department.

b. Was the loan received, accepted, or solicited when Ms. Stephens was seeking official action?

The foregoing discussion establishes that Ms. Stephens was seeking official action from Respondent (1) from August 10 through August 19, 2020 regarding Hearts on a Wire; (2) from August 28 through September 2, 2020 regarding the District Attorney's Office; and (3) from September 2 through September 10, 2020 regarding the Police Department. We must next consider if, at any of those times, Respondent received, accepted, or solicited the \$4,000 loan from Ms. Stephens.

We note at the outset that we have not previously examined the terms “accept” and “receive” as used in Code Section 20-604(1). We must, of course, give them different meanings. *See, e.g., Allstate Life Ins. Co. v. Commonwealth*, 992 A.2d 910, 919 (Pa. Commw. Ct. 2010) (“[C]ourts must attempt to give meaning to every word in a statute as we cannot assume that the legislature intended any words to be mere surplusage.”).

We find it instructive to consider that, for the purposes of Pennsylvania property law, the elements of an *inter vivos* gift are donative intent, delivery, and acceptance. *See In re Sipe's Estate*, 492 Pa. 125, 131 (1980); *Wagner v. Wagner*, 466 Pa. 532, 537 (1976). Donative intent is the intention to make an immediate gift. *Wagner*, 466 Pa. at 537. “The essence of delivery of a gift is relinquishment by the donor of dominion and control of the subject matter of the gift.” *Id.* at 539. Acceptance is presumed if the gift is beneficial to the donee. *See In re Sipe's Estate*, 492 Pa. 125, 130 (1980); *Roop v. Greenfield*, 352 Pa. 232, 235 (1945). If that presumption is challenged, however, courts have looked to evidence of consent, or lack thereof, by the donee to determine whether the element of acceptance is satisfied. *See Minner v. City of Pittsburgh*, 363 Pa. 199, 203 (1949); *Roop*, 352 Pa. at 237. The absence of express renunciation may also demonstrate acceptance in the case of an *inter vivos* gift that has been delivered. *See In re Sipe's Estate*, 492 Pa. at 131.

The terms “delivery” and “receipt” appear to us to be analogous in this context and we find that receipt of a gift for the purposes of Section 20-604(1) occurs when the recipient City employee assumes dominion and control over the gift, that is, when the City employee has the gift in hand. Moreover, as is the case in the context of *inter vivos* gifts, if a City employee receives a gift and does not return or reject it, we will presume that the gift has been accepted for the purposes of Section 20-604(1). In contrast, acceptance may occur for the purposes of Section 20-604(1) even if receipt (that is, delivery) does not actually occur.

The policy supporting the requirement of delivery of an *inter vivos* gift is “to avoid mistake and to protect alleged donors from fraudulent claims of gifts based only on parol evidence.” *Hengst v. Hengst*, 491 Pa. 120, 122 (1980). The purpose of Section 20-604(1), however, is to prevent City employees being influenced (or appearing to be influenced) in their decision making because they have received a gift from someone who is the subject of that decision making. Taken together, this policy goal and the use of the disjunctive “accept or receive” confirm that City Council intended that *either* acceptance or receipt could give rise to a violation. Accordingly, we find that if a City employee and a donor have agreed to a gift, the City employee has accepted that gift for the purposes of Section 20-604(1) regardless of whether the gift is delivered at a later date (or not at all).

i. Receipt

The parties have stipulated that Respondent received the funds for the \$4,000 loan from Ms. Stephens on September 23, 2020. The record contains no evidence indicating that on September 23, 2020, Ms. Stephens was seeking official action from Respondent.

ii. Acceptance

Given the undisputed evidence that Respondent received the check for \$4,000 and signed the loan agreement on September 23, 2020, acceptance must have occurred at the latest as of that date. Based on the evidence presented, it appears that Respondent and Ms. Stephens agreed to the loan at some point while Respondent was staying with Ms. Stephens in July or August of 2020. If that were the case, Respondent would have accepted the gift, for the purposes of Section 20-604(1), prior to her receipt of the check for \$4,000.

At the hearing, Respondent engaged in an extended colloquy with her counsel about how she and Ms. Stephens discussed a loan while Respondent was staying with her prior to the August 24, 2020, attack. (Tr. at 199:1-201:22.) This colloquy included the following exchange: “Q. Did she agree to this loan before she was attacked? A. Absolutely. I was in her house before she was attacked. I was staying in her house before she was attacked.” (Tr. at 201:6-10.) Similarly, in the sworn statement she provided to Enforcement Staff in May of 2021, Respondent stated: “And we agreed at that time while I was still staying in her house that she offered to loan me the \$4,000, and I said okay.” (Stmt. at 45:22-24.) Based on this evidence, we conclude that Respondent agreed to, and therefore accepted, the loan while she was staying with Ms. Stephens.

As best we can determine from the evidence in the record, as discussed on page 4 above, Respondent stayed with Ms. Stephens from approximately late July through early or mid-August of 2020. Respondent testified that her stay with Ms. Stephens ended before August 16, 2020. As discussed above, on pages 4-5 and 14-15, from August 10, 2020, through August 19, 2020, Ms. Stephens sought official action from Respondent with regard to Hearts on a Wire. As such, it may be that Respondent accepted the loan while Ms. Stephens was seeking official action regarding Hearts on a Wire. It is also possible that she accepted the loan before August 10, 2020.

We agree with the Hearing Officer that the evidence in the record is not sufficient to establish that Respondent accepted the loan during the brief period when Ms. Stephens was seeking official action regarding Hearts on a Wire. Ex. A at 19-20. For us to conclude otherwise would require speculation on our part. It would also entail adoption of facts expressly rejected by the Executive Director, who argues strenuously that Respondent and Ms. Stephens did not discuss the loan until after the GoFundMe account was not only established, but also funded.

As the Hearing Officer observed:

Ms. Morrison is entitled to have the Board determine whether the Executive Director met his burden of proof under the case he presented and upon which she had advance notice. To depart from that and proceed on different facts and a different theory than what the Executive Director urges upon the Board in order to find a violation threatens to transform the Board's essential role as a fair and neutral adjudicator into a super-prosecutor.

Ex. A at 22.

Accordingly, we cannot find that Respondent accepted the loan while Ms. Stephens was seeking official action from her.¹

iii. Solicitation

Respondent maintained both in her sworn statement and at the hearing that she never solicited the loan from Ms. Stephens. (Tr. at 156 1-5, 199:1-201:5; Stmt. at 45:14-24.) Rather, she testified that Ms. Stephens offered the loan in July or August 2020, while Respondent was staying with her. According to Respondent, after discussing her desire to find an apartment, Ms. Stephens offered to loan her the necessary money and asked how much she would need. Respondent calculated her estimated up-front rental expenses and agreed with Ms. Stephens on the amount of \$4,000. All of these discussions took place while Respondent was staying with Ms. Stephens.

¹ We note that we would not reach a different conclusion if we found that Respondent accepted the gift on September 23, 2020, rather than when she was staying with Ms. Stephens as no evidence in the record suggests that Ms. Stephens was seeking official action from Respondent on that date. *See* Section VII(b)(i), *supra*.

Ms. Stephens testified that she never discussed the loan with Respondent prior to the August 24, 2020, assault. (Tr. at 110:2-11.) Rather, she testified that Respondent asked her for the loan at some point after the GoFundMe account had raised money, which was in either late August or early September. (Tr. at 110:2-111:15.)

We accept the Hearing Officer's finding that Respondent's testimony is more reliable and credible than Ms. Stephens' testimony on this point. *See* Ex. A at 18-19. The Hearing Officer weighed Respondent's credibility in light of all the evidence, including the longstanding friendship between Respondent and Ms. Stephens, timing of events, and absence of evidence that GoFundMe dollars were used for the loan. We need not make any findings regarding the amount of money Ms. Stephens actually had on hand at the time Respondent stayed with her – only that Ms. Stephens offered the loan during that period.²

² The Executive Director alleged at the hearing that Respondent asked her attorneys to list Ms. Stephens' husband, Avery Shaw, as a witness solely for the purpose of intimidating Ms. Stephens. Specifically, the Executive Director argued that Ms. Stephens has a protective order against Mr. Shaw, that Respondent was aware of that order, and that Mr. Shaw's testimony would have been cumulative or irrelevant. In his post-hearing brief, the Executive Director argued that "[Respondent's] failed attempt to intimidate or discourage the only witness against her and to potentially disrupt or sabotage the Hearing itself by asking her attorneys to list a witness who Ms. Stephens has a Protective Order against makes her testimony not credible where it conflicts with that of Ms. Stephens because she was attempting to manipulate the Hearing process through subterfuge." (E.D. Br. at 18, ¶88.)

As the Hearing Officer noted, however, Mr. Shaw was the only other witness to numerous interactions between Respondent and Ms. Stephens. *See*, Ex. A at 29. Mr. Shaw drafted the loan agreement. (Tr. at 199:21-200:3.) Both Respondent and Ms. Stephens testified that Mr. Shaw was present at the police station the night of the assault. (Tr. at 87:16-24 (Stephens); Tr. at 144:22-24; 210:7-10 (Morrison).) Given his unique ability to corroborate, dispute, or elaborate on critical facts in this case, we cannot conclude that Mr. Shaw's testimony would have been either cumulative or irrelevant. As such, we cannot find that listing Mr. Shaw as a witness would serve no purpose other than to intimidate Ms. Stephens. We also note that Ms. Stephens only learned that Mr. Shaw was a witness because the Executive Director informed her of that fact on the day of the hearing after Respondent's counsel stated that Mr. Shaw would not be testifying. (E.D. Br. at 16, ¶ 79.) Accordingly, the inclusion of Mr. Shaw as a witness does not undermine Respondent's credibility.

The Executive Director argues that even if we credit Respondent's testimony, such testimony is itself evidence of solicitation. We disagree that responding to an offer of a loan and an inquiry about the amount needed is solicitation. Once offered, a gift can be *accepted*, but we find it would be a rare case where a gift could be solicited after it has been offered.

After considering all the relevant law, facts, and argument, as well as the Hearing Officer's assessment of the credibility of the witnesses, we find that the Executive Director has not proved, by a preponderance of the evidence, that Respondent solicited the \$4,000 loan from Ms. Stephens.

VIII. CONCLUSION

For the reasons discussed above, we find that the \$4,000 loan was a gift and that Ms. Stephens sought official action from Respondent at various points during the period from August 10 through September 10, 2020. We further find, however, that the Executive Director has not proven by a preponderance of the evidence that Ms. Stephens was seeking official action from Respondent when Respondent accepted the loan in late July or early August of 2020 or when she received the loan on September 23, 2020. We further find the Executive Director has not proven by a preponderance of the evidence that Respondent solicited the loan from Ms. Stephens. As such, we cannot find that Respondent violated Philadelphia Code Section 20-604(1).

WHEREFORE, the Notice of Administrative Enforcement is hereby DISMISSED and this matter is TERMINATED.

BY THE PHILADELPHIA BOARD OF ETHICS

/s/Michael H. Reed

Michael H. Reed, Esq., Chair
Judge Phyllis W. Beck, (Ret.), Vice-Chair
Sanjuanita González, Esq., Member
Brian J. McCormick, Jr., Esq., Member
JoAnne A. Epps, Esq., Member

Exhibit A

**BOARD OF ETHICS
OF THE CITY OF PHILADELPHIA**

J. Shane Creamer, Jr.	:	
Executive Director	:	
Board of Ethics	:	
Of the City of Philadelphia	:	
	:	
v.	:	Matter No. 2106ET19
	:	
Celena Morrison,	:	
Respondent	:	

HEARING OFFICER RECOMMENDATION

Introduction

On June 9, 2021, J. Shane Creamer, Jr., Executive Director of the Board of Ethics, filed and served upon Celena Morrison, executive director of the Office of LGBT Affairs, a Notice of Administrative Enforcement Proceeding. In that notice, the Executive Director alleged two separate violations of law: In Count 1, the Executive Director asked the Board to find that Respondent violated Philadelphia's Gift Law, Philadelphia Code Section 20-604(1), and in Count 2 he alleged that Respondent failed to disclose gifts and sources of income in her Statement of Financial Interests in violation of Philadelphia Code Section 20-610.

On July 13, 2021, the Executive Director requested leave to file an Amended Notice of Administrative Enforcement Proceeding seeking to remove Count 2 and supporting factual paragraphs on the basis that he had learned that Respondent had filed an amended Statement of Financial Interests on June 4, 2021. With the consent of the parties and pursuant to my Order granting leave to amend, the Executive Director filed and served an Amended Notice of Administrative Enforcement Proceeding upon Respondent which was deemed to occur on July 20, 2021. The Amended Notice pleads one count of violation; namely that Respondent violated

Philadelphia's Gift law, Philadelphia Code Section 20-604(1), by "*soliciting, accepting, and receiving*" a \$4,000 interest-free loan from Kendall Stephens, a person allegedly seeking official action from Respondent in her capacity as executive director of the Office of LGBT Affairs. (ED Notice ¶34).

It is undisputed that Ms. Morrison executed an interest-free loan agreement and received a cashier's check from Ms. Stephen's for \$4,000 on September 23, 2020. The Amended Notice contends that Respondent was precluded under the Gift Law from soliciting, accepting, and receiving any gifts from Kendall Stephens because Ms. Stephens was seeking official action from Ms. Morrison and the Office of LGBT in two ways. (ED Notice ¶36). First, the Executive Director alleges that Ms. Stephens sought and advocated for Ms. Morrison's involvement with the organization "Hearts on a Wire" in August 2020. (ED Notice ¶37). Second, following a physical attack upon Ms. Stephens at her home on August 24, 2020, the Executive Director alleges that Ms. Morrison became "intrinsically involved with Ms. Stephens' interactions with multiple city officials" in which Ms. Stephens sought Ms. Morrison's help to support and advocate for her regarding the criminal prosecution of her attackers and in relation to the potential filing of a complaint against the Philadelphia Police Department for the way they responded to Ms. Stephens and handled the attack. (ED Notice ¶38). As a result, the Executive Director contends that Ms. Stephens was actively seeking official action from Ms. Morrison and, as such, Ms. Stephens was a prohibited source for monetary gifts. (ED Notice ¶49).

As Hearing Officer, I conducted multiple conferences with the parties both prior to, and following, the filing of the Amended Notice of Administrative Enforcement Proceeding. Initially, Ms. Morrison was not represented by counsel and appeared on her own. Subsequently, Ms. Morrison obtained counsel and Gaetan J. Alfano, Esquire, and Leslie A. Mariotti, Esquire,

entered their appearances on behalf of Ms. Morrison. On September 30, 2021, Respondent with the benefit of counsel, filed an Answer to the Amended Notice of Administrative Enforcement Proceeding. In her Answer, Respondent admits that she executed a \$4,000 non-interest bearing loan agreement with Kendall Stephens on September 23, 2020 and that she received a cashier's check for \$4,000 from Ms. Stephens on that day. (R Answer ¶¶25-26). However, Respondent denies that she ever solicited any funds from Ms. Stephens, and rather alleges that this loan was offered to her by Ms. Stephens. (R Answer ¶¶46).

Further, to the extent that Ms. Morrison took any actions concerning Hearts on a Wire, Respondent alleges that she was not acting in her official capacity, but rather as a friend. (R Answer ¶¶37-38). With regard to any actions taken with regard to the police or District Attorney's office, Respondent alleges that she was responding to requests for specific information and the provision of any information by her was only ministerial in nature and should not be regarded as "official action" under the Gift Law's definition of that term. (R Answer ¶¶45). In short, Respondent denies that Ms. Stephens sought "official action" from her or that Respondent solicited these funds and therefore her receipt of an interest-free loan from Ms. Stephens did not violate the Gift Law.

The Record in this Case

The record in this case includes the following key items:

- The Executive Director's Amended Notice of Administrative Enforcement Proceeding and the Respondent's Answer to the Amended Notice of Administrative Enforcement Proceeding;
- Pre-Hearing Stipulations of the Parties, containing 23 Stipulations of Fact agreed upon by the parties;
- A Transcript of Hearing held on December 15, 2021, containing 269 pages of testimony of proceedings that began at 10:01 a.m. and concluded at 4:19 p.m.;

- Eighteen hearing exhibits admitted into evidence at the request of the Executive Director, including the deposition of the Respondent taken on May 3, 2021 and emails relevant to this matter;
- Three hearing exhibits admitted into evidence at the request of the Respondent, containing emails relevant to this matter.

In addition, pursuant to my Post-Hearing Order entered on December 21, 2021, the Executive Director and the Respondent each submitted on January 14, 2022 Proposed Findings of Fact and Proposed Conclusions of Law, along with concise arguments in support of their respective positions.

Brief Summary of the Main Facts

Respondent Celena Morrison is the Executive Director of the Philadelphia Office of LGBT Affairs. She began this position on March 2, 2020 where she is responsible for developing proposed policies regarding civil rights issues affecting LGBT people, coordinating the implementation of policies and programs to meet City diversity and equality goals, coordinating with City Departments, agencies, and offices to improve LGBT access to City services, promoting equality and safety for LGBT people, supporting the growth and development of the City's LGBT communities, and serving as a liaison between the City's and region's LGBT communities and the City.

Ms. Morrison began her job as executive director at the start of the Covid-19 pandemic. She has a high school education and did not attend college. She identifies as transgender. She had minimal work experience before being hired as a part-time outreach worker at the Mazzoni Center in Philadelphia. She worked at the Mazzoni Center for two to three years where she developed new programs for the organization and then left to go to the William Way Community Center, an LGBTQ community center in downtown Philadelphia, where she served for two years as their director of programming. In 2019, Ms. Morrison was [REDACTED]

■■■■ out of work much of the year. When she returned to work, she was approached by individuals from the City who expressed an interest in having her apply for the position of executive director of the Office of LGBT Affairs. She applied for the position and was hired to start work on March 2, 2020. She may have worked in the office for a week or so, but ■■■■ ■■■■ she obtained permission to work from home because of the Covid-19 virus and her vulnerability, and a few days later everyone was sent home from the office because of the emerging pandemic.

During this time, Ms. Morrison testified that she had little supervision. Her supervisor resigned around this time and another worker from a different office was selected to supervise her. Ms. Morrison had to turn to interns in the office for instruction on how to fulfill her job responsibilities and this was made more difficult because she was not in City Hall. While Ms. Morrison did receive ethics training, she stated that this was all new to her and she did not understand much of it. She stated, for example, that she did not know how to fill out the statement of financial interests form and did not know to list her City salary or the loan received from Ms. Stephens on the form.

Ms. Morrison and Kendall Stephens were close, personal friends and both were active in the LGBT community. Ms. Stephens is a Philadelphia transgender community advocate who has been a student at Temple University since August of 2020. She is active on LGBT issues and is the chair of student health and wellness at Temple. She serves as Temple's Diversity, Equity and Inclusion spokesperson and is a member of the boards of the William Way Community Center and the Bethany Children's Home. She is a member of the District Attorney's LGBT Advisory Board and serves on the Philadelphia Police Department's Liaison Committee.

In late July or early August, 2020, Ms. Morrison [REDACTED]

[REDACTED] moved into Ms. Stephen's home temporarily for approximately two weeks.

Neither Ms. Morrison nor Ms. Stephens were able to be exact about the dates during which Ms. Morrison resided with Ms. Stephens, but Ms. Morrison testified that she was sure that she had moved out of Ms. Stephens' home by [REDACTED] August 16.

Ms. Stephens was involved with a community organization known as "Hearts on a Wire" which advocated for incarcerated LGBTQ individuals. Ms. Stephens testified that as early as April or May of 2020 she spoke to Ms. Morrison about the organization to try to have Ms. Morrison facilitate a meeting with the group and other stakeholders for the purpose of securing more resources for Hearts on a Wire. It is unclear exactly when discussions, if any, occurred about Hearts on a Wire during August, 2020, but emails introduced into evidence document communications with stakeholders about such a meeting on August 10, 2020 and on August 19, 2020. In the August 19 email sent by Ms. Morrison to Ms. Stephens and other stakeholders, Ms. Morrison agreed she was available for a meeting with the organization on August 28, 2020.

According to Ms. Morrison's testimony at the hearing and in her deposition, she and Ms. Stephens discussed while they were temporarily living together Ms. Morrison's need to find a new place to live [REDACTED]. Ms. Morrison testified that Ms. Stephens asked her how much she would need to rent a new place to live and Ms. Morrison stated that \$4,000 would be sufficient to cover first month's rent, security deposit, and corresponding expenses. Ms. Morrison then testified that Ms. Stephens offered to loan Ms. Morrison \$4,000, stating that she had the money to do so in a household closet where she had \$200,000 in cash hidden. Ms. Stephens showed some of the cash to Ms. Morrison in envelopes taken from the bottom of the closet and thrown on to the bed. According to Ms.

Morrison, they agreed then, while living together, that Ms. Stephens would loan her the money and that Ms. Stephens' husband Avery Shaw, a law student at the time, would draw up an agreement later so that the monies would be available when she found a new place.

Contrary to this, Ms. Stephens denied that any such discussion took place while Ms. Morrison was living in her home or that she ever had such cash in her closet. As will be discussed in more detail later, Ms. Stephens alleges that Ms. Morrison solicited the loan later in September from her only after she established a GoFundMe account to obtain financial assistance following a violent attack upon her.

On August 24, 2020, Ms. Stephens was physically attacked in her home by assailants who allegedly used transphobic and derogatory slurs while attacking her. Immediately preceding the attack, Ms. Morrison was on the phone with Ms. Stephens on a personal call. During that call, Ms. Morrison could hear commotion developing. They hung up and following the attack Ms. Stephens called Ms. Morrison very upset, stating that attackers had come into her house and beat her up. Ms. Morrison went immediately to Ms. Stephens' home, but Ms. Stephens had already gone to the police station. It was now 10:00 p.m. and Ms. Morrison went to the police station.

Upon arrival at the police station, Ms. Morrison saw that Ms. Stephens was very upset because she believed that the police had mistreated her and had trivialized the incident by characterizing it as a simple assault. Ms. Morrison spoke with the police to learn why the police had not labeled it as a hate crime and in the process reminded the police of Directive 4.15 which provides guidance to police on how they should interact with transgender identified individuals. She did not at this time identify herself as executive director of the City's LGBT Affairs office.

The parties stipulated that after leaving the police station, Ms. Morrison sent a text message to Ms. Stephens that stated, “I just want you to know that I love you as a sister and I have your back as my sister and as a member of this community. I have your back in my professional position as well and we will not take this lying down.” Ms. Morrison explained that she wrote this text because she wanted to connect Ms. Stephens to every resource that was available to her and that this was part of her job as executive director. Ms. Morrison also sent Ms. Stephens’ husband, Avery Shaw, the email address of the police LGBTQ liaison so that he could follow up and Ms. Morrison promised to call the police on Ms. Stephens’ behalf. Ms. Morrison acknowledged that these outreach and assistance activities were part of her official duties but that she also took these steps because she was Ms. Stephens’ friend.

In the days following the August 24 attack, Ms. Morrison served as a liaison between Ms. Stephens and the Philadelphia Police Department concerning Ms. Stephens’ negative experience with police officers investigating her attack. She relayed Ms. Stephens’ contact information to police officials and corresponded with both police officials and Ms. Stephens regarding police complaint reporting procedures.

On August 25, Lauren Cox, Deputy Communications Director for the Office of the Mayor emailed Ms. Morrison requesting context about the attack in order to respond to a press request regarding the attack on Ms. Stephens. Ms. Morrison informed Ms. Cox that Ms. Stephens was a close friend and did not feel comfortable answering questions about the attack. On September 2, Deputy Commissioner Robin Wimberly emailed Ms. Morrison concerning the attack, wanting to make sure that Ms. Stephens understood the complaint procedure against the police. On September 9, Commissioner Wimberly emailed Ms. Morrison concerning whether Ms. Stephens had changed her mind regarding filing a complaint against the police. On the next

day, September 10, Ms. Morrison responded to Wimberly by email stating that Ms. Stephens does want to move forward with filing a complaint against the police, and that Ms. Stephens had asked Ms. Morrison to share her contact information, which Ms. Morrison did. Commissioner Wimberly responded to Ms. Morrison on September 15 thanking her for her help and informing her that the Commissioner had spoken with Ms. Stephens and had walked her through the complaint process.

The September 15 email from Commissioner Wimberly to Ms. Morrison is the last communication in the record between Ms. Morrison and the police department regarding the attack on Ms. Stephens. Most communications were initiated by the police department and Ms. Morrison's last response to police officials occurred on September 10.

Ms. Morrison also responded to a request initiated by the District Attorney's office regarding the attack. On August 28, Adam Geer, Director of Diversity & Inclusion, at the District Attorney's office contacted Ms. Morrison to discuss the attack on Ms. Stephens. On September 2, Ms. Morrison sent ADA Geer photographs of the main attacker and a link to an interview that Ms. Stephens gave regarding the attack. There are no further communications in the record between Ms. Morrison and the District Attorney's office regarding the attack. The last communications documented in the exhibits between Ms. Morrison and the District Attorney's office occurred on September 2. Further, Ms. Morrison testified that when the police and the District Attorney's office contacted her, she checked with Ms. Stephens to see if it was alright to provide contact information.

Following the August 24 attack, Ms. Stephens raised over \$35,000 through GoFundMe donations to help for her medical expenses. It is stipulated by the parties that Ms. Morrison had no role in the GoFundMe campaign. However, it is here that the facts sharply diverge. Ms.

Stephens testified that Ms. Morrison was following the GoFundMe campaign and would notify her periodically regarding the balance of the account. After the fund raised more than \$35,000, Ms. Stephens claimed that Ms. Morrison asked her if she could borrow \$4,000 to rent a new place. Ms. Stephens further testified that she and Ms. Morrison never discussed the loan until after the GoFundMe account was created and \$35,000 raised. She denied that they had discussed the loan while Ms. Morrison was living with her in her home in late July or early August or that she had a large amount of cash in her closet while Ms. Morrison was living with her. As a result, the Executive Director sought to prove that Ms. Morrison solicited a \$4,000 no-interest loan from Ms. Stephens in September 2020 after more than \$35,000 was raised in the GoFundMe account.

In contrast, Ms. Morrison testified in her deposition on May 3, 2021 (without the assistance of counsel) and at the hearing that she and Ms. Stephens discussed the loan while she was living in Ms. Stephens' home temporarily [REDACTED] and needed a new place to live. It was there, according to the testimony of Ms. Morrison, that Ms. Stephens offered to loan her \$4,000 so that she could have the funds needed to move into a new place to live. They discussed at that time the amount needed to cover first month's rent, a security deposit, and move-in expenses, along with other aspects of the loan. Ms. Morrison further testified that Ms. Stephens showed her some of the cash from her closet to communicate that she had the funds to loan her needed monies for such a move. At this time, Ms. Morrison and Ms. Stephens were close friends and mutually supportive of each other. Additionally, Ms. Morrison points out that the materials describing the GoFundMe campaign specifically identified how the funds would be used and nothing in those materials identified that such funds would be used as a loan to assist Ms. Morrison. To the contrary, the materials stated that half of the funds would be donated to

the William Way LGBT Community Center and the other half would go to Ms. Stephens' medical expenses, upgrading security in her home, and other expenses related to "her road to recovery." Funds directed to William Way were a donation and not a loan, and updates to the GoFundMe campaign page did not reflect a loan to Ms. Morrison.

On September 23, 2020, Ms. Stephens and Ms. Morrison executed a written loan agreement that reflected a no-interest loan from Ms. Stephens to Ms. Morrison for \$4,000. The written agreement did not state the source of the monies used for the loan and Ms. Morrison testified that she was not told the source of the funds. On the same day, Ms. Stephens provided a cashier's check for \$4,000 to Ms. Morrison. There is no evidence on the record from either Ms. Stephens or Ms. Morrison regarding discussions immediately preceding September 23, 2020, that presumably took place to arrange for the execution of the written agreement and the exchange of the cashier's check.

The loan agreement provides that Ms. Morrison was to pay Ms. Stephens \$150 one month later, on October 23, 2020, and then \$350 on the 23rd of each month thereafter ending on October 23, 2021.¹ Repayment of the loan did not occur as scheduled. The relationship between Ms. Morrison and Ms. Stephens disintegrated after Ms. Stephens was not selected by Ms. Morrison to participate in a press conference held by the District Attorney's office regarding violence perpetrated against transgender persons following the murder of a transgender woman in Philadelphia. This occurred after the date of the loan agreement and before the first payment was due. Each claimed that the other blocked communications or refused to respond to attempted

¹ Though the written agreement does not state so, the parties stipulated that this was an interest-free loan and that is consistent with the testimony of all parties. Interestingly, the math on the agreement appears to be incorrect, as repayment in full with no interest at the rate specified would have occurred with the payment on September 23, 2021, and not on October 23, 2021 as written in the agreement. However, this mathematical error has no legal significance in this case.

communications. The hostile nature of their relationship was still apparent at the time of the hearing on December 15, 2021.

Ms. Morrison did not make any monthly repayments on the loan. On February 25, 2021, Board Enforcement Staff received an anonymous complaint alleging that Ms. Morrison had accepted \$4,000 from a constituent. The Board initiated an investigation on February 26, 2021, and Board Enforcement Staff contacted Ms. Morrison on March 2, 2021, to notify her of the investigation. Ms. Morrison's initial Philadelphia Statement of Financial Interests filed on May 18, 2021, contained deficiencies previously described. After Board Enforcement Staff brought this to her attention and requested that she amend her Statement by June 7, 2021, Ms. Morrison filed an amended Statement of Financial Interests on June 4, 2021. During communications with Board Enforcement Staff, Ms. Morrison informed Board attorney Caroline Curley that she intended to pay back the loan in full and requested that Ms. Curley deliver a repayment check to Ms. Stephens. Thereafter, Ms. Morrison gave a cashier's check dated April 22, 2021, in the amount of \$4,000 to the Board Enforcement Staff for delivery to Ms. Stephens.

Key Timeline Dates

2020

- March 3: Ms. Morrison begins employment as Executive Director – Office LGBT Affairs.
- Apr-May: Ms. Stephens begins discussion with Ms. Morrison about Hearts On A Wire.
- Late July/Early August: Ms. Morrison moves in temporarily to the home of Ms. Stephens for approximately two weeks.
- August 10: Ms. Stephens sends email to stakeholders and Ms. Morrison informing that Ms. Morrison will participate in a meeting with Hearts on a Wire.
- August 16: Ms. Morrison has moved out of Ms. Stephens' home by this date, [REDACTED].
- August 19: Ms. Morrison informs group regarding Hearts on a Wire that she can meet on August 28.

- August 24: Ms. Stephens is attacked at her home.
- August 25: Ms. Morrison sends text to Ms. Stephens, stating that “I love you as my sister and I have your back as my sister and as a member of this community. I have your back in my professional position as well and will not take this lying down.”
- August 25: Lauren Cox, Deputy Communications Director, emails Ms. Morrison for information about attack to give to the press; Ms. Morrison responds by email with some details, but also states that Ms. Stephens is a close friend and Ms. Morrison does not feel comfortable answering questions about the incident.
- August 28: Meeting regarding Hearts on a Wire never occurs; no further mention of Hearts on a Wire.
- August 28: Adam Geer, Director of Diversity & Inclusion, ADA Homicide Unit, requests that Ms. Morrison call to discuss Ms. Stephens’ matter; Ms. Morrison replies with available times.
- Days Following August 24: Ms. Stephens creates a GoFundMe Account.
- September 2: Robin Wimberly, Deputy Commissioner, Philadelphia Police, emails Ms. Morrison wanting to ensure that Ms. Stephens understands police complaint process.
- September 2: Ms. Morrison sends ADA Geer screenshots of woman who was Ms. Stephens’ main attacker.
- September 2: ADA Geer thanks Ms. Morrison and says screenshots will be forwarded to assigned detective; will keep Ms. Morrison updated. This is the last documented contact between the District Attorney’s office and Ms. Morrison.
- September 9: Wimberly emails Ms. Morrison asking if Ms. Stephens has changed her mind about a complaint against the police.
- September 10: Ms. Morrison emails Wimberly to say that she spoke with Ms. Stephens and that she does want to move forward with a complaint.
- September 15: Wimberly emails Ms. Morrison stating that she spoke with Ms. Stephens and walked her through the process. This is the last documented contact between Ms. Morrison and the police.
- September 23: Loan Agreement executed by Ms. Stephens and Ms. Morrison.
- September 23: Cashier’s Check for \$4,000 given to Ms. Morrison by Ms. Stephens.
- Between September 23 and October 23: Relationship between Ms. Stephens and Ms. Morrison devolves; no contact; repayment of loan scheduled to begin on October 23 is not made; payment in full made on April 26, 2021, after involvement of Board Enforcement Staff.

2021

- February 25: Anonymous Complaint to Board Enforcement Office claiming Ms. Morrison accepted \$4,000 from a constituent
- March 3: Board Enforcement investigation begins
- April 26: Ms. Morrison delivers \$4,000 cashier's check to Board Enforcement office for transmittal to Ms. Stephens; check dated April 22, 2021.
- May 3: Board Enforcement Staff deposes Ms. Morrison who is unrepresented
- May 18: Ms. Morrison files Statement of Financial Interests
- June 3: Board Enforcement office notifies Ms. Morrison of deficiencies on statement; requests correction by June 7
- June 4: Ms. Morrison files amended Statement of Financial Interests correcting deficiencies
- June 9: Executive Director files and serves Notice of Administrative Enforcement Proceeding against Ms. Morrison

The Law

§ 20-604. Gifts, Loans and Favors to City Personnel.

- (1) No City officer or employee shall accept or receive gifts worth more than ninety-nine dollars (\$99) in the aggregate per calendar year or any gifts of money from any person who is seeking official action from that officer or employee or who has a financial interest at the time, or in close proximity to the time the gift is received, which the officer or employee is able to substantially affect through official action. An officer or employee may not solicit gifts of any value from a person who is seeking official action from that officer or employee or who has a financial interest the officer or employee is able to substantially affect through official action.

§ 20-601. Definitions.

- (10) *Gift*. A payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value given to, or for the benefit of, an officer or employee, unless consideration of equal or greater value is received. "Gift" shall not include a political contribution otherwise reportable as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a Family member of the individual or from a relative within the third degree of consanguinity of the individual or of the individual's spouse or Life Partner, or from the spouse or Life Partner of any such relative.

(17) *Official action.* An act or omission taken by an officer or employee in his or her official capacity that requires discretion and is not ministerial in nature.

Brief Discussion of the Relevant Elements of the Gift Law Applied to this Case

The Gift Law prohibits a city officer or employee from accepting or receiving a gift greater than the threshold amount from any person who is seeking official action from that officer or employee. In addition, an officer or employee may not accept or receive any gift of money from a person who is seeking official action from that officer or employee, nor may the City officer or employee solicit gifts of any value from a person who is seeking official action from that officer or employee.

It is stipulated by the parties that Ms. Morrison is a City officer or employee and that an interest-free loan executed from Ms. Stephens to Ms. Morrison is a gift as defined by the Gift Law. The Executive Director does not allege that this case involves actions by a person who has a financial interest which an officer or employee is able to substantially affect through official action.

Therefore, under the Gift Law and in accordance with these stipulations, the Board of Ethics must determine whether Ms. Morrison accepted or received a gift from Ms. Stephens and, if so, whether Ms. Stephens was seeking official action from Ms. Morrison at the time of the acceptance or receipt of the gift. Additionally, the Board must determine whether Ms. Morrison solicited a gift from Ms. Stephens at the time that Ms. Stephens was seeking official action from Ms. Morrison. If the answer to either of these questions is yes, then the Board must proceed to apply mitigating and aggravating factors provided under Section 20-1302 of the City Code. If the answer to both questions is no, then the Board need not turn to Section 20-1302.

RECOMMENDATION

The Executive Director argues that Ms. Morrison violated the Gift Law in two ways. First, he contends that Ms. Stephens sought and advocated throughout August 2020 for Ms. Morrison's involvement, and that of the Office of LGBT Affairs, with an organization known as "Hearts on a Wire." In so doing, he contends that Ms. Stephens was actively seeking official action from Ms. Morrison, thereby rendering Ms. Stephens a restricted source for monetary gifts. By "soliciting, accepting, and receiving" a \$4,000 no-interest loan from Ms. Stephens, the Executive Director maintains that Ms. Morrison violated the Gift Law. (ED Notice ¶37).

Second, the Executive Director contends that Ms. Morrison was intrinsically involved with Ms. Stephens' interactions with the Philadelphia Police Department and the District Attorney's Office following a violent attack on Ms. Stephens in her home. Here, the Executive Director argues that Ms. Stephens sought the power of Ms. Morrison and her office to support and advocate for her regarding her complaint against the police department and the criminal prosecution of her attackers. As such, the Executive Director maintains that Ms. Stephens was a prohibited source and by "soliciting, accepting, and receiving" a \$4,000 no-interest loan from Ms. Stephens, Ms. Morrison violated the Gift Law. ED Notice ¶38.

In this recommendation, I address both contentions.

Hearts on a Wire

Ms. Stephens testified that she began discussing with Ms. Morrison in April or May of 2020 her interest in obtaining support for an organization known as Hearts on a Wire. However, there is no further mention of such discussions until August 2020. Ms. Stephens was involved with the organization and thought the organization's focus on incarcerated LGBTQ persons was

important to support. She hoped to bring more attention and resources to the organization and wanted Ms. Morrison to meet with them, along with other stakeholders. Ms. Morrison stated she had reservations about the organization based upon her prior knowledge of the organization, but ultimately agreed to meet with the organization at Ms. Stephens' request. On August 10, 2020, Ms. Stephens wrote an email to stakeholders in which she copied Ms. Morrison, stating that she spoke with Ms. Morrison about a meeting with Hearts on a Wire and that Ms. Morrison will participate. On August 19, 2020, Ms. Morrison wrote in an email to Ms. Stephens and stakeholders that she would meet with the organization and stakeholders, including Ms. Stephens, on August 28, 2020.

In late July or early August, 2020, Ms. Morrison moved out of her home and into the home of Ms. Stephens temporarily [REDACTED]. Although neither party could pin down precisely the starting and ending dates of Ms. Morrison's temporary residence in the home of Ms. Stephens, the evidence shows that Ms. Morrison stayed for two to three weeks in the home of Ms. Stephens and moved out before [REDACTED] August 16, 2020. Ms. Morrison and Ms. Stephens were close personal friends and leading members of Philadelphia's transgender community. While in the home of Ms. Stephens, Ms. Morrison testified at the hearing and in her deposition that she and Ms. Stephens discussed the need for Ms. Morrison to find a new place to live [REDACTED]. According to Ms. Morrison's testimony, it was during this time that Ms. Stephens offered to lend Ms. Morrison money needed for her to obtain a new place to rent. Ms. Stephens asked Ms. Morrison how much she would need to obtain a new place and Ms. Morrison stated \$4,000, based upon a calculation of first month's rent, security deposit, and related expenses. According to Ms. Morrison, Ms. Stephens offered then – in Ms. Stephens' home while they were living together --

to provide a \$4,000 loan to Ms. Morrison to obtain a new place to live. Ms. Morrison was clear that she did not request the loan, but that she did agree to accept the loan. Ms. Stephens' husband, Avery Shaw, was living in the home at the time and was supposed to draw up a loan agreement at some later date, as he was a law student.

I find this testimony to be credible. Ms. Morrison and Ms. Stephens were close friends and highly supportive of each other at this time and it is certainly reasonable and understandable that they discussed Ms. Morrison's need for a new place to live [REDACTED] while she was temporarily living with her as the first step [REDACTED]. On this basis, I think the credible testimony supports that Ms. Stephens offered to loan Ms. Morrison money to move and that she and Ms. Stephens agreed sometime before August 16, 2020, that Ms. Stephens would loan her \$4,000.

This, however, raised a troubling question of how Ms. Stephens would have the funds to provide such a loan since Ms. Stephens was herself a student at Temple University at the time and receiving needs-based funds to support her education. Ms. Morrison testified consistently, at the hearing and in her deposition, that Ms. Stephens claimed to have had \$200,000 in cash in a closet of her home from which she could loan her the money. Ms. Morrison testified that Ms. Stephens showed her the closet in question and pulled out several envelopes containing cash from the bottom of the closet, throwing them on the bed to assure Ms. Morrison that she had the means to loan her the money. Ms. Morrison did not count the money in the envelopes but did see that they contained cash. It is admittedly a peculiar claim that Ms. Stephens would have \$200,000 in cash in her home, but Ms. Morrison never confirmed that Ms. Stephens had that amount of cash. She did, however, testify that she saw several envelopes full of cash and did not count the cash shown to her. She also testified that she did not look inside the closet to see if

there was additional money there. I find credible the testimony of Ms. Morrison that after she was offered a loan by Ms. Stephens, Ms. Stephens showed her several envelopes of cash to provide assurance that she had funds with which to provide a loan to Ms. Morrison. I make no finding on whether Ms. Stephens, in fact, had the sum of \$200,000 in her closet or whether that was simply a boast from Ms. Stephens to convince a close friend, Ms. Morrison, to accept the loan at a very difficult time in her life.

In short, the evidence reflects that Ms. Stephens sought action from Ms. Morrison regarding Hearts on a Wire on August 10 and Ms. Morrison agreed on August 19 to meet with the group on August 28. The meeting on August 28 never occurred and there is no later mention of Hearts on a Wire in the record. Ms. Stephen's request to Ms. Morrison for a meeting with Hearts on a Wire could reasonably be regarded as a request for official action, but the question is whether Ms. Stephens was seeking this official action at the time that Ms. Morrison accepted or received or solicited the no-interest loan from her. To constitute a violation of the Gift Law on this basis, Ms. Morrison would have had to have accepted or received or solicited the loan between August 10 and prior to August 16 (which was [REDACTED] the uncontradicted date by which she had left Ms. Stephens' home). The Executive Director shoulders the burden of proving by a preponderance of the evidence that Ms. Morrison accepted the loan at the time that Ms. Stephens was seeking official action regarding Hearts on a Wire, and that burden was not met. There is not sufficient evidence to establish that Ms. Morrison accepted the loan during this short window when Ms. Stephens' requested official action from her. It was possible, but it was not proven.

As such, the Board would have to engage in speculation to find a violation of the Gift Law on this basis. It would also have to adopt facts expressly rejected by the Executive Director.

In essence, the Board would have to conclude that the timing was close enough, even though not precisely established as the Gift Law demands. If, nonetheless, the Board were inclined to find a violation under these circumstances, I would emphasize that this would be an inadvertent violation of the Gift Law at a time when Ms. Morrison was experiencing very difficult personal circumstances.

However, I do not recommend that the Board find a violation on this basis. Through the testimony of Ms. Stephens presented at the hearing, and in his proposed findings of fact, the Executive Director maintained that a discussion of a loan never occurred in August while Ms. Morrison was living with Ms. Stephens. To the contrary, the Executive Director sought to prove that Ms. Morrison solicited the loan from Ms. Stephens only after Ms. Stephens created a GoFundMe account following her attack and after more than \$35,000 was raised in donations to that account. He maintained that Ms. Morrison “lied under oath” in describing an agreement to accept a loan from Ms. Stephens in August while they were living together. Rather, he asserted that Ms. Morrison solicited a \$4,000 no-interest loan from Ms. Stephens in September 2020, only after the GoFundMe account raised more than \$35,000, and those funds were loaned to Ms. Morrison on September 23, 2020, when the loan agreement was executed and a cashier’s check given to Ms. Morrison.

Therefore, according to the Executive Director’s proposed findings of fact and the theory of his case as presented, there was no discussion or agreement between Ms. Morrison and Ms. Stephens concerning a loan in August 2020. All evidence of Ms. Stephens seeking action from Ms. Morrison regarding Hearts on a Wire occurred earlier in August (and possibly before) and ended in August before the attack on Ms. Stephens occurred. The last written communication regarding Hearts on a Wire is dated August 19, 2020. The meeting planned for August 28, 2020,

never occurred and there is no further evidence from any witness or any document regarding Hearts on a Wire after that date. Therefore, according to the evidence presented by the Executive Director, and the conclusions he urges upon the Board in his post-hearing filing, Ms. Stephens was not seeking official action from Ms. Morrison regarding Hearts on a Wire at the time when he alleges Ms. Morrison solicited or accepted a loan from Ms. Stephens.

This timing of requests for official action is critical under the Gift Law. Unlike the financial interest provision of the Gift Law which permits a finding of a violation when a gift is received *in close proximity* to the time that official action is sought from the City officer, this case is governed by the requirement that a City officer not accept or receive or solicit a gift of money from any person who is *seeking* official action from that officer. Under the Executive Director's theory of the case, Ms. Morrison did not solicit or accept a loan from Ms. Stephens until later in September after Ms. Stephens' GoFundMe account exceeded \$35,000. The loan agreement was executed on September 23 and the funds were received on September 23. When those events occurred, there is no evidence of record that Ms. Stephens was seeking official action from Ms. Morrison regarding Hearts on a Wire. Therefore, the Executive Director has failed to prove a violation of the Gift Law occurred on this basis.

Of course, the Board might consider rejecting the Executive Director's contention that no discussion or agreement regarding a loan occurred in August while Ms. Morrison and Ms. Stephens were living together. The Board might be tempted to engage in an independent review of the record to find a violation of the Gift Law regarding Hearts on a Wire because, contrary to what the Executive Director sought to prove, Ms. Morrison's testimony could establish that Ms. Morrison agreed to accept a loan from Ms. Stephens at the time that Ms. Stephens was seeking

official action regarding Hearts on a Wire. But, again, I would not recommend that the Board of Ethics engage in such a course of action.

Such an approach would appear to raise serious due process concerns. Ms. Morrison is entitled to have the Board determine whether the Executive Director met his burden of proof under the case he presented and upon which she had advance notice. To depart from that and proceed on different facts and a different theory than what the Executive Director urges upon the Board in order to find a violation threatens to transform the Board's essential role as a fair and neutral adjudicator into a super-prosecutor. The Pennsylvania Supreme Court has cautioned administrative agencies that due process requires that they not intermingle prosecutorial and adjudicatory functions, and therefore I would recommend that this is not a path that the Board should go down.²

For all of these reasons, I recommend that the Board find no violation of the Gift Law regarding any actions sought or taken in connection with the organization Hearts on a Wire.

Interactions with the Philadelphia Police Department and the District Attorney's Office

The thrust of the Executive Director's argument here is that following the attack on Ms. Stephens on August 24, Ms. Morrison acted as a liaison, on Ms. Stephens' behalf and at her request, in interactions with the Philadelphia Police Department and the District Attorney's office. She did so both as a close friend and in her official capacity as executive director of the City's LGBT Office. Essentially, the Executive Director argues that Ms. Morrison fulfilled this liaison role in at least three ways: (1) Ms. Morrison relayed Ms. Stephens' contact information to

² See, e.g., *Lyness v. Com., State Bd. Of Medicine*, 605 A.2d 1204, 1210 (1992). See also *Quigley v. U.C.B.R.*, (Pennsylvania Supreme Court, November 17, 2021, at n.13). I am not suggesting that these cases control the situation here, but rather they should give the Board reason for pause to make sure it is not overreaching should it seek to engage in an inherently prosecutorial function.

police officials at the request of Ms. Stephens; (2) Ms. Morrison acted as a go-between with police officials regarding the filing of a complaint by Ms. Stephens against the police for trivializing the attack due to her transgender status; and (3) Ms. Morrison communicated with police and the District Attorney's office for the purpose of enhancing the charges brought against those responsible for Ms. Stephens' attack.

The Executive Director is correct in asserting that in the days following the attack, in early September, Ms. Morrison acted as a liaison between Ms. Stephens and the Philadelphia Police Department. This is a stipulated fact. Moreover, Ms. Morrison did send Ms. Stephens a text message on August 25 after leaving the police station on the night of the attack that stated "I just want you to know that I love you as a sister and I have your back as my sister and as a member of this community. I have your back in my professional position as well and we will not take this lying down." It can be fairly concluded that the actions taken by Ms. Morrison in this liaison role were motivated by a close personal relationship with Ms. Stephens, as a fellow member of the transgender community, and in fulfillment of her official responsibilities to serve the transgender community as executive director of the City's LGBT Office. I believe Ms. Morrison's decision to act as liaison following the attack on Ms. Stephens reflects all of these motivations.

In understanding this liaison role, it is necessary to examine closely what Ms. Stephens requested of Ms. Morrison, what Ms. Morrison did in response, and the precise timing of these actions. Once again, the evidence is not as clear as one would like.

At the police station on the night of the attack, Ms. Stephens was very upset and felt that the police officers were trivializing her attack due to her transgender status. Ms. Morrison arrived at the police station and spoke with police at around 10:00 p.m. This was clearly outside of

business hours and there is no evidence in the record that Ms. Morrison identified herself as a City officer as executive director of the LGBT Office. She did, however, assert Directive 4.15 to the police and testified in her deposition that she was glad she did so because “that means I’m doing my job.”

Following that discussion with police, Ms. Morrison texted Ms. Stephens hours later to say, “I just want you to know that I love you as a sister and I have your back as my sister and as a member of this community. I have your back in my professional position as well and we will not take this lying down.” While Ms. Morrison explained that she wanted to connect Ms. Stephens to every resource that was available to her, she also agreed in testimony at the hearing that this was part of her job. Ms. Morrison testified that she meant that she could make the connections to whatever resources or people that Ms. Stephens needed as a victim of a crime.

In this role, Ms. Morrison texted Ms. Stephens to report that she had sent the email address of the Police Department’s LGBTQ liaison to Ms. Stephens’ husband, Avery Shaw, so that he could contact the liaison. Ms. Morrison also stated that she intended to call the police on Ms. Stephens’ behalf on the following day. Ms. Stephens did not reject these intended actions, providing further evidence that Ms. Morrison was acting at Ms. Stephens’ request and with her consent. In speaking on Ms. Stephens’ behalf with police officials, the evidence supports that she was wearing two hats – as a close, personal friend and as the executive director of the City’s LGBT office – without distinguishing or separating those two roles.

Further, Ms. Stephens testified that she asked for Ms. Morrison’s help with getting charges against her attackers enhanced from simple assault and with commencing an internal affairs investigation regarding how police handled her complaint during a visit by Ms. Morrison to her home soon after the attack. Ms. Morrison testified that the police and the district attorney’s

office contacted her because they wanted to be connected to Ms. Stephens. Ms. Morrison acknowledged in an email dated September 2 and sent to Mary Groce, a Philadelphia author who had shared with her a newsletter writeup about Ms. Stephens, that “I have been working hard with the Police Commissioners and the District Attorney’s Office to get all of this taken care of.” Ms. Morrison explained that this statement was made in reference to connecting Ms. Stephens to resources and about her interactions with the police following the attack.

A request that Ms. Morrison simply forward contact information of the police department’s LGBTQ liaison might reasonably be viewed as a request for ministerial action that would not constitute official action under the definition of that term.³ However, requests for assistance by Ms. Stephens to represent her with the police department and the District Attorney’s office and to serve as a go-between in discussing a complaint against the police or potentially elevating criminal charges against the attackers, if they occurred, would constitute requests for discretionary action that fall within the definition of the term official action.

The written texts and emails introduced as exhibits by both parties provide additional evidence regarding what actions were sought and taken following the attack on Ms. Stephens.

The first written communication came on August 25 from Lauren Cox, Deputy Communications Director, Office of the Mayor, who requested information from Ms. Morrison about the attack on Ms. Stephens so that she could address a media inquiry about the attack. In her email response on August 25, Ms. Morrison provided limited information to Deputy Communications Director Cox and expressed an uncomfortableness in answering questions because Ms. Stephens was, in her words, “a close friend of [hers] that was assaulted last night by

³ Official action is defined as “an act or omission taken by an officer or employee in his or her official capacity that requires discretion and is not ministerial in nature.” § 20-601(17).

about five guys and girls. I met her at the Police department and drove her to the hospital.” This contact was initiated by Deputy Communications Director Cox and not by Ms. Stephens.

On September 2, Robin Wimberly, Deputy Commissioner at the Philadelphia Police Department, emailed Ms. Morrison wanting to ensure that Ms. Stephens understood the police complaint process. One week later, on September 9, Wimberly again emailed Ms. Morrison to ask whether Ms. Stephens had changed her mind about filing a complaint against the police. Ms. Morrison emailed Wimberly the next day on September 10 to report that she had spoken with Ms. Stephens and Ms. Stephens does want to move forward with a complaint against the police. Ms. Morrison’s email to Wimberly is from her City email address and contains her full signature block as executive director of the Office of LGBT Affairs. A final email between the police and Ms. Morrison occurred on September 15 when Wimberly emailed Ms. Morrison to state that she spoke with Ms. Stephens and walked her through the complaint process. This is the last written evidence in the record of any contact between Ms. Morrison and the Philadelphia Police Department.

According to Ms. Morrison’s deposition testimony, Ms. Stephens asked Ms. Morrison to share her information with the District Attorney’s office and Ms. Morrison did so with Adam Geer, Assistant District Attorney and Director of Diversity and Inclusion. On August 28, ADA Geer sent an email to Ms. Morrison at her City email address requesting that she call him to discuss the Kendall Stephens matter. Ms. Morrison responded by email the same day with her availability for such a call. On September 2, Ms. Morrison sent Mr. Geer screenshots of the woman who was Ms. Stephens’ main attacker, as well as a link to an interview about the attack. As in other communications, Ms. Morrison’s email came from her City email address and contained her full signature block as executive director of the Office of LGBT Affairs.

On the same day, September 2, Mr. Geer thanked Respondent and stated that the screenshots would be forwarded to the assigned detective and that he would keep Ms. Morrison updated. This is the last documented contact between the District Attorney's office and Ms. Morrison. If there were other conversations between Ms. Morrison and the District Attorney's office regarding this matter, there is no evidence of such communications in the record.

In summary, the evidence reflects that the last communication *from* Ms. Morrison to the Philadelphia Police Department on behalf of Ms. Stephens occurred on September 10 and her last communication to the District Attorney's office occurred on September 2. It is reasonable to find that Ms. Morrison's representative actions as liaison to the Philadelphia Police Department and the District Attorney's Office were at Ms. Stephens' request and with her consent. It is also reasonable to conclude that some activity, though perhaps not all, involved discretionary actions that would constitute official action under the Gift Law. But there is no evidence that Ms. Stephens was seeking official action from Ms. Morrison concerning the police or the District Attorney's office *after* the dates of the last written communications noted above.

Once again, the timing of actions requested by Ms. Stephens is critical to determining whether a violation occurred under the Gift Law. The loan agreement was executed on September 23 and the funds were received on that day. There is no evidence presented by either party of discussions about the loan in the days immediately preceding September 23. Moreover, the evidence shows that any requests by Ms. Stephens to Ms. Morrison for official action following her attack had ended earlier in September, well before September 23. By September 23, Ms. Stephens was not a restricted source. After careful consideration of the evidence in this case, I find that the Executive Director has not met his burden by a preponderance of the evidence of proving that Ms. Morrison solicited the loan from Ms. Stephens. I do not find

credible Ms. Stephens' testimony that it was Ms. Morrison who solicited the loan or that she did so only after the GoFundMe account was created and exceeded \$35,000 in donations. I further find that Ms. Stephens was not seeking official action from Ms. Morrison as of September 23, the date when the loan agreement was executed and Ms. Stephens gave Ms. Morrison the check for \$4,000.

Therefore, I recommend that the Board find no violation of the Gift Law.⁴

Concluding Comments

I would like to add several concluding comments.

First, I have not addressed mitigating or aggravating factors because I have recommended that the Board not find a violation of the Gift Law. If, nonetheless, the Board should find a violation, I believe any such violation was an inadvertent violation by someone who was new in her position with limited training and supervision during a time of a pandemic. She cooperated with Board Enforcement Staff -- without the assistance of counsel-- and took prompt corrective action to modify her financial disclosure statement when deficiencies were brought to her attention.

Second, I noticed that the Amended Notice of Administrative Enforcement referenced a different legal standard from that contained in the Gift Law. The Enforcement Notice charged Ms. Morrison with a violation of the Gift Law by "*soliciting, accepting, and receiving*" a gift from a restricted source. If this standard was strictly applied as pled in the Enforcement Notice,

⁴ I want to emphasize that I believe that the most credible evidence in the record is that the loan was discussed at the time that Ms. Morrison was residing temporarily with Ms. Stephens in early August, that Ms. Stephens offered to loan Ms. Morrison money to move, and that they agreed in August to such a loan. If that was the case, Ms. Morrison accepted the loan from Ms. Stephens long before there could have been any requests by Ms. Stephens for official action concerning her attack which occurred on August 24. And, again, the loan monies were received on September 23, after any requests for official action had ended.

the Executive Director would be required to establish all three elements in order to prove a violation, whereas the Gift Law permits a finding of violation if an officer accepts *or* receives a gift in excess of a threshold amount from a restricted source *or* solicits a gift of any value from a restricted source. However, the Board does not need to reach this issue if it finds, as I have recommended, that there is no violation under the standard provided by the Gift Law.

Third, the Executive Director filed a motion in limine to preclude the testimony of Avery Shaw (Ms. Stephens' husband). At the hearing, the Executive Director contended that the Respondent's listing of Avery Shaw on her witness list was an attempt to intimidate Ms. Stephens ([REDACTED]). I did not rule on the motion in limine because I waited to see if the Respondent was going to call Mr. Shaw as a witness. When counsel for Ms. Morrison informed me that they were not going to present him as a witness, I saw no reason to rule on the motion in limine. In my view, there were valid reasons to place Mr. Shaw on the witness list and his testimony would not simply have been cumulative as the Executive Director argued. Mr. Shaw was apparently present during discussions about the loan in August that took place in the home that he shared with Ms. Stephens, and he was alleged to be the draftsman of the loan agreement that was executed on September 23.

Fourth, I have not addressed in this recommendation that fact that Ms. Morrison and Ms. Stephens had a complete falling out in their relationship and that Ms. Morrison did not pay back the loan in accordance with the terms of the agreement. She ultimately paid off the loan in full, but only after the involvement of the Board's Enforcement Staff as I have described above in the facts. In view of my recommendation, I did not think it was necessary to address these developments.

Fifth, I recommend that the Board undertake ongoing review of the current language of the Gift Law, and especially its temporal requirements, to assure that the law is properly serving the public purposes intended by its enactment.

Finally, I wish to express my appreciation to Mr. Creamer, Mr. Alfano, and Ms. Mariotti for their cooperation and professionalism throughout this contested proceeding. I also wish to acknowledge and thank the General Counsel, Michael Cooke, and the General Counsel Staff, Jordana Greenwald, Thomas Klemm, and Danielle Gardner Wright, for their able assistance and dedication.

A handwritten signature in black ink, appearing to read "LS Rulli", written in a cursive style.

Louis S. Rulli, Esq.
Hearing Officer

Date: March 3, 2022