



CITY OF PHILADELPHIA

BOARD OF ETHICS
PACKARD BUILDING
1441 SANSOM STREET
2ND FLOOR
PHILADELPHIA, PA 19102-3026
(215) 686-9450
FAX: 686-9453

Evan Meyer
General Counsel

Philadelphia Board of Ethics Advice of Counsel

September 12, 2007

Michelle D. Flamer, Senior Attorney
Law Department
One Parkway Bldg., 17th Floor
1515 Arch Street
Philadelphia, PA 19102

Re: Gifts and Solicitation of Donations—City Employees' Combined Campaign

Dear Ms. Flamer:

The Board of Ethics has delegated to me to provide this Advice of Counsel in response to your letter of August 10, 2007. You advise that you serve as legal counsel to the City's Combined Campaign, which you describe as the "nineteen year old, employee driven charitable drive that allows City employees to contribute to thirteen Participating Organizations through workplace giving." You have asked a number of questions, some stated and some implied, relating to various proposals for the organizations and individuals involved in the Campaign to solicit donations of goods and services from various private entities, to be used as incentives and/or prizes to be provided to City employees to encourage participation in the campaign.

Essentially, you raise two types of questions related to the solicitation of gifts to be provided and the mechanism of providing the gifts to certain City employees. Both types of questions involve multiple possible scenarios, considering the various intermediary entities that may or may not be involved in effecting either the solicitation of the gifts, or the provision of the gifts.

For example, you advise that the Combined Campaign is managed by the following entities or types of entities:

1. The Administrative Board of the City (Mayor, Managing Director, and Finance Director);
2. The Participating Organizations: 13 fund-raising charitable organizations that receive the donations (such as United Way, Women's Way, Police Athletic League);
3. The Campaign Management Organization, an entity responsible for the daily operation of the campaign (this year, the Center for Responsible Funding, a nonprofit);
4. The Advisory Committee, comprised of representatives of the entities in Nos. 2 and 3 above, as well as various City officials, including co-chairs Records Commissioner Joan Decker and Deputy Health Commissioner Kevin Vaughan; and
5. Other officials of the City who provide services to support the campaign.

You advise that goods and services may be solicited from local businesses and large corporations, some of which have previous or existing contractual relationships with the City and others of which may be regulated, taxed, or provided services by the City (almost certainly if they have an office in the City). You advise that such solicitations may be made by:

1. Participating Organizations;
2. Campaign Management Organization; or
3. The City.

You advise that such donations might be used for the following purposes:

1. To underwrite costs of the Campaign;
2. To provide incentive prizes to be used in raffle of employees who turn in their pledges by a certain date; or
3. To serve refreshments at a kick-off event.

Thus, in contrast to our usual "gift" query, where we are asked whether it is acceptable for a specific City employee to accept a specific gift from a specific entity under specific circumstances, in this matter each of the elements of your question involves multiple possibilities, creating a welter of potential scenarios. Since it would be impossible to address every single scenario, I will attempt to outline some general principles, which you may be able to apply.

A. Solicitation of Gifts

In general, the question of government officials soliciting charitable donations is not one of law but of a possible appearance of impropriety. There may be an "abuse of

power” appearance if the official soliciting funds wields some power over the entities or individuals solicited. That is, such individuals or officers of such entities may feel coerced by an implicit threat of adverse City action in the future (or induced by implicit promise of favorable City action). City Solicitor Opinion No. 86-27, which involved a Managing Director in a similar situation, concluded that “he might also be required to refrain from taking official action affecting a person or entity from whom he had solicited funds for a private purpose.” (emphasis added). The Opinion cited a State Ethics Commission opinion, which does not give a rationale for its conclusion and is based on a previous version of the statute that differs in significant ways from the current State Ethics Act. On review of these opinions, it seems clear that the problem is more an appearance of impropriety than a defined conflict of interest.

I note that Opinion No. 86-27 further advised that, even where there is no conflict, there might be a concern that an appearance of undue pressure or influence would be created by soliciting and accepting funds which are affected by decisions of the soliciting official. The Opinion added, however, “I believe that such concerns would be lessened by a general campaign, in which solicitation was made openly to the public and corporate community as a whole.” Therefore, the appearance problem depends in part on whether the letter is sent to a wide mailing list, or limited to individuals and entities that have relations with the City government or in particular the soliciting official.

There is a wide range of possible factual scenarios here. At the one extreme, if, for example, Commissioner Decker were to send a personal letter, on Records Department stationery, only to those real estate firms that regularly file documents with her department, to companies with which her department contracts for services, and to other individuals with whom she has regular official contact, soliciting donations of goods and services, that might raise an appearance that she was exerting her power as Records Commissioner to influence what should be an uncoerced decision to give to charity. At the other extreme, if Commissioner Decker is merely one of several City officials on the Advisory Committee that approves the concept that the Campaign Management Organization or any of the Participating Organizations will themselves make a solicitation (on their own stationery and signed by their officials) to a wide variety of companies, some of which do business with the City, Commissioner Decker’s involvement (and indeed the involvement of any other City official) in any solicitation would be so remote that no “abuse of power” appearance could exist¹.

¹ I use Commissioner Decker merely as a convenient example. The same general principles apply as well to her co-chair Kevin Vaughan, any member of the Administrative Board, you as counsel to the Combined Campaign, and any other City official or employee involved in the Campaign.

B. Acceptance of Gifts

There are a number of ethics provisions that apply to the acceptance of gifts by City employees. These include Section 10-105 of the Home Rule Charter, Section 20-604 of the Philadelphia Code, Sections 1103(b) and (c) of the State Ethics Act, and Executive Order No. 002-04. As with solicitations, there is a wide range of possible factual situations that are implied in your request. I will attempt to address the most likely general situations and provide guidance.

1. Companies provide goods or services to either a Participating Organization or to the Campaign Management Organization as an incentive. The Organization then conducts a raffle among employees who pledge by a certain date with the provided goods/services as a prize. I conclude that, on these facts, this would not be a gift at all to the winner of the raffle. Where a raffle is conducted anonymously, a broad range of employees may participate, and the winner is determined completely by chance, there is no gift to the winner. Accordingly, none of the cited ethics provisions would be violated by this scenario.
2. In contrast to the above example, if donated gifts are provided by either a Participating Organization or the Campaign Management Organization (CMO) directly to a particular City employee in a way that is not random or anonymous, that would be a problem. For example, if after the campaign, the CMO decides to reward certain City employees who were particularly helpful (say, yourself) in setting up the campaign by providing them with some of the donated gifts, that would be a prohibited gift under the executive order, and probably under Charter Section 10-105, as well. (Also, Code Section 20-604, depending on the value of the gift and the circumstances.)
3. Companies donate funds to either a Participating Organization or to the Campaign Management Organization to underwrite the costs of the Campaign. This would not be a gift to a City employee. Accordingly, none of the cited ethics provisions would be violated by this scenario. (I do not discuss donations to the City, because I believe that the City itself may not accept donations earmarked for a particular purpose, as departments may spend only funds appropriated to them by City Council, but this is a budgeting question under the Charter, not an ethics question.)
4. Companies donate food and drink for a “kick-off” event for campaign staff, including City employees. I conclude that any free consumables for such a purpose would be a permissible gift to the City, not a gift to any individual City employee. This is in contrast to a ruling by the previous advisory Board of Ethics relating to holiday parties, which serve no governmental purpose. In this matter, the Combined Campaign serves an appropriate governmental purpose of encouraging charitable giving by the City’s employees.

Finally, I would like to emphasize that my advice is based on the facts that you have presented and on this particular situation only—that is, the City Employees' Combined Campaign. Other situations of solicitation of charitable giving and of providing incentives to City employees may require a different analysis.

Sincerely yours,

Evan Meyer
General Counsel

cc: Richard Glazer, Esq., Chair
J. Shane Creamer, Jr., Esq., Executive Director