



BOARD OF ETHICS
CITY OF CHICAGO

ADVISORY OPINION

November 16, 2016

Case No. 16032.A, Purchase by City officials and employees of tickets to high-demand events at face or discounted value

Introduction. This opinion had its genesis in baseball, and has broadened to include the role of government officials in events that have civic or cultural significance, but are costly to attend. It is the solely the responsibility of the Board of Ethics to interpret the City's Governmental Ethics Ordinance and give guidance to City officials and employees. In this advisory opinion, we set forth the rules that apply when City of Chicago officials or employees are given the opportunity to purchase or accept discounted, free or face value tickets to "high demand" entertainment events, such as baseball, football, basketball or hockey post season games, headliner concerts, or hit theater shows. By "high-demand," we mean popular events for which a reasonable person could expect to pay more than \$50 above the face value of a ticket to gain admission. This opinion addresses events where those residents of the City who are not City officials or employees must go to the secondary ticket market to procure tickets at a price above face value. At the heart of this opinion, we address when, and under what conditions, City officials or employees may or may not accept free tickets, or purchase such tickets at their face value, or less, for such events.

Procedural History.

The October 4 Memorandum. On September 29, 2016, the Executive Director of the Board of Ethics (the "Board") was contacted and asked for an advisory opinion addressing whether, under the City's Governmental Ethics Ordinance (the "Ethics Ordinance"), City elected officials and other City officials could accept an offer from the Chicago Cubs to purchase up to two (2) tickets for each home game of the National League Divisional Series (NLDS) and National League Championship Series (NLCS) at face value, that value being the price set by Major League Baseball. Consistent with both the Board's 2010 opinion in Case No. 10021.A and with amendments made to the Ethics Ordinance in November 2012,¹ the Executive Director publicly advised City officials and employees and the team, on October 4, that, under the amended gift restrictions in §2-156-142(d)(12) of the Ethics Ordinance, these officials and employees could accept the team's offer to purchase up to two (2) tickets per NLDS or

¹ Among these changes was the first-time, explicit addition of the exception to the gift restrictions for any item for which the recipient pays "the fair market value." §2-156-142(d)(2). In 2010, when this Board last addressed the issue of baseball tickets (not post-season baseball tickets), the secondary market for tickets was not as established as it is now. We are using the Black's Law Dictionary definition for the term "fair market value":

"The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. By fair market value is meant the price in cash, or its equivalent, that the property would have brought at the time of taking, considering the highest and most profitable use, if then offered for sale in the open market, in competition with other similar property at or near the location of the property taken, with a reasonable time allowed to find a purchaser." *Black's Law Dictionary*, 5th edition, 1979.

NLCS home game at face value as a public appearance related to official City business, with several critical caveats related to reasonable hosting.

As was widely reported, the Cubs – who have acted in good faith throughout in understanding the Board’s guidance and working with us – complied with its obligations. The Executive Director’s October 4 Memorandum and the guidance announced in it were provisional, interlocutory, and subject to the full Board’s modification, as the full Board had not yet deliberated together. The October 4 Memorandum is attached to this opinion as Exhibit 1. As the Board stated in its October 21 Revised Memorandum (attached to this opinion as Exhibit 2), the October 4 Memorandum was valid through the NLCS, and rescinded and replaced by the Board’s October 21 Revised Memorandum for the World Series, and by this Advisory Opinion, beyond the World Series, and for general applicability.

The October 21 Revised Memorandum. On October 19, the full Board took up the matter as a public body at its regularly scheduled meeting. Owing to the media interest in this story and its resonance with the public, the Board’s Chair took the unusual step of conducting part of this deliberation on the ethical concerns regarding the proposed ticket sale to aldermen and other City officials during the Board’s public session. Following that deliberation, and additional closed session discussions, which included an assumption that the Cubs would reach the World Series, and the assumption that ticket prices for the World Series would be at levels similar to or higher than those of the NLDS or NLCS, the Board voted unanimously to revise and supersede the October 4 guidance in a Revised Memorandum released publicly on October 21, as follows:

1. The Ethics Ordinance prohibits City employees and officials from accepting any gift of cash or its equivalent (regardless of amount), or any non-cash gift worth \$50 or more from any single source per calendar year, with certain exceptions. The exceptions stated in the Ordinance include, but are not limited to: (i) cash or gifts in any amount from personal friends² or relatives; (ii) any opportunity available to members of the public on the same terms; (iii) anything for which the official or employee pays the fair market value; or (iv) any benefit resulting from the outside, non-City business, employment or community activities of the official or employee, if customarily provided to others in similar circumstances.
2. Like the Executive Director’s October 4 guidance, the Board’s October 21 revised guidance was based on §2-156-142(d)(12) of the Ethics Ordinance. That provision allows City officials or employees to accept reasonable hosting expenses, including entertainment, from an event’s sponsor, in connection with *appearances, public events or ceremonies related to official City business*, provided they are approved in advance by, and then reported back to, the Board, within 10 days of acceptance. (Emphasis added.)
3. It is reasonable to assume, and the Board did assume, that, but for the offer made to certain City officials and employees by the team, these officials and employees would have had to pay more than \$50 above the tickets’ face value to be able to attend these games (unless they were offered tickets

² The Board cautions here that this personal friend exception is not a blanket exception. In order to rely on this exception, a “personal friend” must be a *bona fide* personal friend. In determining whether such a personal friendship exists, relevant factors to be considered are “the circumstances under which the gift was offered, such as (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the ... officer, or employee the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the actual knowledge of the member, officer, or employee the individual who gave the gift also at the same time gave the same or similar gifts to other ... officers or employees.” See the Illinois State Officials and Employees Ethics Act, 5 ILCS 430/10-15(7).

by personal friends or relatives, or through their non-City business or employment, as allowed per §2-156-142(d)(4), (6), or (11)).

4. Therefore, the Board determined that this greater-than-\$50-differential *would* constitute a prohibited gift to these officials or employees, unless one of the exceptions to the Ethics Ordinance's gift provisions cited above applies.

5. The Board also determined that City officials and employees may accept an offer from an event's sponsor to purchase face value or accept free tickets (one for the official and one for a guest) to high-demand sports or entertainment events, events at which a reasonable person could expect to have to pay more than \$50 above face value to gain admission, *provided that*:

(i) the officials' or employees' attendance in person is to enable them to perform an official, appropriate, ceremonial duty or action, such as publicly welcoming the crowd, making a speech, throwing out the first pitch, marching with the color guard, standing with other elected officials on the field, or comparable activities appropriate to the particular venue, in other words, public announcement does *not* suffice to constitute an appropriate ceremonial duty or action. To be clear, artificial ceremonial duties do not qualify. The Board of Ethics is prepared to assist anyone covered by the Ethics Ordinance in working through these situations and issues; and

(ii) there is a clear and direct connection between the officials' or employees' attendance and performance of such a ceremonial duty or action and the nature and location of the event itself³; and

(iii) each attending City official or employee who accepts such an offer shall have it approved in advance by, and then shall report his or her acceptance and attendance to, the Board, as required by the Ethics Ordinance.

6. The Board made clear that its October 21 guidance:

(i) did not impact the ability of City officials or employees to purchase season tickets to professional sports teams and thereby gain the ability to purchase coveted post-season tickets on the same terms as other season ticket-holders, or limit them from procuring tickets to other high-demand events (such as concerts) in the same manner as other members of the general public; and

(ii) did not address whether City elected officials could use City funds or funds from their political committees to purchase such tickets, as these issues go beyond the purview of the Ethics Ordinance and the Board. City officials were (and are) advised to seek legal advice from the City's Law Department, the Illinois State Board of Elections, or private counsel as to the applicability of

³ See New York City Conflicts of Interest Board (COIB) Advisory Opinion 2012-4, entitled *Gifts of Admission to Sporting and Entertainment Events*, especially pp. 6-8, addressing which New York City elected officials could meet this test and accept free tickets for the U.S. Open Tennis tournament. Our COIB colleagues determined that only the Mayor and the Queens Borough President would meet this test. Their opinion was issued after this Board rendered its advisory opinion in Case 10021.A. The COIB opinion is attached as Group Exhibit 3. We find our COIB colleagues' reasoning to be persuasive. But, we also note that our opinion goes beyond this COIB opinion, which addresses elected officials receiving free tickets. Our opinion addresses a slightly different question, namely situations in which the difference between the price that would be charged to government officials by the event's sponsors and what a member of general public would expect to pay exceeds \$50, and, thus, introduces and focuses on the concept of "fair market value."

other provisions in the City's Municipal Code, such as §2-8-050, which governs aldermanic expense accounts, or the Illinois Election Code, or other potentially applicable laws; and

(iii) did not affect those City officials who complied in good faith with the interlocutory guidance rendered by the Board's Executive Director on October 4, 2016, up to and including the NLCS, but would apply were the Cubs to advance to the World Series, which, in fact, occurred; and

(iv) superseded the Board's advisory opinion in Case No. 10021.A,⁴ to the extent that opinion was incompatible with its October 21 guidance.

7. The Board voted to direct its staff to prepare this draft formal advisory opinion consistent with and expanding upon the rationale described above.

Law, Analysis and Discussion. As stated above, this is a "gift" case. Our reasoning is based on our determinations that:

(i) a City employee's or official's ability to purchase tickets to a high-demand sports or entertainment event at or below face value, from the event's sponsor, solely on the basis that they are City employees or officials, constitutes a gift (unless an exception to the gift restrictions applies); and

(ii) if, at the time the event's sponsor⁵ makes the offer to sell tickets to a City employee or official, the difference between the price these City personnel would pay and the price a reasonable person would need to pay exceeds \$50, then the gift is worth in excess of \$50 and thus prohibited by the Ethics Ordinance, unless an exception to gift restrictions applies.

We understand that, in this scenario, these City officials or employees would still be paying the tickets' face value; these are not "freebies." We also recognize that other jurisdictions might use the tickets' face value as the sole valid measure of the offer's worth, and not take into the account the secondary market.⁶ That was the state of the law when we issued advisory opinion 10021.A, cited in footnotes 3 and 4, above. We reject that rationale here.

The rationale behind the Board's decision *here* is to prevent the appearance of favoritism and impropriety that results when City officials and employees take advantage of "special access" to high-demand sports or cultural events in the City, unless they are performing some kind of official, ceremonial public act at the event, consistent with their City positions. Put another way, *a free, discounted or face value ticket, offered by the event's sponsor, which offer is not made to the general public, is a special benefit or privilege, a gift.* If that gift or special access is worth more than \$50 (as measured by the difference between the price of the offered tickets and what a reasonable purchaser would expect to pay in the secondary market), then, in order for a City official or employee to accept it

⁴ See https://www.cityofchicago.org/content/dam/city/depts/ethics/general/AO_GiftsTravel/10021A.pdf

⁵ Consistent with Board precedent, the term "sponsor" of course would *not* include an entity (like StubHub or Vivid, for example) that purchases event tickets for re-sale, or to give to City officials or employees. See Case No. 09011.A: https://www.cityofchicago.org/content/dam/city/depts/ethics/general/AO_GiftsTravel/09011.A.pdf

⁶ It appears that both the United State Senate's Select Committee on Ethics and the House of Representatives Ethics Committee use this valuation. See Senate Rule XXXV 1.B; House Rule XXV 5(a)(1)(B)(ii): "The gift rule provides that a ticket to a sporting or entertainment event is 'valued at the face value of the ticket, or, in the case of a ticket without a face value [such as a skybox], at the highest cost of a ticket with a face value for the event. To address the issue of artificially low face values, the gift rule also provides that the 'price printed on the ticket shall be deemed its face value only if it also the price at which the issuer offers that ticket for sale to the public.'"

without violating the Ethics Ordinance, an exception to the gift restrictions must apply. Under this scenario, the only exception that, we conclude, *could* apply, is the one for reasonable hosting, specified in §2-156-142(d) (12), which, we hold, requires an appearance and public act related to official City business.⁷ This is particularly important in a case like this, where the Cubs are heavily regulated by the City Council. Issues ranging from the renovations of Wrigley Field, permitted construction of adjacent facilities, open plaza beer gardens and, importantly, night baseball, are subject to City Council approval. The special benefit through the face value sale of inflated market value tickets can only cause the citizens of Chicago to question the propriety, fairness and appropriateness of elected officials accepting such "special benefits" from a heavily regulated entity.

The Ethics Ordinance prohibits City officials or employees from soliciting or receiving anything of value in return for advice or assistance on matters concerning City business. See §§ 2-156-142(e), (f).

⁷ The Ethics Ordinance contains a detailed section covering which gifts may and may not be offered or accepted. It provides, in pertinent part: 2-156-142. Offering, receiving and soliciting of gifts or favors.

- (a) (1) Except as otherwise provided in this chapter, no city official, candidate for city office, or employee ... shall
 - (i) solicit any gift for himself or any covered relative ...
 - (iii) accept any gift of cash, gift card or cash equivalent.
- (2) Except as otherwise provided in this chapter, no city official ... or employee, and, subject to subsection (h) no covered relative, shall knowingly accept any gift, unless the total value of all gifts given to the [recipient] ... by a single source amounts to no more than \$50.00 in a calendar year...
- (c) No person shall offer, with intent to violate, or make a gift that violates, this section.
- (d) The restriction in subsection (a) shall not apply to the following:
 - (1) Any opportunity, benefit, loan, or service that is available to members of the public on the same terms.
 - (2) Anything for which the [recipient] pays the fair market value...
 - (4) Any gift from a relative...
 - (6) Any gift from a personal friend, unless the [recipient] ... has reason to believe that, under the circumstances, the gift was given because of the official position, candidacy or employment of the [recipient] ...
 - (11) Any food, refreshment, lodging, transportation, or other benefit resulting from the outside business, employment or community activities of the [recipient] ... if such benefits have not been offered or enhanced because of the official position ... or employment of the [recipient], and are customarily provided to others in similar circumstances.
 - (12) Reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with meetings, appearances or public events or ceremonies related to official city business, if furnished by the sponsor of such meeting or public event or ceremony, and further provided that such travel and expenses, entertainment, meals or refreshments have been approved in advance by the board and are reported to the board within 10 days of acceptance thereof.
- (e) No person shall give or offer to give to any official ... or employee ... and none of them shall accept, anything of value, including, but not limited to, a gift, favor or promise of future employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any [recipient] concerning the business of the city would be influenced thereby...
- (f) No official or employee ... shall solicit or accept any money or other thing of value including, but not limited to, gifts, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the city ...

In municipal or state ethics laws, one of the main purposes of gift restrictions is to avoid even the appearance of impropriety. We have recognized this, in, e.g., Case Nos. 88005.A; 88046.A.

The Board's decision here is intended, in part, to assist City employees and officials and event sponsors to avoid even the appearance that they are not disinterested when dealing with these sponsors' City matters, or that they are taking advantage of their government position. The sale of high-demand tickets to City personnel at face value by the event's sponsors, even where there is no *quid pro quo*, still fosters the public perception that: (i) City personnel may be more favorably disposed towards the gift offeror when that offeror has business before them; and (ii) City personnel are, solely by virtue of their City position, taking advantage of benefits to which the public has no access. Both are undesirable outcomes that cause citizens of Chicago to lose confidence in the integrity and independence of their elected and appointed leaders.

We now address questions raised to us since we issued our October 21 Revised Memorandum. We caution all City employees, officials, and potential sponsors or hosts of high demand events that, while the Board intends the questions and examples discussed below to provide guidance, the guidance provided may be relied on only by those who raised these questions to us in the weeks since we issued our October 21 Revised Memorandum, and only as to specific factual situations described in the questions. *Any City officials, employees or potential high-demand event sponsors are advised to seek specific, confidential guidance before making or accepting any offer for tickets to high-demand events at face value or below, when the tickets are known to be selling for prices higher than \$50 above that rate.*

Question (1): *How is a City employee or official to determine whether an entertainment or sports event is high-demand, that is, an event for which a reasonable person could expect to pay in excess of \$50 above face value to gain admission? The secondary market for tickets fluctuates.*

Answer: As the Massachusetts State Ethics Commission recognized, the fundamental question here, as it is in so many areas of the law, is based on the "reasonable person standard": whether a reasonable person wishing to attend the event would be required to pay \$50 or more over face value to purchase the ticket or tickets that the public official is being provided the opportunity to purchase at face value.⁸ To determine this, the City official or employee would need to consult the secondary market *at the time the official or employee wishes to purchase the tickets.* We stress that we are addressing here only tickets that are offered by the event's sponsor, not tickets offered to City personnel by their relatives or personal friends.

Example 1: The Chicago White Sox wish to offer a City official face value tickets to a Tuesday night game in June against the New York Yankees. Before the City official accepts this offer, we advise that the City official do some secondary market research, which would show at the time of the offer what comparable tickets would sell for, then seek the Board's advice if that fair market value prices is more than \$50 above the face value. The Board believes that conducting this kind of research does not present an undue burden on a City official or employee. If the research includes prices offered by both discount and retail resellers, it will readily reflect the fair market value at the time.

⁸ See Massachusetts State Ethics Commission Advisory 04-01, entitled *Free Tickets and Special Access to Event Tickets*, attached as part of Group Exhibit 3.

In other words, the key inquiry here is what a reasonable person would need to pay *at the time the sponsor's offer is made*.

Example 2: At or near the beginning of the season, an alderman wishes to purchase directly from the White Sox box office two (2) seats for 10 different home games, all at face value. Nothing in this scenario presents an issue under the Ethics Ordinance, because the same offer is made to members of the general public. There is no special access. Such an offer is explicitly permitted under §2-156-142(d) (1), which exempts from the gift restrictions "any opportunity, benefit, loan or service that is available to members of the public on the same terms."

Example 3: The alderman who purchased these 20 tickets in Example 2 now finds that he or she owns two (2) tickets to a game in May, against the Angels of Anaheim. The Angels have a great slugger in the lineup who may hit his 600th career home run in this game, thereby likely driving up the secondary market price for tickets to it. The tickets for which the official paid \$50 each might now be worth \$100 each on the secondary market. This scenario also presents no violation of the Ethics Ordinance, because the official purchased the tickets from the event's sponsor (the team) at fair market value, and on the same terms as members of the general public, before the rise in ticket prices in the secondary market. There was no special access. Moreover, there would be no violation if this official resells these tickets for a premium in accordance with applicable law⁹ — he or she would not be taking advantage of special access, and would be exercising the same right that any other ticket holder would have.

Example 4: The morning of this same Angels game, a different City official, who did not already have tickets for the game, finds that the game is "sold out," but wishes to contact the White Sox box office directly¹⁰ to see whether there are any remaining unsold tickets available to the public. Prior to doing so, this official would need to perform some simple secondary market research. If that research shows that the premium above face value is \$50 or less, then the event would no longer be a high-demand event, and the official could purchase any remaining tickets the team might have. However, if the research shows that the premium *exceeds* \$50 per ticket, then the official would need to forego the opportunity to purchase these tickets directly from the team and would need to obtain them through the secondary market, or from a personal friend or relative — the same way that any other fan would. Again, the key is that there can be no special access afforded to a City official or employee for the purchase of high-demand tickets from the event's sponsor, unless that City official or employee would be performing some kind of appropriate public act in his or her official capacity, as requested or approved by the event sponsor.

Example 5: This same City official, an experienced secondary market user, waits until 15 minutes before game time to check the price of tickets to this Angels game, and finds that the price has dropped, at that moment, to merely \$15 above face value. This official may now purchase any remaining tickets at face value from the team, but only on the same terms as any other member of the public. Put another way, the secondary market is, like any capital or commodities market, subject to price fluctuations. If City officials or employees really wish to "play" this market, and are proficient at it, and wait until precipitous last minute price drops, the Ethics Ordinance will not prohibit them from

⁹ The Illinois Ticket Sale and Resale Act prohibits the resale of tickets at more than face value except by authorized ticket brokers or resellers. Thus, we advise any City employee or official in this situation to seek appropriate legal counsel to ensure compliance with this or other potentially applicable laws. See 815 ILCS/414.1.5, *et seq.* (effective January 1, 2016).

¹⁰ Consistent with our analysis, it would be prohibited as "special access" for this City official to contact an individual employee or executive of the team's organization to inquire about unsold tickets, unless that employee or executive were a *bona fide* personal friend of the City official, in accordance with the criteria set forth in footnote 2, above.

procuring tickets from the event's sponsor at this 11th hour, as long as the public has the same opportunities.

Question (2): *An alderman is a partner of or of counsel to a law firm. Another partner in the firm – whom the alderman does not consider a personal friend – has extra tickets to a showing of Hamilton, and offers the attorneys in the firm the chance to buy them at face value, on a first come, first serve basis. Can the alderman accept this offer?*

Answer: Yes. This would fit clearly within the exception in §2-156-142(d) (11) of the Ethics Ordinance, which allows City personnel to accept items of value through their outside, non-City employment or business, “customarily” offered to others in the same situation.

Example 6: This alderman *is* a personal friend of the partner with the *Hamilton* tickets for sale. The alderman may accept or purchase the tickets at whatever price, if any, the parties agree on. There is no special access or prohibited gift here; the personal friendship exception in §2-156-142(d) (6) applies.

Question (3): *A City official wishes to purchase tickets to Hamilton, and logs on to the Private Bank theater's official website or walks over to the box office, and purchases tickets at face value for a show 10 months from now, or, “gets lucky” at that moment and learns from the box office that there are “last minute seats” available for the following night. Can this official purchase these seats at “face value,” even though many other patrons at the theater will likely have paid a large premium for their seats?*

Answer: Yes. Both scenarios clearly fall into the exception in §2-156-142(d)(1) of the Ethics Ordinance, which allows City personnel to take advantage of any opportunity or accept any offer available to members of the general public on the same terms. The Ordinance does not prohibit this lucky City official from taking advantage of that luck. There is no special access or prohibited gift here.

Question (4): *A City employee knows someone who works for Broadway in Chicago, or for the production company staging Hamilton, though they are not personal friends. Can the City employee contact this person and request that these “high-demand” tickets be reserved for a particular show, and then pay face value for these tickets?*

Answer: No. This illustrates prohibited special access, and would constitute a prohibited gift if the going price for comparable tickets for this performance on the secondary market exceeds \$50 over the face value of the tickets offered by person obtaining the tickets for the City employee.

Question (5): *The Mayor and his wife are invited to a special, invitation only pre-opening show by the show's producers at a pre-set price; the invitation is non-transferable, and every seat for the show has been offered on the same terms. There is no market value for these seats. The Mayor is not specially recognized at the performance, and other public officials are also in attendance. Does the Ethics Ordinance allow this?*

Answer: Yes. Unlike other public officials, the Mayor is the City's official representative, thus has wider latitude in what constitutes his or her "official appearance." The Board understands a Mayor's attendance at a private, non-public opening of a major by-invitation only cultural, economic or similar event to be part and parcel of a Mayor's official role, and within his or her capacity as Mayor. However, as with any such appearance, a Mayor's attendance at this event would have to be publicly reported to the Board and/or in the Mayoral Gift Log. Depending on the circumstances, the same may be said of an alderman attending an event or ceremony in his or her Ward where the alderman is there in his or her official capacity and the event or ceremony relates to official City business. Such circumstances will be limited and persons covered by the Ethics Ordinance are encouraged to get advance guidance from the Board.

Question (6): *A City employee is President of a City-wide Hockey Association and plays on a team in that association. The Chicago Blackhawks invites the employee to attend a game, at no charge, along with fellow officers and teammates, who will take a ceremonial shot on the net between periods in the game that night. May this City employee accept the free ticket?*

Answer: Yes. Similar to Question (2), above, this employee is being invited due to her outside community activities. Such invitations are explicitly allowed under §2-156-142(d) (11) of the Ordinance. As long as this offer was extended to her fellow officers or teammates, and was not made to her because of her City job, it is acceptable.

The Board cannot address in advance every possible permutation of its opinion. We offer the examples above as part of our educational responsibilities to assist people subject to the Ethics Ordinance in addressing issues that may confront them. As always, the Board encourages City officials or employees (or venue operators or sports teams) to seek individual guidance in the event they believe that an offer made to or by them might qualify. We are unpersuaded that this puts an undue burden on City employees or officials.

Conclusion. We urge City officials and employees to remember that their government position, whether elected or appointed, is a privilege that confers regulatory and other power, and that with that privilege comes the responsibility and obligation to their constituents that they will use their power and privilege to benefit constituents and the City. In doing so, it is important that they avoid even the appearance of a conflict.

This advisory opinion is based solely on the application of the Ethics Ordinance to the situations and facts described in it. City officials, employees or potential high-demand event sponsors are advised to seek specific, confidential guidance before making or accepting any offer for tickets to such events at face value or below, when the tickets are known to be selling for prices higher than \$50 above that rate.



William F. Conlon, Chair



EXHIBIT 1

BOARD OF ETHICS
CITY OF CHICAGO

CONFIDENTIAL

Date: October 4, 2016
To: All City of Chicago Elected Officials, Other City Invitees 51B
From: Steve Berlin, Executive Director, Board of Ethics
Re: Purchase of Cubs 2016 post-season tickets at face value

As you may be aware, the Sun-Times ran this piece in today's paper:
<http://chicago.suntimes.com/chicago/70-percent-of-city-council-snaps-up-cubs-playoff-ticket-offer/>.

To avoid any possibility that the City's Governmental Ethics Ordinance might be violated, we advise you that:

1. If you are going to or have already taken advantage of the offer from the Cubs to purchase Cubs 2016 post-season tickets at face value, you must, to avoid a potential violation of the City's Governmental Ethics Ordinance, attend in person in your official capacity. We have advised the Cubs organization, and they have agreed, that, to ensure that this occurs, they acknowledge the presence of all of you who attend at some point during each game you attend, on the Jumbotron and/or by the PA announcer. After each game you attend, please send the usual post-public event disclosure to my office;
2. The Ethics Ordinance prohibits the offer or acceptance of gifts of more worth than \$50 from any person, other than a personal friend or family member. The difference between the face value of tickets (this price is set by MLB) and the commonly understood "fair market value" for Cubs post-season tickets clearly exceeds \$50 per ticket. Although the Board has not issued an advisory opinion concluding that this difference would be a prohibited gift, the Governmental Ethics Ordinance was amended in November 2012, and, under these amendments, *this difference could well be construed as a prohibited gift to all of you, especially since Mr. Julian Green of the Cubs' organization is quoted in the Sun-Times piece as saying that "This is only for their personal use to enjoy the excitement of the Cubs playoff baseball"*;
3. However, it has long been commonly understood that elected officials and other governmental dignitaries *do* attend sports events in their *official* capacity. In fact, the City's Ethics Ordinance explicitly allows this. *Therefore, you would not be prohibited by the Ordinance from accepting the offer to buy tickets at face value, and would avoid legal or ethical problems, provided you are acknowledged at each game you attend in some public way (whether by participating in the*

color guard, throwing out the first pitch, or being acknowledged by the Cubs for your attendance);

4. Therefore, we advise you that, if you purchase tickets for one or more games at face value, you ensure that:

(i) You enter Wrigley Field by the specially designated VIP gate (the Cubs will insert that information, along with this Memo, into your ticket envelope, and these lines will be likely be shorter anyway);

(ii) That the Cubs publicly announce your presence at each game you attend;

(iii) VERY IMPORTANTLY, that you may not transfer any tickets to others, even your aldermanic staffers, other City employees or officials, family, members of friends, unless you yourself are in attendance at the particular game in person, with that person. If you give away all of your tickets for any particular game, this could be construed as a prohibited gift, since you, not your friends or guests, are the City official;

(iv) Thus, if you find that you cannot attend a particular game in person, we advise you to turn back to the Cubs *every ticket* for that game, in accordance with any terms set by the Cubs.

5. If you follow these guidelines, we can avoid the possibility that the matter be investigated, which could subject the both the team and City officials who attend inconsistently with these guidelines to investigation and a public finding that the Ordinance was violated, and to fines. This is not a result that benefits the City.

If you have any questions, please do not hesitate to contact me or my staff.

On behalf of the Board of Ethics, I appreciate in advance your cooperation in this complex (but also joyous and exciting) matter.

GO CUBS!

Steve

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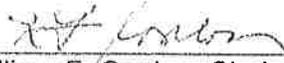
EXHIBIT 2

BOARD OF ETHICS
CITY OF CHICAGO

REVISED
MEMORANDUM

Date: October 21, 2016

To: All City of Chicago Elected Officials, Other City Invitees

From: 
William F. Conlon, Chair

Re: Case No.16032.A, Purchase of Cubs 2016 World Series Tickets directly from the Chicago Cubs at face value by City of Chicago Officials or Employees

The members of the Board of Ethics met on October 19, 2016, and have fully considered the issues addressed in the Memorandum circulated on October 4, 2016.¹ In this Revised Memorandum, the Board has revised the guidance given in that October 4 Memorandum as follows:

1. The guidance announced in this Revised Memorandum is based on §2-156-142(d)(12) of the City's Governmental Ethics Ordinance, which allows City officials or employee to accept:

“Reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with meetings, appearances or public events or ceremonies related to official city business, if furnished by the sponsor of such meeting or public event or ceremony, and further provided that such travel and expenses, entertainment, meals or refreshments have been approved in advance by the board and are reported to the board within 10 days of acceptance thereof.” [emphasis added]

¹ In that October 4 Memorandum, the Board's Executive Director advised all 53 City elected officials and others that, under the gift restrictions in the Governmental Ethics Ordinance, these officials could accept the team's offer to purchase up to two (2) tickets per post-season home game at face value (the cost being set by the League itself, not by the team) provided that two (2) conditions were met: (i) that each attendee be announced on the public address system, or otherwise publicly acknowledged by the team to the crowd in some way; (ii) that each official must attend each game for which he or she has purchased tickets – they may not give all tickets purchased for any game to family, friends, supporters, constituents, for example; and (iii) that each attending City official or employee who accepted this offer then report his or her attendance to the Board, as required by the Ordinance. This Memorandum and the guidance announced in it were provisional, or interlocutory, subject to the full Board's modification. The October 4 Memorandum is hereby withdrawn, effective October 21, 2016.

2. It is reasonable to assume, and the Board does assume, that, but for the offer made to City elected City officials and others by the team, these officials and others would have had to pay more than \$50 above the tickets' face value to be able to attend these games (unless they were offered tickets by personal friends or relatives, as allowed per §2-156-142(d)(4) or (6)); therefore this greater-than-\$50-differential *would* constitute a prohibited gift to these officials, unless it falls under the exception to the gift provisions cited above.

3. City elected officials (or other City officials and employees) may accept an offer to purchase face value or even accept free tickets (one for the official and one for a guest, such as a spouse or domestic partner) to a sports or other entertainment event, at which a reasonable person could expect to be required to pay more than \$50 above face value to gain admission, provided that:

(i) the officials' personal attendance is to enable them to perform an official, appropriate, ceremonial duty or action, such as publicly welcoming the crowd or making a speech, throwing out the first pitch, marching with the color guard or standing with other elected officials on the field, or comparable activities appropriate to the particular venue; and

(ii) there is a clear and direct connection between the official's attendance and performance of a such a ceremonial duty or action and the nature and location of the event itself. For example, this could include the Mayor, as the representative of the City itself, and the alderman of the Ward in which the venue is located, as the representative of the citizens and businesses in the vicinity of that venue; and

(iii) each attending City official or employee who accepts such an offer then report his or her attendance to the Board, as required by the Ordinance

4. This Revised Memorandum opinion:

(i) does not impact the ability of City officials or employees to purchase season tickets to professional sports teams and thereby gain the ability to purchase coveted post-season tickets on the same terms as other season ticket-holders, or limit them from procuring tickets to other high-demand events (such as concerts) in the same manner as other members of the general public; and

(ii) does not address whether City elected officials could use funds collected by their political committees to purchase such tickets, as that question goes beyond the purview of the City's Governmental Ethics Ordinance. Elected officials are advised to seek legal advice from either the City's Law Department, the Illinois State Board of Elections, or private counsel as to the applicability of other provisions in the City's Municipal Code, such as §2-8-050, which governs aldermanic expense accounts, or the Illinois Election Code, or other potentially applicable laws; and

(iii) does not affect those City officials who complied in good faith with the provisional, interlocutory advice rendered by the Board's Executive Director on October 4, 2016, up to and including the National League Championship Series, but this Revised Memorandum does apply in the event the Cubs advance to the World Series; and

(iv) supersedes the Board's advisory opinion in Case No. 10021.A,² to the extent that opinion is incompatible with this Revised Memorandum.

5. The Board voted to direct its staff to prepare a draft formal advisory opinion consistent with and expanding upon the holdings described above. That draft formal opinion will be considered by the Board, which intends to issue the opinion at its regularly scheduled November 2016 meeting.

² See https://www.cityofchicago.org/content/dam/city/depts/ethics/general/AO_GiftsTravel/10021A.pdf



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Gifts of Admission to Sporting and Entertainment Events

Charter Sections: 2604(b)(5)

Opinions Cited: 2000-4, 2007-3

Advisory Opinion No. 2012-4

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In its Advisory Opinions Nos. 2000-4 and 2007-3, the Board addressed in considerable detail the receipt by City officials, and then the gift by lobbyists, of complimentary tickets to certain widely attended cultural events and fundraising functions. More recently, and with particular frequency in the last several months, the Board has received a number of requests for advice about the giving and accepting of free admission to popular sporting and entertainment events -- including one of the City's most prominent annual events, the United States Open Tennis Championships. In order to summarize the Board's responses to these requests for advice and to set forth the standards by which such offers of complimentary attendance to sporting and entertainment events will be evaluated, the Board issues this Advisory Opinion.

Background

Charter Section 2604(b)(5) prohibits public servants from receiving “any valuable gift, as defined by rule of the board” from persons or firms who have or are seeking business dealings with the City. Pursuant to this Charter mandate, the Board in 1990 adopted its Rule 1-01 (“Valuable Gifts”), which defines a “valuable gift” to be “any gift to a public servant which has a value of \$50.00 or more, whether in the form of money, service, loan, travel, **entertainment, hospitality**, thing or promise, or in any other form.” Rule 1-01(a) (emphasis added). Rule 1-01 also sets forth a number of circumstances in which the acceptance of gifts with a value of \$50.00 or more will be permissible, including, in Sections 1-01(f) and (g), complimentary attendance at certain events and functions. Thus, insofar as relevant here, Section 1-01(f) of the Board’s Rules permits a public servant to:

(4) attend a public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization, provided that this exception does not apply when the invitation is from an organization which has business dealings, as defined in Charter Section 2601(8), with, or a matter before, the public servant’s agency;

or to:

(5) be a guest at any function or occasion where the attendance of the public servant has been approved in writing as in the interests of the City, in advance where practicable or within a reasonable time thereafter, by the employee’s agency head or by a deputy mayor if the public servant is an agency head.

And Board Rules Section 1-01(g) provides that a public servant who is an elected official or a member of the elected official’s staff authorized by the elected official may attend a

“function given by” an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable, or community nature, when invited by the sponsoring organization.

In 2006, Local Law No. 16 added the proscription that lobbyists may not give gifts of *any value* to public servants of the City and assigned to the Board the responsibility for adopting rules defining prohibited gifts from lobbyists and exceptions thereto, directing that to the extent practicable such rules should be consistent with the Board’s rules and opinions on the receipt of valuable gifts by public servants. See Administrative Code Section 3-228. The Board accordingly adopted its Rule 1-16 (“Prohibited Gifts from Lobbyists and Exceptions Thereto”), effective January 26, 2007, which delineates circumstances in which gifts by lobbyists to public servants will not be prohibited, including, in particular, Sections 1-16(c)(8) and (9), permitting lobbyists to offer to public servants complimentary attendance at certain public events and functions, generally under the same circumstances as outlined in Board Rules Sections 1-01(f) and (g) set forth above. In addition to following the mandate of Local Law 16 to conform Rule 1-16 to its Rule 1-01 to the fullest extent possible, the Board has also striven to be consistent in interpreting the valuable gift ban of Charter Section 2604(b)(5) and the lobbyist gift ban of Administrative Code Section 3-225. See, e.g., Opinion No. 2007-3 at 5. And the Board has done likewise in giving the advice summarized in this Opinion regarding public servants’ free attendance at sporting and other entertainment events.

The starting point for such advice is the emphatic observation in both Opinion No. 2000-4 and Opinion No. 2007-3 that gifts of complimentary attendance to public events and functions may be given by lobbyists and accepted by public servants only where the public servant in

question is attending the event *in his or her official capacity*. See Opinion No. 2000-4 at 9 (“in all cases...the public servant...must of course be undertaking the activity in question **in the course of his or her official duties**”) (emphasis in original); Opinion No. 2007-3 at 10 (“unless a nexus exists between the public servant’s duties and the [event], ...providing free admission to a public servant for [the event] **would violate**” the law) (emphasis in original).

Advisory Opinion No. 2007-3 focused on public officials’ free attendance at fundraising events such as gala dinners, and exhibit openings, hosted by not-for-profit cultural organizations that were also registered as lobbyists. The Board wrote that it would be permissible for the sponsoring organizations to provide two complimentary tickets to such events to a public servant who would be attending “in his or her official capacity,” where attending such events would “provide[] City officials with the opportunity to learn more about the host organization and its unique issues and needs.” (Advisory Opinion No. 2007-3 at 10.) Although that Opinion thus did *not* involve offers of free attendance at popular sporting or entertainment events, the Board foreshadowed the questions presented here, noting in *dicta* the following:[P]ublic servants, even elected officials, are not entitled to receive complimentary tickets to any and every cultural event, performance, or sporting event in the City. For example, it is not, in the Board’s view, part of the official duties of most public servants to attend plays or mid-season football, baseball, or basketball games. It may, however, be part of the official duties of certain high-ranking officials to attend such special events as World Series games, the Tony and Grammy Awards, or Broadway opening nights that focus national attention on New York City and promote commerce and tourism. It may also be part of the official duties of a very small number of City employees (for example, a program officer at the Department of Cultural Affairs) to attend a certain number of “ordinary” performances or events of City-funded arts or cultural institutions, in order to assess the programming which City taxpayers are helping to underwrite.

(Advisory Opinion No. 2007-3 at 11.)

Having thus anticipated the question, the Board now provides specific guidance on when acceptance of complimentary attendance to sporting and other entertainment events is permissible.

Discussion

The Board was charged by Charter Section 2604(b)(5) to adopt the relevant rules specifying what would constitute prohibited “valuable gifts” that public servants may not receive and by Administrative Code Section 3-228 with specifying by rule what would constitute gifts that lobbyists may not offer to public servants. The question of gifts of complimentary attendance at sporting and other entertainment events thus calls for the Board to interpret its own rules. More particularly, it calls for interpretation of the exceptions set forth, as noted above, in Board Rules Sections 1-01(f) and (g) and 1-16(c)(8) and (9) on attendance at public affairs or functions. In this regard, the Board historically has taken a broad view of what kinds of events might qualify as “public affairs” or “functions or occasions” under the language of these rules. Likewise, it has adopted a generous interpretation of the phrase “organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature” in considering the organizations sponsoring such events. However, as noted above, the Board has consistently required that public servants may accept complimentary attendance to such events *only* when they are attending in their official capacities – i.e., when there is some demonstrable nexus between the nature or location of the event and the public servant’s official duties.

This “official duties” requirement is especially relevant when considering public officials’ free attendance at popular sports events, concerts, Broadway plays, and the like – events for which tickets are often hard to come by and for which New Yorkers and visitors to the City often pay hundreds of dollars for a single admission. These are entertainment events, attendance at which is presumably as much a pleasure for public servants as for the others who attend. The Board will therefore look for objective evidence that public servants who purport to be attending such events in the course of their official duties are serving the public in some meaningful way.

In this regard, it is instructive to examine the approach of the State of New York to this issue. The operative State provision is Section 1-c(j) of the Legislative Law, which defines what constitutes a prohibited “gift” and the exceptions thereto. The relevant exception, set forth at Section 1-c(j)(ii), permits “complimentary attendance...[to] a widely attended event...[which] shall mean an event...which is related to the attendee’s duties or responsibilities or which allows the public official to perform a ceremonial function appropriate to his or her position.” As interpreted by the New York State Commission on Public Integrity (the “CPI”) ¹ in its Advisory Opinion No. 08-1, dated March 25, 2008, “events at which the activities are substantially recreational in nature shall not be considered to be for a public purpose or related to a State employee’s official duties.” *Id.* at n. 18. In order for complimentary attendance at entertainment or recreational events to satisfy the requirement of Section 1-c(j)(ii), the CPI required that the government official must be performing a “ceremonial function appropriate to his or her

¹ The Public Integrity Reform Act of 2011 (Ch. 399 of the Laws of 2011) established the Joint Commission on Public Ethics (“JCOPE”), which replaced the CPI, among other things. The Act, however, did not revoke or rescind advisory opinions issued by the CPI.

position.” Applying that decision, the CPI, on December 9, 2010, issued a Decision and Notice of Civil Assessment (the “Decision”) that imposed a \$62,125 fine on Governor David Paterson for, among other things, accepting from the New York Yankees a free ticket to Game One of the 2009 World Series at Yankee Stadium. In finding that Governor Paterson violated the law by accepting a free ticket to attend this game, the CPI determined that “the Governor did not perform a ceremonial function.” The Decision noted that Governor Paterson did not participate in the pre-game opening ceremonies and was not recognized during the public address announcement that identified the public officials in attendance. The Decision rejected Governor Paterson’s contention that attendance at such “high profile” events was part of his duties. See Decision at 12-13.

Similarly, the New York State Legislative Ethics Commission (the “LEC”), which provides advice to members and employees of the Legislature about compliance with the State’s ethics laws, issued its Generic Advice for Legislative Members, dated February 9, 2010, interpreting the “widely attended events” exception of Legislative Law Section 1-c(j)(ii). In that advisory, the LEC noted that attendance at events such as legislative receptions is within the scope of a legislator’s responsibilities, but distinguished these events “from those that serve predominantly as entertainment.” For entertainment events, absent a ceremonial role that would satisfy the requirement of the Legislative Law, “an invitation that would involve only viewing a professional sporting event, movie or show would not likely be acceptable under the widely attended event exemption.” In short, like the CPI, the LEC views a ceremonial role appropriate to the public official’s position to be necessary for the public official to accept a gift of complimentary tickets to a sporting or other entertainment event. Applying that standard in

August 2012, the LEC, it was widely reported, ruled that State legislators could *not* accept complimentary tickets to the 2012 US Open Tennis Championships. Sally Goldenberg, Advantage out: 'Open' shut to pols, New York Post, Aug. 13, 2012; Editorial, A Freebie Too Far, The New York Times, Aug. 15, 2012.

In evaluating the recent requests for advice about invitations to entertainment events, the Board has reached a similar conclusion. More particularly, in determining whether public servants would be attending a sporting or other entertainment event as part of their official duties, the Board has required that two criteria be satisfied: 1) there must be a clear and direct nexus between the public servant's official duties and the nature or location of the event, **and** 2) the public servant must in fact be performing some official function at the event. As to the first of these criteria, the Board would be hard-pressed, for example, to find a nexus between a World Series Game at Yankee Stadium and the official duties of any Borough President except the Bronx Borough President, or between the US Tennis Open and the duties of any Borough President except the Queens Borough President. Similarly for Members of the City Council, acceptance of complimentary attendance at sporting and entertainment events occurring outside their Council districts will be examined closely to determine whether there is indeed a clear and direct nexus between the Member's official duties and the event in question.

Even where there is a clear and direct nexus between a public servant's official duties and the event in question, the public servant must still be performing some official function at the event in order to justify a free ticket. One such official function, as the Board noted in Opinion No. 2007-3, would be the evaluative role that a small number of City employees, such as program officers of the Department of Cultural Affairs, perform when they attend performances

of cultural organizations funded by their City agency. Another appropriate official function, especially for high-ranking public servants, is active participation in a public ceremony, such as dedicating a new public arena or delivery of welcoming remarks at an Opening Day game or a session of the Tennis Open. But performing such a “ceremonial function” requires some kind of *active participation* in the ceremony; the mere acknowledgement in a public address announcement of the official’s presence at the event, even with an accompanying wave to the crowd from the public official, is not a sufficient ceremonial role. Nor does the Board accept the argument that merely attending to show the City’s support for an entertainment event that is of importance to the City’s economy and its cultural life constitutes performing an official function so as to permit the acceptance of free tickets.²

To illustrate the application of the foregoing determination to specific cases, the Board now summarizes the advice it has recently given:

1. Several Members of the City Council, as well as a Borough President, received invitations to attend sessions of a major annual sporting event and sought the Board’s advice as to whether they might accept these invitations. The Board first determined that there was a clear and direct nexus between their City positions and this event only for the Borough President in whose borough the event took place and for the Council Member in whose Council district the event took place.

² The Board is not presented with the question, and therefore does not decide here, whether attendance to “show the City’s colors” is a legitimate City purpose that would justify the expenditure of *City funds* for the purchase of tickets to entertainment events. Its decision here is limited to determining when official duties will be performed at entertainment events so as to justify the acceptance from a third party of a gift of complimentary attendance. The Board has not been presented with proposals by City officials to spend City funds for their attendance at entertainment events. If and when City officials seek the Board’s advice as to such proposed use of City funds, the Board will, pursuant to its mandate, advise accordingly.

Having found no sufficient nexus for the other Council Members, the Board advised them that accepting the complimentary tickets would violate the conflicts of interest law. Even as to the Borough President and the local Council Member, the Board advised that they must perform some specific ceremonial function at the event and, in this regard, advised that the role must be more substantial than simply being announced at the event and waving to the crowd in response to that announcement. The Board provided the same advice to a lobbyist that had extended the invitations – that is, that only the invitations to the Borough President and the local Council Member would be permissible and then only if those officials were to perform a specific ceremonial role at the event.

2. The Board also advised a Borough President who sought its advice about accepting a complimentary ticket to a major entertainment event in a new entertainment and sports facility in that official's borough. In this case, it was proposed that the Borough President would perform a ceremonial role at the opening night of this entertainment event. Because the Board found both that there was a clear nexus between the Borough President's official duties and this opening night event and that he would be performing a specific ceremonial role at the event, the Board advised the Borough President that he could accept a complimentary ticket from the event's sponsor and also that, if the sponsor offered a second complimentary ticket for a guest, he could accept that second ticket as well. See Advisory Opinion No. 2000-4 at 11.

3. In contrast, when a Borough President sought the Board's advice about accepting a complimentary ticket to a major entertainment event where the proposed ceremonial role was to take place at a reception to be held at the event facility in advance of the entertainment event, the Board advised that acceptance of a complimentary ticket to the entertainment event would not be permissible. While recognizing that there was a nexus between the Borough President's duties and the event in question, the Board observed that the ceremonial role was taking place at the reception, not at the event itself, and concluded that, while the proposed ceremonial role appeared to be sufficiently within the Borough President's official duties to permit acceptance of complimentary admission to the reception, it would not support complimentary tickets to the subsequent entertainment event.
4. A high-ranking law enforcement official sought the Board's advice about acceptance of complimentary tickets to the US Tennis Open. The official had been involved in the City's planning for and provision of security and emergency response services at the Open and informed the Board that his attendance would be in furtherance of that official function. The Board advised that while there was indeed a nexus between the official's City position and the security and emergency services for the event, no *official* function would be performed by his simply sitting in the stadium watching tennis matches. More particularly, the Board advised that the official could be present on the grounds of the Tennis Center and could accept any complimentary admission sufficient for, but limited

to, what was necessary for his observation and oversight of security and related services during the event, but that he could not accept a complimentary seat in the tennis stadium, since he would be performing no official function by merely viewing the matches.

5. The Board also advised an elected official who wished to accept a complimentary ticket to view a professional sporting event in the sponsor's enclosed suite at a sports facility outside of the City. The official advised that Board that the sponsor of the event was proposing to construct a new sporting facility at a location in the City served by the elected official that would be similar to the one outside the City and that the purpose of the public official's attendance at the out-of-town location was to help inform the official about such facilities and the events that took place there. The elected official would not only view the sporting event from the sponsor's suite, but would be served complimentary food and drink during the event. In response, while noting that touring the out-of-City sports facility, and even viewing a game there, might arguably be within the City official's duties, the Board nevertheless advised that it would violate Chapter 68 to accept complimentary attendance in the sponsor's suite, with accompanying food and drink, because any official function that the official might perform in inspecting the facility and even viewing an actual sporting event there did not require being entertained in the sponsor's box.

Conclusion

The receipt by City officials of complimentary attendance to sporting and other entertainment events and the corresponding gift by lobbyists of free admission to these events will be permissible only when *both* of two requirements are satisfied: first, there must be a clear and direct nexus between the public servant's official duties and the event; and second, the public servant must be performing some official function at the event. One example of such an official function is a specific ceremonial role at the event appropriate to the official's City position. But the mere public address announcement of the official's presence at the event and the official's acknowledgement of that announcement is not a ceremonial role sufficient to permit the gift or acceptance of complimentary admission to sporting or other entertainment events.



Steven B. Rosenfeld
Chair

Monica Blum
Andrew Irving
Burton Lehman
Erika Thomas-Yuille

Dated: November 26, 2012



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Advisory 04-01: Free Tickets and Special Access to Event Tickets

INTRODUCTION

This advisory addresses the application of the conflict of interest law (Chapter 268A of the Massachusetts General Laws) to public officials/employees who accept free tickets or special or preferential access to purchase tickets to sporting, theatrical, musical and/or other events.

THE LAW

Public officials/employees are generally free to purchase tickets for sporting, theatrical, musical and/or other events at face value. Conflict of interest concerns are raised, however, where public officials or employees are, because of their appointed or elected positions, given free or discounted tickets or provided special access to purchase tickets even if at face value to events for which the same access is not available to the general public. The same concerns would apply to a public official who is allowed free entry to an event or invited to attend an event without a ticket where the event would otherwise require a ticket costing \$50 or more. Section 23(b)(2) of G.L. c. 268A prohibits a public official/employee from knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

A. Free or Discounted Tickets

A free ticket or a discounted ticket that is not available to the general public is a special benefit or a privilege. Unless such a free or discounted ticket is authorized, e.g. by law, regulation, ordinance or other legitimate rule, it would generally be unwarranted because there is no reasonable justification for a public official/employee to obtain such a privilege. The courts and the Commission have concluded that items with a value of \$50 or more are of substantial value. Therefore, if the value of the free ticket or the value of any discount that is offered is \$50 or more, a public official or employee who accepts the ticket risks violating § 23(b)(2) of the conflict of interest law.

The conflict of interest law is implicated whether or not a public official/employee initially solicits a free or discounted ticket. The fact that the public official/employee obtains the ticket to attend the event or otherwise takes advantage of the ticket and he knows, or has reason to know, that it was given to him because of his public position, constitutes a "use of position" for § 23(b)(2) purposes.

The Commission recognizes one important, although narrow, exception to the general rule. A public official/employee may accept a free ticket valued at \$50 or more, where he/she is performing a legitimate, public ceremonial purpose at the event or his/her attendance at the event is consistent with the public official/employee's office or official responsibilities.

For example, a public official/employee may accept a free ticket if he/she were throwing out the first ball at a baseball game, making a speech at the event or performing some other similar public, ceremonial function. As the Commonwealth's chief executive officer, the governor or his designee could attend such an event without purchasing a ticket if invited as the Commonwealth's representative. Similarly, the mayor or other chief executive officer of a municipality or his designee could attend such event without purchasing a ticket if invited to represent the host municipality.

B. Special or Preferential Access to Purchase Tickets

Special access to purchase tickets not available to the general public is also a special benefit or privilege. Such access to tickets may similarly be unwarranted. Even though there may not be a readily assigned value to such access, the Commission has found that certain privileges of no immediately ascertainable dollar or monetary value may also be of substantial value.

In determining whether special access provided to a public official/employee to purchase a ticket or tickets to an event is an "unwarranted privilege or exemption of substantial value," the Commission will look at the totality of the circumstances. The fundamental question, in each case, is whether a reasonable person wishing to attend the event would pay \$50 or more over face value to purchase the ticket or tickets that the public official is being provided the opportunity to purchase at face value. In addressing this question, the Commission will examine a variety of factors including, but not limited to, the following:

- *Demand* - there is a demand for the tickets that increases their value beyond the face value; the event is generally recognized as a highly desirable major event or considered a unique opportunity or providing for a limited engagement.
- *Ticket Availability* - the ticket is not available to the general public, the event is sold out or only limited, less-desirable seats remain available.

- *Alternative Sources to Purchasing Tickets* - the price at which the general public may purchase a ticket is more than \$50 over the face value as indicated by prices posted by ticket agencies or on-line auction services.
- *Multiple Ticket Availability* - the cost of purchasing the total number of tickets is \$50 or more over the face value on the tickets as measured above.
- *Access* - the avoidance of a cumbersome or time consuming ticket distribution process such as first-come, first serve or waiting in line.

For example, conflict of interest concerns would be raised if tickets to a major sporting event such as the Ryder Cup, the Superbowl or a World Series game were offered to public officials/employees to purchase at face value. Such tickets are limited in number and not readily available to the general public for purchase at face value. Other examples of special events that may raise conflict of interest concerns are tickets to major concerts and/or theatrical events.

As with the receipt of free tickets, it is not necessary that a public official/employee initially solicit the opportunity to purchase the tickets. It may be sufficient if he accepts the special access to the tickets offered as a result of his official position.

CONCLUSION

The Commission believes that the public's confidence in government is undermined when public officials and employees are offered and take advantage of free tickets or special access. The conflict of interest law's requirement that public officials and employees be treated similarly to the general public protects the public's right to expect that government officials and employees will not exploit their public positions for their private gain or advantage.

It is important to keep in mind that this advisory is general in nature and the examples in the advisory are representative and not all-inclusive. Public officials and employees are encouraged to seek specific legal advice about the application of the conflict law to the purchase of tickets when offered free tickets or special access to purchase tickets by contacting the State Ethics Commission at 617-371-9500 before purchasing the tickets.

ISSUED: January 15, 2004

APPENDIX: Frequent Questions and Answers

Q1. (*Friend's Extra Ticket*) I am a public employee. A close, personal friend has an extra ticket to a major sporting event. May I accept a ticket from him?

A. Yes, if he is offering the ticket to you because of your friendship and not to influence or thank you for an official act or because of your position as a public employee. If your friend's motive may be a mixed one, e.g. partly friendship and partly in thanks for an official act that you performed, you should not accept the gift without seeking further advice from the Commission.

Q2. (*Determining Motivation*) How does the Commission determine whether the motivation for my friend offering a ticket is our friendship or my position as a public employee?

A. The Commission considers such factors as how long you have known each other and whether your friendship was established prior to your becoming a public official. In addition, the Commission may consider whether you exchange gifts on holidays or to recognize other significant events, visit each other's homes or socialize regularly. In each case, the Commission will look at the totality of the circumstances surrounding a gift to determine whether the motivation was friendship.

Q3. (*Gift to Colleague*) I am a public official and have a ticket valued at \$50, for which I paid full value. I would like to give the ticket to another public official who is a colleague. May I give my colleague the ticket?

A. A ticket or other gift from one public official to another raises questions similar to those raised if a private party gives the ticket to the public official. You may give the ticket to your colleague if it is being given because of your personal relationship and not to influence or thank you for an official act or because of your colleague's position. If your motive for giving the ticket is mixed, e.g. partly friendship and partly as thanks for help with official work, you should not offer the gift without seeking further advice from the Commission.

Q4. (*Ceremonial Exception*) I am a public official. The owner of a major theatre has invited me to join him in his front row box seat for the opening of a major musical show. Although we are friendly and have met at a few events, we do not socialize and are not personal friends. The theatre will occasionally have matters pending before my department but does not have anything pending at this time. The box seat is valued at \$150. May I attend the opening?

A. No, unless you pay for the value of the box seat or your attendance at the event serves a qualified, ceremonial function or is consistent with your official responsibilities as discussed in Commission Advisory No. 04-1. Although you and the owner are on friendly terms, your relationship is primarily professional. Your acceptance of a free box seat therefore would be an unwarranted privilege of substantial value.

Q5. (*Chance Meeting Invitation*) I am a well-known public official and am attending a major sporting event. At a chance meeting at the event, the stadium's owner invites me to join him in his booth. I visit for 15-20 minutes. Tickets for seats in similar booths can cost as much as \$250 per game. May I visit the owner in his booth?

A. Yes. A short visit to a booth under these circumstances is not an unwarranted privilege of substantial value. On the other hand, spending the entire game in the box would be of substantial value and prohibited unless you pay for the value of the seat in the booth.

Q6. (*Dispelling Appearance of Conflict*) I am a public employee. A professional acquaintance, who has a matter pending in my office, has offered me a ticket valued at \$45 to a charitable event. May I accept the ticket?

10/6/2016

Advisory 04-01: Free Tickets and Special Access to Event Tickets

A. No unless you first make a public, written disclosure to your appointing authority that completely and accurately describes your relationship and the nature of the matter pending at your office. Checking with your appointing authority before accepting the ticket is important since your appointing authority may have established stricter standards than those imposed by the conflict of interest law.

APPENDIX added: May 26, 2004

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Formal Advisory Opinion 2004-7 Gifts of Tickets to Athletic and Entertainment Events

Opinion Summary

The City's Standards of Conduct prohibit city officials or employees from accepting a gift of free or reduced tickets to an entertainment or athletic event that is offered due to their position with the city, unless the official or employee is performing an official duty at the event.

Question Presented

May city officials and employees accept complimentary tickets to entertainment and sports events under the Code of Ethics?

Facts

The Ethics Office has received several inquiries from city employees or officials concerning when they may accept complimentary tickets to an entertainment event. Typically, these situations involve unsolicited offers of tickets to a professional sports event from a variety of sources, including professional sports teams, registered lobbyists, and non-profit foundations, with the offers made to the officials or employees in their official capacity. To provide guidance to both donors and recipients, the Board of Ethics addresses the following questions:

1. May a city council member accept the gift of a ticket from a local lobbyist to a professional football game at the Georgia Dome?
2. May a city judge solicit or accept free tickets from the Atlanta-Fulton County Recreation Authority to attend a professional baseball game?
3. May a city employee who is appointed by the mayor accept a complimentary ticket to a professional football game from the Atlanta Falcons or the Arthur Blank Foundation?
4. May the city council president who serves as a member of the host city delegation accept an invitation to attend the National Basketball Association's All-Star Game?

5. May a city employee who serves on the Board of Directors of the Atlanta Convention and Visitors Bureau have his entry fee waived to participate in the ACVB's charity golf tournament?
6. May the Atlanta Workforce Development Agency accept an offer from the Atlanta Braves to provide tickets to a Braves game for 600 youth in the agency's summer work program?

Discussion

Unlike most city codes of ethics, the City of Atlanta's code has a specific provision addressing gifts of tickets. Prior to 1997, members of the Atlanta City Council received free tickets to sports and entertainment events, often as part of a city contract. The Atlanta City Council that year amended section 2-816 on passes, tickets, and gratuities after a city council member was discovered trading her free tickets for gifts and favors. The provision was intended to prohibit officials and employees from receiving free or reduced tickets to entertainment and athletic events due to their city position. See Atlanta, Ga., Ordinance 97-0-1861 (Dec. 1, 1997), codified at Atlanta, Ga. Code § 2-816.

The 1997 amendment bans city officials, employees, and board members from accepting a gift of tickets to entertainment and athletic events for less than face value when the tickets are offered because of the individual's position with the city. The provision specifically states:

(b) No official, employee or person appointed to any board, corporation, commission or authority, including the mayor, the president of council, members of council, and judges of the municipal and traffic courts, shall knowingly accept any ticket of admission or other evidence of right of entry to any entertainment event, such as, but not limited to, musical concerts and dramatic productions, or to any athletic events, as a gift or for a value less than the price printed on the ticket, which would not be offered or given to such official or employee if such person were not an official or employee. For purposes of determining whether such ticket would be offered or given by reason of the official's or employee's position with the city, it shall be presumed that the offer of such ticket or right of entry from a member of the official's or employee's immediate family or from a business other than a public agency in which the official or employee, or a member of the official's or employee's immediate family, serves as an officer, director, stockholder, creditor, trustee, partner, or employee, is not made by virtue of that official's or employee's position. For purposes of determining whether such ticket would be offered or given by reason of the official's or employee's position with the city, it shall be presumed that any offer of such ticket or right of entry made by any prohibited source, but not limited to the Atlanta Fulton County Recreation Authority and any professional sports team located in the metro Atlanta area, is given by reason of such official's or employee's position with the city. As used in this section, "entertainment event" shall not include breakfasts, lunches, or dinners.

(1) Any official or employee who is performing an official duty at an entertainment event shall be exempt from this section with regard to that particular entertainment event.

Atlanta, Ga. Code of Ordinances § 2-816 (b).

Unlike the more general prohibition in the code against gratuities, which is limited to gifts from a prohibited source, this specific prohibition against free or reduced tickets is not based on the

source of the gifts. Instead, it bans tickets given from any source "by reason of the official's or employee's position with the city." To determine whether a ticket is offered because of the individual's position, the provision describes two presumptions. First, it is presumed that a ticket from a prohibited source is given by reason of an individual's position with the city. Second, it is presumed that a ticket from an immediate family member or from a business for which the individual or an immediate family member works or serves as a board member is not given by reason of an individual's position with the city.

The ticket ban applies to personal gifts of tickets to two types of events: entertainment events, including musical concerts and dramatic productions, and athletic events, such as professional sporting events. There is an express exception when the official or employee is performing an official duty at an entertainment event. In addition, the ban on tickets does not apply to meals or to civic, charitable, or political events, which would be analyzed under section 2-801's ban on gratuities.

Applying these guidelines, the Board of Ethics gives the following answers and analysis to each of the factual situations involving a gift of tickets to an entertainment or athletic event.

1. No. A city council member may not accept a gift of a ticket from a local lobbyist to a professional football game at the Georgia Dome based on the presumption that the offer of the ticket from a prohibited source is given by reason of the official's position on the city council.
2. No. A city judge may not solicit or accept tickets to a professional baseball game from the Atlanta-Fulton County Recreation Authority due to the presumption that any ticket from the authority is given by reason of the judge's position with the city.
3. No. A city employee who is appointed by the mayor may not accept tickets to a professional football game from the Atlanta Falcons or the Arthur Blank Foundation for a value less than the printed ticket price when the ticket would not have been offered or given if the person were not a city employee.
4. Yes. The city council president who serves as a member of the host city delegation may accept an offer of tickets to attend the National Basketball Association's All-Star Game based on the exception for an official who performs an official duty at an entertainment event. Although the "official duty" exception is mentioned in connection with an entertainment event, the Board interprets the exception to apply also to athletic events. If, for example, the mayor were asked to throw out the first pitch at a baseball game, she would be performing an official duty that permits her to accept a complimentary ticket to the game. This exception is a narrow one limited to a specific duty at a specific event and is not intended to give an official or employee an on-going right of free entry to a series of similar events based on continuing responsibilities to monitor or examine a situation.
5. Yes. A city employee who serves on the Board of Directors of the Atlanta Convention and Visitors Bureau may accept complimentary tickets to participate in the ACVB's charity golf tournament because he is being offered the ticket in his capacity as a board member of the sponsoring organization and not by reason of his position with the city. In addition, his attendance falls within the official duty exception since he is serving as a host and representative of the sponsoring organization.

6. Yes. A city agency with no authority over the Atlanta Braves may accept the team's offer of 600 tickets for city youth to attend a baseball game because it is a gift to the City of Atlanta, rather than a personal benefit to an individual employee. Sections 2-801 and 2-816 of the Code of Ethics permit city officials and employees to accept anything of value on behalf of the city so long as the gift is not calculated to influence a pending decision or the exercise of official authority. The Atlanta Workforce Development Agency operates a Summer Youth Employment Program to provide temporary employment opportunities for approximately 700 young people. The Georgia Department of Labor funds the program from the federal Workforce Investment Act. The city agency does not exercise any official action concerning the Braves. In 2003 the Atlanta City Council adopted a resolution authorizing the mayor or her designee to accept donations of money and services to support the agency's efforts in funding summer job opportunities for youth. Atlanta, Ga. Res. 03-R-0975. This resolution thus gives authority to the workforce agency to accept the donation of baseball tickets as a reward to the youth for their work.

Approved September 23, 2004

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ADVISORY OPINION NO. 2015-EC-002

Issued May 15, 2015

The Ethics Commission has received a written request for an advisory opinion from Randy Massanelli, Vice Chancellor for Governmental Relations at the University of Arkansas. In his advisory opinion request, Mr. Massanelli asked two questions:

- 1. Whether the practice of selling tickets to officials covered under Amendment 94, at face value and without requiring a donation to the Razorback Foundation, is prohibited under §30 (a) of the Amendment, which prohibits gifts from a lobbyist, a person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist. In other words, is sale of the tickets at face value considered a "gift" under §30(b)(2)(A) of the Amendment?*
- 2. Whether, in light of the passage of Amendment 94, it is permissible for the University to sell parking in University lots not controlled by the Razorback Foundation to certain public servants (including members of the General Assembly, usually season ticket holders), so long as the University charges those public servants for the parking, and so long as the amount charged is comparable to the amount charged for certain other University guests who are actual or potential donors to the University, as well as comparable to the amounts charged in nearby private parking lots not operated by the University? In other words, under such circumstances, is the sale of parking at the local going rate to public servants who are covered under Amendment 94 considered a "gift" under §30(b)(2)(A) of the Amendment? To clarify, parking in these lots is not available to the general public, but only to the public servants and certain other invited University guests.*

The Commission has previously analyzed whether tickets and parking passes to University of Arkansas Razorback games constituted prohibited gifts. See Advisory Opinion Nos. 2000-EC-005, 2002-EC-001, and 2002-EC-002. However, it is being called upon to reexamine the topic in light of the passage of Amendment 94.

During the 2015 general election, Issue 3 (now "Constitutional Amendment No. 94") was passed by the voters of Arkansas. During the 90th General Assembly, the Arkansas Legislature passed SB 967 (now Act 1280) which amended Amendment 94 by adding additional provisions. It provided, in pertinent part, as follows:

§30 Gifts from lobbyist

- (a) Persons elected or appointed to the following officers shall not knowingly or willfully solicit or accept a gift from a lobbyist, a person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist:
- (1) Governor;
 - (2) Lieutenant Governor;
 - (3) Secretary of State;
 - (4) Treasurer of State;
 - (5) Auditor of State;
 - (6) Attorney General;
 - (7) Commissioner of State Lands;
 - (8) Member of the General Assembly;
 - (9) Chief Justice of the Supreme Court;
 - (10) Justice of the Supreme Court;
 - (11) Chief Judge of the Court of Appeals;
 - (12) Judge of the Court of Appeals;
 - (13) Circuit court judge;
 - (14) District court judge;
 - (15) Prosecuting attorney; and
 - (16) Member of the independent citizens commission for the purpose of setting salaries of elected constitutional officers of the executive department, members of the General Assembly, justices, and judges under Article 19, § 31, of this Constitution.

(2)(A) "Gift" means any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor.

There are several exceptions to the definition of gift. However, none of them appear to be applicable to the facts presented in the instant advisory opinion request.

Background information:

Per the Razorback foundation website, the regulations and prices for obtaining season tickets are provided below.

"Seating Prioritization"

All new season ticket requests and seat improvement requests will be allocated using the new Razorback Priority Points Program. Tickets will be allocated based on Priority Points rank within a member's current classification. *All requests are assigned based upon availability.*

Retaining Season Ticket Locations

To retain season ticket locations in all venues, existing season ticket holders must maintain or exceed the previous year's **total Annual Fund contribution**, regardless of the number of tickets purchased in each sport.

Seat Improvement Requests

Current season ticket holders must meet or exceed the minimum membership classification or required seat value totals, whichever is greater, to qualify for specific sections. Please refer to the 2015 member benefits chart for minimum member classification levels required for each section in football and baseball and the seating charts below for required minimum seat values.

New Season Ticket Requests*

Football, Baseball & Men's Basketball: First-time season ticket purchasers must meet the minimum member classification or required seat value totals, whichever is greater, to qualify for specific sections. Please refer to the chart below for minimum member classifications required for each section and the venue seating charts below for required for required minimum seat values. First-time season ticket purchasers must meet or exceed the minimum required seat value totals to qualify for specific sections. See chart below.

FIRST TIME FOOTBALL SEASON TICKET PURCHASERS & SEAT IMPROVEMENTS FOR ALL SPORTS

Football, baseball & Men's basketball: For first time football season ticket purchasers or current season ticket holders wanting to improve seating, the required member classification for each section is listed in the chart below. Seating access at athletic events is determined by a member's priority ranking, which includes current member classification as well as total lifetime giving dollar amount.

BEST AVAILABLE SECTION(S) BASED ON MEMBERSHIP LEVEL				
	Number of Football Priority Tickets Allowed*	Donald W. Reynolds Razorback Stadium	Boonville Stadium	Bud Walton Arena
Boyles-Matthews Platinum - \$20,000 -	18	All Sections	All Sections	All Sections
Boyles-Matthews Gold - \$10,000 - \$19,999	14	All Sections	All Sections	All Sections
Boyles-Matthews Silver - \$5,000 - \$9,999	12	103, 105, 114	All Sections	All Sections
Super Mag - \$2,000 - \$4,999	8	112, 115	106, 110	101, 117-119, 126, 130*
WSI Mag - \$2,000 - \$2,999	8	102, 106, 128-126	105, 111	102, 115, 130*
Yash Mag - \$1,000 - \$1,999	6	Pig Heaven	104, 112	104, 105, 112, 113, 122, 122*
Big Mag - \$500 - \$499	4	101, 107, 112, 116, 115, 127, 128 504, 514	103, 113	201-233, 215-221, 233-236*
Big Red - \$100 - \$199	4	502, 503, 505, 503, 512, 525	102, 114	107-113, 125-128, 207-211, 500-232, 232-234*
Razorback - \$50 - \$99	1	502, 506	103, 101, 115, 115	201-233, 215-221, 233-236*

*This chart is based on the member's total lifetime giving dollar amount. The amount one donates affects his or her "Membership Level". The amount paid towards your annual contribution will affect a person's ability to seek out the most highly desirable seating and the largest number of tickets. For example, to have access to 18 season tickets for any seats in the stadium someone wishes, one must contribute over \$20,000. Again,

Analysis:

It is clear from the website that, in order to obtain season tickets, there is a cost independent of the actual ticket price. The amount one donates affects his or her "Membership Level". The amount paid towards your annual contribution will affect a person's ability to seek out the most highly desirable seating and the largest number of tickets. For example, to have access to 18 season tickets for any seats in the stadium someone wishes, one must contribute over \$20,000. Again,

this is the cost just to be eligible to apply, and does not include the price of the actual tickets. The minimal amount to contribute to be eligible to buy the least desirable ticket in the stadium is between \$50-\$99.

If the University is selling the tickets and is waiving the membership level contribution, the Commission concludes that waving such contribution constitutes "something of value". In other words, waiver of such a fee to apply to buy season tickets would certainly fall within the definition of "gift", which is defined to include any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor.

The remaining question would be whether the entity waiving this contribution is a lobbyist, a person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist. If the University of Arkansas meets the definition of lobbyist, a person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist, and the University is the entity selling tickets and providing such a waiver, then such a waiver would be a prohibited gift under Act 1280. The person seeking this Advisory Opinion was, at the time of this opinion, registered as the lobbyist for the University of Arkansas. Based on the premise that the University of Arkansas will continue to employ a registered lobbyist, it is the Commission's opinion that the waiver of the contribution for members of the General Assembly would be prohibited under Amendment 94.

Turning to the parking passes, the previous analysis of the University falling under the definition of lobbyist would still apply. What would remain to be addressed is whether the ability to buy parking passes at the same rate as University employees and current and potential large donors pay would meet the definition of a "gift" under Amendment 94. The facts presented by the person requesting the advisory opinion also include that the cost is the same or similar to other private parking lots in the area.

If such were the case, i.e., that the parking is substantially the same as the private parking available in the area, and the cost was the same as private parking in the area, then it would appear that the members of the General Assembly would not be getting anything of value for which consideration of equal or greater value has not been given. On those facts, the Commission is of the opinion that there would not be a violation of Amendment 94 (as amended by Act 1280). If alternate facts were presented, e.g., the private parking in the area was not substantially similar or the costs were not equal, then the Commission concludes that solicitation or accepting the parking passes would not be permissible under the Amendment 94 gift prohibition.

This advisory opinion is issued by the Commission pursuant to Ark. Code. Ann. § 7-6-217(g)(2).

ARKANSAS ETHICS COMMISSION

By: Jill Rogers Barham
Jill Rogers Barham

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 04-26
August 5, 2004

AUTHORIZATION FOR EXCEPTION TO KRS 11A.045(1)

EXCEPTION NO. 2004-1
August 5, 2004

RE May Governor and Lieutenant Governor accept from Churchill
Downs tickets for the Kentucky Oaks and the Kentucky Derby?

DECISION: Yes, within limitations.

This authorization opinion for an exception to KRS 11A.045(1) is issued by the Executive Branch Ethics Commission (the "Commission") upon its own motion. This matter was reviewed at the May 27 and August 5, 2004 meetings of the Commission and the following authorization is issued.

According to recent news articles, Churchill Downs Racetrack ("Churchill Downs") provided to the Governor and the Lieutenant Governor two sections of box seating for both the Kentucky Oaks and the Kentucky Derby.

KRS 11A.045(1) relating to the acceptance of gifts by public servants provides:

- (1) No public servant, his spouse, or dependent child knowingly shall accept any gifts or gratuities, including travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five dollars (\$25) in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the

EXECUTIVE BRANCH ETHICS COMMISSION

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public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

The Kentucky Horse Racing Authority, a state agency with which the Governor has had direct involvement, has regulatory authority over Churchill Downs. Additionally, Churchill Downs is an employer of executive agency lobbyists who are registered to lobby the Governor, as well as the Lieutenant Governor. Thus, the Governor is prohibited by KRS 11A.045(1) from accepting a gift with a value of greater than \$25 from Churchill Downs, unless the Commission grants an exception as authorized above.

The Commission believes that if it is necessary for an elected official to attend an event as part of his official duty for the Commonwealth, the elected official should be allowed to accept the cost of admittance to the event. Because the Governor and Lieutenant Governor represent the Commonwealth at these events, the Commission believes that they may accept free admittance to both the Kentucky Oaks and the Kentucky Derby.

Thus, the Commission grants an exception for the Governor to accept twelve box seats and 12 walk-around passes for both the Kentucky Oaks and the Kentucky Derby. Although it does not appear that the Lieutenant Governor has had any direct involvement in matters relating to the Kentucky Horse Racing Authority, and thus would not require an exception to accept gifts from Churchill Downs, the Commission also grants a similar exception for the Lieutenant Governor due to the fact that Churchill Downs may be lobbying the Lieutenant Governor. The Commission believes that the acceptance of such tickets by the Governor and the Lieutenant Governor will not create an appearance of impropriety, but will allow them to represent the Commonwealth nationally.

Any additional tickets that are offered to the Governor by Churchill Downs should not be accepted unless an additional exception is obtained from the Commission.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.

Case No. 16032.A
Appendix I

After the Board issued its formal opinion in Case No. 16032.A, a question was raised to the Board that the opinion did not address: if a City employee or official accepts an offer to purchase a ticket for a high-demand event (at or below face value), and, early on in the course of the event, performs an official function, in conformance with the conditions set forth in the opinion, but decides to leave the event, may the employee or official then give his or her ticket away to an aide, or another City employee, or even a stranger, to attend the remainder of the event?

The Board determined, at its December 19, 2016 meeting, that the answer is no: a ticket obtained by a City employee or official to a high-demand event at or below face value, pursuant to the conditions set forth in the opinion, is non-transferrable. While nothing in the City's Governmental Ethics Ordinance compels the City employee or official to remain for the entire event after he or she performs the official function, neither can the employee or official give away the unused portion of the ticket.

January 18, 2017