

MEH

April 10, 1991

C O N F I D E N T I A L

[REDACTED]

City of Chicago
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Board of Ethics

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Catherine M. Ryan

Room 303
320 North Clark Street
Chicago, Illinois 60610
(312) 744-9660

ADVISORY OPINION

Re: Gifts

Case No. 90064.A

[REDACTED]

On October 15, 1990, you requested an advisory opinion from the Board of Ethics regarding the propriety of DEPARTMENT X employees accepting gifts that are given by contractors as part of an annual outing sponsored by your department. After analyzing the facts presented, the Board finds that the gift aspect of the outing is prohibited by the Ethics Ordinance. We appreciate your bringing this matter to the Board's attention and your willingness to follow the ethical standards embodied in the Ordinance. In this letter, we present the provisions of the Ordinance relevant to this case, and our analysis of the facts according to those provisions.

FACTS: You explained to us that for the last several years, DEPARTMENT X has organized a outing for its employees and the contractors who are associated with the department. Outing invitations to employees are not addressed to individuals but are posted in the department. The event is attended by department employees and their families, current City contractors for that department, as well as developers and contractors who have worked with the department in the past or are interested in business with it in the future. The outing is held on a weekday, and employees take a personal/vacation day if they attend. Tickets sell for \$45 each to cover fees, food, and beverages.

At these outings, the contractors provide gifts that are distributed to participating EMPLOYEES.

EMPLOYEES CHOOSE GIFTS RELATIVE TO THEIR PERFORMANCE IN A COMPETITION, THE BEST PLAYER CHOOSING FIRST AND SO ON

These gifts range in price from \$3 to \$300. You estimated that only two or three



out of approximately 300 gifts that you knew of were valued at more than \$50. In your opinion, the average value of the gifts was \$10. Other sources questioned by the Board staff estimated the average value of the gifts to be higher.

Although the EMPLOYEES know these gifts are given by the contractors, the specific sources of individual gifts are not identified. You told us there is no way to know which contractors brought which gifts, even after all the gifts are distributed. However, other people who spoke with the staff said that participants may know which contractors brought the larger gifts.

THE ETHICS ORDINANCE: The issue before the Board in this case is whether or not the gift-giving aspect of the annual [REDACTED] outing complies with the Governmental Ethics Ordinance. The relevant provisions of the Ordinance are §§ 2-156-040 and 2-156-050.

GIFTS: The applicable subsections of § 2-156-040 of the Municipal Code of Chicago (prior code § 26.2-4) state:

No person shall give or offer to give to any official, employee or City Contractor, or the spouse or minor child of either of them, 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 official, employee or City Contractor, concerning the business of the City would be influenced thereby. It shall be presumed that a non-monetary gift having a value of less than \$50 does not involve such an understanding. (§ 2-156-040(b))

No person who has an economic interest in a specific City business, service or regulatory transaction shall give, directly or indirectly, to any City official or employee whose decision or action may substantially affect such transaction, or to the spouse or minor child of such official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service other than an occasional one of nominal value (less than \$50). . . . (§ 2-156-040(c))

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MONEY FOR ADVICE: Section 2-156-050 (prior code § 26.2-5) prohibits officials and employees from accepting anything of value in exchange for advice or assistance in matters concerning City business:

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; provided, however, that nothing in this section shall prevent an official or employee ... from accepting compensation for services wholly unrelated to the official's or employee's City duties and responsibilities and rendered as part of his or her non-City employment, occupation or profession.

ANALYSIS: It is the Board's determination that, based on the above stated provisions, the gifts given during the [REDACTED] outing are prohibited.

The totality of circumstances presented compel the Board to conclude that a reasonable inference exists that these gifts are given with the intention of influencing the governmental decisions of the City employees and officials who receive them. This case does not involve an isolated instance of gift-giving, but an annual event whose structure includes gifts from City contractors to City employees. Furthermore, while the gifts are not labelled to indicate their individual sources, the collective identity of the contributors (the contractors) is known by the City workers who attend the outing. Therefore, based on this reasonable inference, it is the Board's opinion that the gift-giving aspect of the [REDACTED] outing does not comply with § 2-156-040(b) of the Ordinance.

In addition, § 2-156-040(c) of the Ordinance prohibits employees (and their spouses and minor children) from accepting gifts if (a) the donor has an economic interest in a business transaction with the City; and (b) the recipient may substantially influence that transaction. An occasional nominal gift (valued at less than \$50) is permitted. Based on the nature of the [REDACTED] outing as it has been described to us, the donors of the gifts are City contractors or potential City contractors, and therefore they have an economic interest in a specific City business--contracts with the Department [REDACTED]. The City workers attending the annual event are Department [REDACTED] employees, and thus are likely to be in positions to affect the same business transactions in which these contractors are involved.


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Finally, § 2-156-050 of the Ordinance prohibits officials and employees from accepting anything of value in exchange for advice or assistance in matters concerning City business. Under these particular circumstances, the inference is that these gifts are accepted in exchange for assistance in City business.

CONCLUSION: Based on the particular circumstances presented, the Board determines that the gifts given in relation to the [REDACTED]outing are prohibited by the Ethics Ordinance.¹

Thank you again for bringing this matter to our attention. We enclose a sheet which sets forth the Board's procedural rules after it renders a decision. If you have any further questions regarding this matter or some related issue, please do not hesitate to contact us.

Sincerely,


Albert Hofeld
Chair

encl

cc: [REDACTED]
[REDACTED]

Kelly Welsh
Corporation Counsel

jgj/90064.L3

¹ The Board's determination in this case is based upon the facts as presented in this letter. If they are incorrect or incomplete, please notify us immediately, as any change in the facts may alter our decision.

NOTICE OF RECONSIDERATION AND RELIANCE

Reconsideration: This advisory opinion is based on the facts outlined in this opinion. If there are additional material facts or circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances that are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this opinion.

Reliance: This advisory opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.