

City of Detroit Board of Ethics

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Advisory Opinion #2019-25

Issued: May 13, 2020

Advisory Opinion #2019-25: It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2019-25 regarding future events hosted by contractors. However, the Board declines to issue an advisory opinion pertaining to the December 13, 2019 event hosted by [Contractor] because that event has already occurred and, the Board does not provide opinions on past conduct. The Ethics Ordinance states that past conduct "is more appropriately addressed by the filing of a complaint or by the contracting of an investigation."

In regard to future events hosted by contractors, the Requestor should be advised of the Ethics Ordinance's prohibition on public servants accepting gifts or other things of value from entities that do business with the City. The Requestor is advised of the exception that is provided in Section 2-5-70(b)(4) of the Code, which enumerates specified expenses and items related to events. The permissibility of attending a contractor hosted event and the applicability of the prohibition as to gifts and things of value offered at such an event, depend upon the facts and circumstances pertaining to the specific event.

You may submit a request for an advisory opinion with information pertaining to a future event if you wish to receive specific guidance related a particular event. The Board has 91 days to address a Request for Advisory Opinion. Under extraordinary circumstances, the Board can allow an additional 91 day period to respond to the Request. If you file a Request for a specific event, please file it with sufficient time to be heard by the Board.

I. Procedural Background

Request for Advisory Opinion 2019-25 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on December 04, 2019. In accordance with Sec. 2-6.101, the Request was submitted by a current public servant as defined by Section 2-6-3 of the Detroit Ethics Ordinance (the “Ordinance”). The Public Servant maintains confidentiality in this matter.

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code (Code), the 91-day period for review of this request will conclude on March 12, 2020. Section 2-5-1 24(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on June 03, 2020.

At its meeting on May 13, 2020, the Board determined that the Request will meet the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. The Board heard a Preliminary Analysis from legal council on the same day, and after consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion pursuant Section 2-6-104(b)(4) of the Ethics Ordinance.

II. Information from the Request

The Requestor is an [REDACTED] for the [REDACTED] of the [REDACTED]. According to the Request, employees of the [REDACTED] are frequently invited to events hosted by contractors who do business with the City. To provide an example of such an event, the Requestor attached a copy of an invitation to the Request. It was an event hosted by [Contractor]. According to the invitation, the event was scheduled to occur on December [REDACTED], 2019. The invitation refers to the event as an [REDACTED] and indicates that it was an opportunity to [REDACTED] the [REDACTED]. The invitation also indicates that lunch and drinks and complimentary valet parking would be provided.

The question presented to the Board is whether the Requestor may attend events hosted by City contractors. By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 Detroit City Code.

III. Applicable Charter Sections

The 2012 Detroit City Charter provides at Section 2-106.1 that the purpose of applying and enforcing these requirements and standards is to ensure that governmental decisions are made in the public's best interest by prohibiting public servants from participating in matters that affect their personal or financial interests. This Request involves Section 2-106.4 of the 2012 Detroit City Charter codified at Sections 2-5-70 of the 2019 Detroit City Code. It states as follows:

Sec. 2-5-70. - Prohibition on gifts and gratuities; exceptions.

(a)A public servant shall not accept gifts, gratuities, honoraria, or other thing of value from any person or entity doing business or seeking to do business with the City, is seeking official

action from the City, has interests that could be substantially affected by the performance of the public servant's official duties, or is registered as a lobbyist under applicable law and [Section 2-5-35](#) of this Code.

(b) The prohibition in Subsection (a) of this section shall not apply:

- (1) To an award publicly presented to a public servant by an individual, governmental body, or non-governmental entity or organization in recognition of public service;
 - (2) To complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials;
 - (3) To a gift received from a public servant's immediate family member or relative, provided, that the immediate family member or relative is not acting as a third party's intermediary or an agent in an attempt to circumvent this prohibition;
 - (4) To an admission or registration fee, travel expenses, entertainment, meals or refreshments that are furnished to the public servant:
 - a. By the sponsor of an event, appearance or ceremony, which is related to official City business in connection with such an event, appearance or ceremony and to which one or more members of the public are invited; or
 - b. In connection with teaching, a speaking engagement, or the provision of assistance to an organization or another governmental entity as long as the City does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshment for the same activity.
- (Code 1984, § 2-6-71; Ord. No. 18-12, § 1(2-6-71), eff. 8-31-2012)

IV. Application of the Charter and Code to the Information Presented

The Ethics Ordinance generally prohibits public servants from accepting gifts or other things of value from entities that do business with the City or are seeking to do business with the City. The only exception that is relevant to events hosted by contractors is provided in Section 2-5-70(b)(4), which provides an exception for "an admission or registration fee, travel expenses, entertainment, meals or refreshments" in two specified types of situations. One such situation is when such expenses or items are provided "*[b]y the sponsor of an event, appearance or ceremony, which is related to official City business in connection with such an event, appearance or ceremony and to which one or more members of the public are invited.*" That situation to which the exception applies appears to be narrow, as it is only applicable if the pertinent event, appearance, or ceremony is related to official City business, and if such official City business pertains to the event, appearance, or ceremony.

An example of such a situation would be the Mayor or a City Council Member attending a ribbon cutting ceremony for a new City park or development project, or an event that is being held to commemorate a new City initiative or program. An example that may be more applicable to employees of the [REDACTED] would be an employee attending a conference on [REDACTED] that's sponsored by a contractor and the employee's attendance is requested, or approved, by the employee's supervisor. The exception also contains the requirement that "*one or more members of the public are invited*" to the event. Although the term "members of the public" is not defined in the Ethics Ordinance or in the Charter, that

requirement is easily satisfied where people other than just the public servant and employees of the contractor are invited to attend.

The other type of situation to which the exception provided in Section 2-5-70(b)(4) may be applicable to events hosted by a contractor is where a public servant attends such an event "(i)n connection with teaching, a speaking engagement, or the provision of assistance to an organization

...as long as the City does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshment for the same activity." An example of such a situation would be where a contractor invites a public servant to teach or speak at the contractor's event. The exception for this type of situation does not apply, however, if the City compensates the public servant for any of the specified expenses or items for the same teaching activity, speaking engagement, or provision of assistance.

A public servant's attendance of an event hosted by a contractor is not, by itself, a violation of the Ethics Ordinance's prohibition on accepting gifts or other things of value from an entity doing business with the City. However, if other attendees of such an event are required to pay an admission or registration fee, and the public servant is not, then the public servant's attendance would be a violation of the prohibition unless either of the two types of situations described in Section 2-5-70(b)(4) of the Code are applicable. Furthermore, even if one of the two types of situations described in Section 2-5-70(b)(4) apply to the public servant's attendance of the event, the prohibition would still apply to any gifts or other things of value from the contractor other than "an admission or registration fee, travel expenses, entertainment, meals or refreshments.1 If neither of the two types or situations described in Section 2-5-70(b)(4) are applicable, then the exception does not apply, and the public servant would be prohibited from accepting any gift or other thing of value from the contractor without paying for it, including meals or drinks that may be complimentary to other guests.

The determination of whether a public servant may attend an event hosted by a contractor, and what types of gifts or other things the public servant may accept from the contractor while attending such an event, depends upon the facts and circumstances pertaining to the event. Such facts and circumstances will vary between different events. Therefore, without information pertaining to a specific event, it is not possible to provide a definite answer as to whether the public servant may or may not attend an event that is hosted by a contractor. However, the Requestor may rely on the language of Section 2-5-70 of the Code for general guidance and the Requestor may submit a request for an advisory opinion with information pertaining to a particular future event in order to receive more specific guidance as to that event.

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2019-25 regarding future events hosted by contractors. However, the Board declines to issue an advisory opinion pertaining to the December 13, 2019 event hosted by [Contractor] because that event has already occurred and, the Board does not provide opinions on past conduct. The Ethics Ordinance states that past conduct "is more appropriately addressed by the filing of a complaint or by the contracting of an investigation."

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Dated: June 12, 2020