

City of Detroit Board of Ethics

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Advisory Opinion #2020-12

Issued: September 15, 2020

Advisory Opinion #2020-12: 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 2020-12. The Ethics Ordinance prohibits the Requestor from accepting gifts from [REDACTED]. If a public servant accepts a free [REDACTED] from [REDACTED], it would violate Section 2-5-70 of the Code, which prohibits public servants from accepting gifts from entities that do business with the City. An authorized City official or the Requestor should notify [REDACTED] about the prohibition. The Requestor should also warn other public servants of the potential Ethics Ordinance violation that could occur if they register for [REDACTED]'s giveaway and win a gift card.

I. Procedural Background

Request for Advisory Opinion 2020-12 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on August 10, 2020. In accordance with Sec. 2-5-121, the Request was submitted by a public servant as defined by Section 2-5-3 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 November 9, 2020. Section 2-5-124(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 February 08, 2021.

At its meeting on September 15, 2020, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-5-121 of the Ordinance. The Board heard a Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board decided to issue the Advisory Opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

The Requestor is a public servant who is employed by the City a Talent Development and Performance Management Specialist for the HR Department.

The Requestor states that they have an education partner:

████████████████████ (██████████). We have recently obtained an education partnership them and they would like to giveaway two \$25 ██████████ as part of the partnership announcement. Would this conflict with the City's Ethics Policy? The giveaway will strictly be handled by ██████████ and employees will register on ██████████ site for a chance to win one of the gift cards.

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 2-5-71 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

Section 2-5-70(a) of the Code generally prohibits public servants from accepting any gifts, or anything of value that is provided without remuneration, from an entity that is “doing business or seeking to do business with the City.” Section 2-5-70(b) includes four exceptions to the prohibition, however, none fit the fact pattern in this scenario. The City and [REDACTED] are in partnership and this means [REDACTED] is “doing business” with the City. Therefore, a public servant accepting a free [REDACTED] [REDACTED] would be in violation the gifts and gratuities prohibition.

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 2020-12. The Requestor would be in violation of the gifts and gratuities prohibition. The Ethics Ordinance prohibits the Requestor from accepting gifts from [REDACTED]. If a public servant accepts a free [REDACTED] from [REDACTED], it would violate Section 2-5-70 of the Code, which prohibits public servants from accepting gifts from entities that do business with the City. An authorized City official or the Requestor should notify [REDACTED] about the prohibition. The Requestor should also warn other public servants of the potential Ethics Ordinance violation that could occur if they register for [REDACTED]’s giveaway and win a gift card.

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Dated: November 17, 2020