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August 16, 2007

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Re: 07 A 0008 Gift Ban: Cash Donation for Christmas Party

Dear [REDACTED]:

This letter is in response to your request for an advisory opinion from the Board of Ethics regarding the above-referenced subject.

[REDACTED] has requested guidance from the Board of Ethics in connection with its investigation of a matter involving a Cook County contractor giving a County employee cash. The factual information upon which this advisory opinion is based was provided by the [REDACTED] and not based on any independent inquiry by the Board of Ethics.

**FACTS**

A County contractor has a contract to upgrade and install a fire alarm system at a County facility. The subcontractor on the contract has personnel who are upgrading and installing the system onsite and who have regular interaction with the County employees at that site.

During the holiday season of 2006, the County contractor and a County employee involved in supervision of the project met to discuss the project and the subject of the County employee's department Christmas party was discussed. The contractor offered

the County employee a cash donation of either \$100.00 or \$150.00 to cover the cost of food and refreshments for the subcontractor's employees so that they could attend the Christmas party. The County employee asked his supervisor if he was allowed to accept the donation and was told that he could. The employee accepted the cash but did not give the contractor a receipt for the cash. Both the County employees and the subcontractors' employees attended the Christmas party. Nor is there any documentary evidence that the cash was used to defray costs of the party for the subcontractor's employees.

Since the party, there has been debate on whether the funds were allocated toward the party or if the employee used the money for his personal benefit.

### **ISSUES**

May a County employee accept a cash donation from a County contractor for a Christmas party for a County subcontractor's employees and County employees?

### **APPLICABLE SECTIONS OF THE ETHICS ORDINANCE**

#### Section 2-561 Definitions

*Employee* means an individual employed by the County whether part-time or full-time or by a contract of employment. Employee shall include individuals employed by County Officers as referenced in Article VII, Section 4 of the Illinois Constitution. Employee shall not include judges of election.

*Prohibited source* means any person or entity who:

- (1) Is seeking official action:
  - a. By the official; or
  - b. In the case of an employee, by the employee or by the official, County agency or other employee directing the employee.
- (2) Does business or seeks to do business:
  - a. With the official; or
  - b. In the case of an employee, with the employee or with the official, County agency or other employee directing the employee.
- (3) Conducts activities regulated:
  - a. By the official; or
  - b. In the case of an employee, by the official, County agency or other employee directing the employee.

- (4) Has interests that may be substantially affected by the performance or non-performance of the official duties of the official or employee...

Section 2-574 Receiving and Soliciting Gifts and Favors

- (a) *Gift ban.* Except as otherwise provided in this Ordinance, no official or employee shall intentionally solicit or accept any gift from any prohibited source or in violation of any federal or State statute, rule, or regulation, or any County ordinance, rule or regulation. This ban applies to and includes spouses of and immediate family living with the official or employee. No prohibited source shall intentionally offer or make a gift that violates this Section.
- (b) *Exceptions.* The restriction in Section (a) does not apply to the following:
  - ...
  - (12) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.
  - ...
- (d) Gifts which have a value of greater than \$100 (or a series of gifts with an aggregate value of greater than \$100 from one prohibited source during any twelve month period) received by any official or employee from a prohibited source shall be disclosed to the Board of Ethics by the recipient within ten (10) business days of receipt....

**DISCUSSION**

Under Section 2-574 of the Ethics Ordinance, unless otherwise permitted by the Ordinance, County employees shall not intentionally accept gifts from any prohibited sources.

An employee is defined by the Ordinance as “an individual employed by the County whether part-time or full-time.” The individual who accepted the cash from the contractor is a full-time employee of the County. Therefore, he is bound by the Ethics Ordinance, including the ban on gifts from prohibited sources. A “prohibited source,” as defined by Ordinance includes an entity that does business or seeks to do business with a County employee or the County agency for which the employee works. In this situation, the contractor is a prohibited source as defined by the Ordinance. The contractor has a contract to upgrade and install a fire alarm system at a County agency and, therefore, is doing business with the agency employing the individual who received the gift. Finally, cash is a tangible item having a monetary value and, therefore, arguably a “gift” as defined by of the Ordinance.

The analysis of whether this donation constitutes a violation of the Ordinance depends on a determination about who benefited from the donation. The Board has concluded in other cases that the solicitation or acceptance of donations from County vendors for a County party is a violation of the Ordinance.

In Advisory Opinions 95 A 0010 & 98 A 0002, the Board concluded that an employee department is prohibited from soliciting outside donations from vendors for their annual party. In those opinions, the employee department was seeking ways to reduce the cost of an annual picnic and a Christmas party by soliciting cash and in-kind donations from County vendors to defray the cost of food. The Board concluded that as articulated in the Preamble of the Ethics Ordinance, employees and officials must be fair and impartial and not use their County employment for personal gain. The Board further determined that even though it may be good for employee morale, a party for government employees cannot be deemed to benefit the citizens of Cook County. Rather, the party would serve the employees' personal benefit. Since the employee department would be soliciting these donations for their personal benefit under the auspices of their County positions, they would be engaging in the improper use of their County employment.

In the prior opinions, the County departments were soliciting vendors for donations for events which only County employees attended. The Board concluded in those opinions that the County employees' solicitation from person doing business with the County might cause a potential conflict of interest and the appearance of impropriety.

While the general conclusions of the Board's prior opinions are referenced, this case presents distinguishing facts that need to be addressed. According to information gathered by [REDACTED], the donation was given to defray the cost of food and refreshment for the subcontractor's employees, not the County employees. This explanation is bolstered by reports that the County employee first checked with his supervisor about the propriety of accepting the cash and that the subcontractors' employees actually attended the Christmas party. Based on that information, one might conclude that County employees were not the intended beneficiaries of the donation. If the money was not solicited or offered for the personal benefit of the County employee who accepted the cash or the County employees of the department, but was instead used for the benefit of the subcontractor's employees, it was not a gift and, therefore, the employee did not violate the Ethics Ordinance.

However, the facts of the case also provide an excellent example of why the acceptance of cash by a County employee is never a good idea although it is not specifically prohibited by the Ethics Ordinance. Because there are no receipts documenting how the

cash was used, the possibility that the money was used by the employee for his own personal benefit is left open to speculation and the appearance of impropriety.

As stated above, the factual information upon which this advisory opinion is based has been provided by [REDACTED] and not the result of any independent inquiry by the Board of Ethics. Therefore, the Board is not in a position to determine whether or not the employee intentionally solicited or the contractor intentionally offered a gift in violation of the Ordinance. More information and/or an assessment of the credibility of witnesses would be required.

If the [REDACTED] investigation leads to a conclusion on its part that the employee accepted the money as a gift for himself or his employees and not as a donation for the party, it would be a violation of the Ordinance. Under the gift ban, any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100 are permissible. Section 2-574(b)(12). Based on these facts, the gift was \$100 or greater and, therefore, prohibited.

It follows that if the employee accepted the money as gift for himself or employees, the gift should have been disclosed by the filing of a gift disclosure form with the Board of Ethics within ten (10) business days of receiving the gift. Section 2-574(d) of the Ethics Ordinance provides that gifts from prohibited sources valued at \$100 or more must be disclosed within ten (10) business days of receipt. Failure to file a gift disclosure form within the proscribed time is a violation of the Ordinance.

Please note the Board's determinations herein are based solely on the application of the Cook County Board of Ethics Ordinance to the general questions posed in this opinion. Other laws or rules also may apply to this situation.

Under the rules and regulations of the Cook County Board of Ethics, all requests for reconsideration of this advisory opinion must be filed within 20 days of the date of this opinion. Please do not hesitate to contact our office if you have additional questions or require additional information.

Sincerely,

THE COOK COUNTY BOARD OF ETHICS



John J. Pikarski, Jr.  
Chairman