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Cook County Board of Ethics

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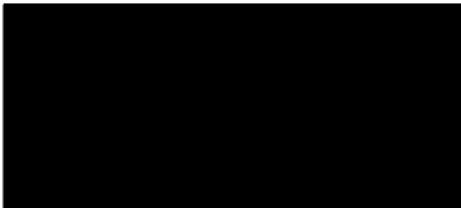
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September 27, 1995



RE: 95 A 0008 Employees' Acceptance of Invitations to Parties

Dear [REDACTED]:

Several months ago, the Board of Ethics staff was asked by Contract Compliance Employees whether they could attend holiday parties hosted by Persons that Do Business with the County. Due to the fact that the parties occurred before the Board of Ethics met, the Board declined to issue a written opinion at that time because the issue was moot by the date of the meeting. This letter will serve as a formal advisory opinion on the above referenced matter.

FACTS

The Office of Contract Compliance ("Contract Compliance" or "Office") is responsible for administering the Cook County Minority- and Women-Owned Business Enterprises Ordinance ("Minority Business Ordinance") which is designed to facilitate the ability of certified Minority-Owned Businesses ("MBE"s) and Women-Owned Businesses ("WBE"s) to participate in County business. At various stages of the contract awarding process from the initial certification process through the time a contract is awarded, Contract Compliance Employees work closely with Persons who are Seeking to Do Business with the County. For example, the Purchasing Department provides Contract Compliance with a list of upcoming contracts to be awarded. Contract Compliance then randomly notifies appropriate MBE/WBEs so they are aware of the contract opportunity.

The Minority Business Ordinance requires that MBE and WBE participation in County contracts equal at least 25% and 10% respectively. Contract Compliance must review all bids to ensure that they comply with these and other requirements of the Minority Business Ordinance. Persons that are unable to meet the requirements of the Minority Business Ordinance ("non-MBE/WBE"s) may submit bids and request a waiver of the Minority Business Ordinance requirements. Pursuant to the Minority Business Ordinance, waivers are available to non-MBE/WBEs who are unable to comply with the requirements despite a "good faith" effort. Thus, Contract Compliance works closely with almost all Persons that Do Business or are Seeking to Do Business with the County, including those who are certified MBE/WBEs under the Minority Business Ordinance, as well as non-MBE/WBEs requesting waivers, to ensure that they follow all appropriate procedures.

During the holiday season in particular, various Persons host parties and invite Employees of Contract Compliance to attend. In some instances, individual Employees receive personal invitations, but on other occasions invitation "flyers" are distributed throughout the Office.

ISSUE

Can Employees of the Office of Contract Compliance accept invitations to attend parties without violating the Ethics Ordinance?

APPLICABLE SECTIONS OF THE ETHICS ORDINANCE

Preamble.

...
WHEREAS, public Officials and Employees serve their government in a fiduciary capacity, and must act at all time to avoid conflicts of interest, impropriety, or even the appearance of impropriety...

Article I. Definitions.

Whenever used in this Ordinance, the following terms shall have the following meanings:

- ...
- (f) "Doing Business" means any one or any combination of sales, purchases, leases or contracts tom from or with the County or any County agency in excess of \$10,000 in any twelve consecutive months.
- (h) "Employee" means an individual employed by the County whether part-time or full-time. Employee shall not include (i) judges of election; or (ii) individuals employed by the County for a specific project having a duration of not more than seven (7) days.
- (i) "Financial interest" means (i) any interest as a result of which the owner currently received or is entitled to receive in the future more than \$2,500 per year; (ii) any interest with a cost or present value of \$5,000 or more;
- (j) "Gift" means anything of value given without consideration or expectation of return.
- (l) "Official" means any elected Cook County official or any appointed non-employee member of any agency of Cook County.
- (m) "Person" means any individual, entity, corporation, partnership, firm, association, union, trust estate, as well as any parent or subsidiary of any of the foregoing, and whether or not operated for profit.
- (o) "Seeking to Do Business" means taking action within the past six months to obtain a contract or business with the County when, if such action were successful, it would result in the Person Doing Business with the County.

Article II Code of Conduct.

2.4 Receiving and Soliciting Gifts and Favors.

- ...
- (b) No Official or Employee or any of their Relatives shall knowingly solicit, accept, receive or agree to receive, either directly or indirectly, anything of value, including but not limited to an alleged 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 such Official or Employee concerning the business of the County would be influenced.

 - (d) No Gifts which have a value of greater than \$125 (or a series of gifts with an aggregate value of greater than \$125 during any twelve month period) may be received by officials, employees, or any relatives residing in their households from (1) Persons with a Financial Interest in County business; (2) Persons Seeking to do Business with the County; or (3) Persons who are compensated lobbyists on County matters. This prohibition shall not apply if the value of the gift in excess of \$125 is directly donated to a neighborhood, community or civic organization....

DISCUSSION

Although Employees of the Office of Contract Compliance are prohibited from accepting invitations to parties from Persons with a Financial interest in County business, Persons Seeking to Do Business with the County and compensated lobbyists where the value of the invitation exceeds \$125.00, they can attend parties hosted by those same Persons where the value of the invitation is less than \$125.00, in those cases where accepting the invitation will not create an appearance of impropriety and where there is no mutual understanding that County business will be influenced.

Under Section 2.4 of the Ordinance, there are several restrictions on the receipt and solicitation of Gifts by Employees and Officials. Section 2.4(d) prohibits Officials and Employees from accepting any Gifts with a value of greater than \$125.00 from Persons with a Financial interest in County business, Persons Seeking to Do Business with the County and compensated lobbyists.

In addition, Section 2.4(b) prohibits an Employee from accepting a Gift from any Person, even if it is valued at less than \$125.00, if acceptance of the Gift is based upon a mutual understanding, either explicit or implicit, that County business will be influenced. From time to time, both MBE/WBEs and non-MBE/WBEs Seeking to Do Business with the County work closely with the Office of Contract Compliance and invite Contract Compliance Employees to parties they host. While there may be no ulterior motive behind some invitations, it is possible that some vendors may send invitations to Contract Compliance Employees in an effort to ensure that they receive favorable treatment from the Office. Such favorable treatment could merely consist of an Employee's friendly phone call informing an MBE/WBE who is not on the random list, about an upcoming contract opportunity. If other MBE/WBEs who aren't on the random list are not privy to the same information, it could be construed as one vendor being treated more favorably than another vendor. As well, given that Contract Compliance exercises discretion in considering non-MBE/WBEs' requests for waivers, it is possible that Contract Compliance Employees could interpret the "good faith" requirement more liberally for those non-MBE/WBEs from whom Contract Compliance Employees have received event/party invitations. Thus, it is easy to see how the nature of the close working relationship between vendors and Contract Compliance could give rise to the inference that vendors who invite Contract Compliance Employees to events receive more favorable treatment from the Office. Given that such an inference, if true, would violate Section 2.4(b) of the Ordinance, Contract Compliance Employees must be extremely cautious about accepting invitations to parties hosted by MBE/WBEs or non-MBE/WBEs who are Doing Business or are Seeking to Do Business with the County.

It is also important to recognize that the underlying principle behind the Ethics Ordinance, as articulated in the Preamble, is that Employees and Officials must at all times act to avoid impropriety or even the appearance of impropriety. Given that there is a close working relationship between Contract Compliance Employees and Persons that Do Business or are Seeking to Do Business with the County, and given that Contract Compliance Employees have some ability to favorably influence County business for certain Persons Seeking to Do Business with the County, Contract Compliance Employees' acceptance of Gifts from these Persons could create an appearance of impropriety. It is this appearance of impropriety that causes the Board to be concerned about the attendance of County Employees at events/parties hosted by Persons that Do Business or are Seeking to Do Business with the County.

Such an appearance of impropriety does not arise when Employees are invited to events hosted by Persons who are not Doing Business with the County *and* are not Seeking to Do Business with the County. Accordingly, there is no provision in the Ethics Ordinance which prohibits Employees from accepting invitations valued at any amount from such Persons.

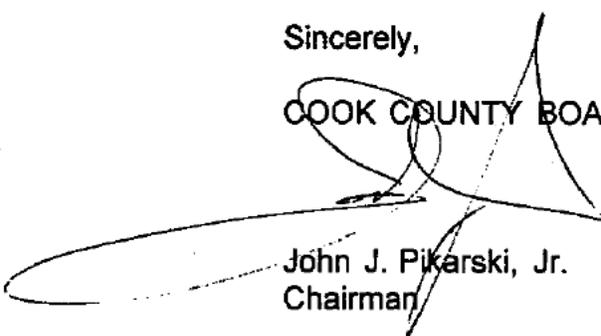
In sum, Employees are prohibited from accepting an invitation valued in excess of \$125.00 from any Person with a Financial interest in County business, any Person Seeking to Do Business with the County and any compensated lobbyists. In cases where the invitation is valued at less than \$125.00, the Board urges caution for the reasons previously discussed. If an Employee has any question as to whether accepting an invitation might create an appearance of impropriety, the Employee should submit the invitation to the Board for review. The form in which the invitation is made, whether a flyer distributed throughout the Office or a personal invitation sent to select Employees does not alter this analysis.

Moreover, the Board requests that for the next six (6) months, one Employee in the Office be assigned the responsibility for collecting and maintaining a log of all party/event invitations received within the Office so that the Board can become familiar with the types of invitations that are received by Contract Compliance and the Board can affirm that the general guidelines set forth in this opinion are, in fact, appropriate. Please contact Laura Grossman of our office with the name of that Employee at your earliest convenience.

We hope that this opinion addresses your concerns. The Board thanks you for your inquiry and commends you for your conscientiousness in seeking to uphold the guiding principles of the Ethics Ordinance. If you would like further clarification of this opinion, please do not hesitate to contact our office. Under the Rules & Regulations of the Cook County Board of Ethics, all requests for reconsideration of an advisory opinion must be filed within fifteen (15) days of receipt of this opinion.

Sincerely,

COOK COUNTY BOARD OF ETHICS


John J. Pikarski, Jr.
Chairman

LG/bh

cc: 