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July 30, 1998



RE: 98 A 0007 Manufacturer Donation of Goods and Materials and Use of Department's Name in Product Promotion.

Dear [REDACTED]

This letter is in response to your request for an advisory opinion on the above referenced matter.

FACTS

The Cook County Department of Public Health Dental Health Services ("DHS") provides dental care at County health clinics to residents who have incomes within 185% of the poverty level. In addition, the Department services over 100 schools and community centers throughout suburban Cook County. DHS would like to partner with the South Suburban Ambulatory Care Network ("SSACN") and Colgate-Palmolive to provide preventive dental health care to children at 9 community health fairs. Colgate has offered to donate materials such as balloons, toothbrushes, toothpaste and patient literature to be distributed to the children.

Also, DHS is partnering with Prairie State Junior College School of Dental Hygiene to facilitate and promote DHS's dental sealant program in south suburban schools. Prairie State has arranged for Procter and Gamble to donate oral hygiene products, such as Crest toothpaste, as well as sponsor pizza parties for children participating in the school-based preventive dental programs that DHS offers.

In addition to Colgate and Procter and Gamble, several other manufacturers of oral health products have offered to donate product samples as well as printed patient education literature. This literature is very helpful in promoting proper oral health and although the materials do promote the products of the companies, for DHS to develop similar literature would be very expensive and time consuming. Also, DHS does not have the means to obtain the graphics displayed nor the quality of paper used by the private manufacturers.

██████████ has stated that only products that DHS's professional team determines to be safe and effective will be distributed and is requesting permission to accept, display and distribute the donated supplies, materials and products. In addition, ██████████ would like to know if it is acceptable for manufacturers who provide products or material donations to use the Department name in product promotion.

According to ██████████ neither Colgate-Palmolive nor Procter-Gamble, has contracts with Public Health. ██████████ stated that most of these types of contracts are let to minority owned enterprises, ("MBE's"). ██████████ stated that, to her knowledge, neither of these companies has bid on a contract offered by Public Health since the County adopted the policy of contracting with MBE's.

ISSUES

1. Can Public Health Dental Health Services accept donations of supplies, products and materials from corporations who may or may not do business with the County, to be distributed to children who participate in DHS programs, without violating the provisions of the Ethics Ordinance?
2. Can manufacturers who provide supplies, products and materials use DHS's name in product promotion?

APPLICABLE SECTIONS OF THE ETHICS ORDINANCE

Article 1. 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 to, 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.

2.4 Receiving and Soliciting Gifts and Favors.

- (a) No Official, Employee or Relative residing in their households shall solicit or accept any anonymous Gift or any Gift of cash.
- (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.

DISCUSSION

Issue 1

An underlying principle of the Ethics Ordinance is that Employees and Officials must be fair and impartial and not use their County employment or office for personal gain. Toward this end, Section 2.4 of the Ethics Ordinance sets forth a number of restrictions on the receipt and solicitation of gifts by Employees and Officials. Section 2.4(a) strictly

prohibits Officials and Employees from soliciting or accepting any gifts of cash. However, this provision is intended to prohibit Officials and Employees from deriving *personal* economic gain through their County service. It is not intended to restrict the ability of County Employees and Officials to accept donations that will be used to benefit the public. Accordingly, given that DHS's distribution of donated products and materials will benefit the public not only by promoting health awareness and education, but also by enabling the children to be the recipients of products to help take better care of their teeth, Section 2.4(a) of the Ordinance would not prohibit Public Health from accepting and distributing these kinds of supplies, materials and products from manufacturers.

Under Section 2.4(b) of the Ordinance, Employees and Officials are prohibited from accepting anything of value where there is a mutual understanding that the business of the County will be influenced. Therefore, so that Colgate-Palmolive and Proctor-Gamble will not mistakenly believe that making donations to DHS will result in their receiving favorable treatment from the County should they again choose to do business with the County, DHS must expressly inform these companies that the decision to donate is purely voluntary. In order to help ensure that donors understand they will not receive preferential treatment, the Ethics Board has developed a gift acceptance form (see enclosed) to be given to any and all donors to County departments. The Board requests that each recipient County department fill out the form and return the yellow copy to the Board of Ethics.

In addition, there are other safeguards in place to ensure that County business will not be influenced. The majority of DHS purchases go out for competitive bidding and are awarded to the lowest bidder. Competitive bidding helps to eliminate the possibility that any person or corporation will have the ability to influence any County purchasing decision. Therefore, DHS may accept donations, provided that the manufacturers, as previously stated, are not led to believe that they will receive any preferential treatment by the County based on their donations.

Issue 2

The Preamble directs employees to act at all times to avoid the appearance of impropriety. While there may be a concern that the prominent display of Colgate-Palmolive and Proctor-Gamble signs and pamphlets and products distributed at the community health fairs may give the appearance that the County is endorsing these products, in this case, the informational value of the pamphlets and the distribution of oral hygiene products to lower income children overcomes that risk. However, the Board cautions DHS to be mindful of this possible concern and take steps to ensure that the distribution of these pamphlets and products are understood to be tools for helping and educating children without expense to the County, and not an endorsement of the corporate sponsors.

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If the case is not clear whether a corporate sponsored pamphlet is educational rather than promotional the pamphlet should be reviewed by the Board of Ethics before being distributed by DHS since the decision on whether such a distribution would violate the Ethics Ordinance can only be decided on a case by case basis. In general, however, corporate sponsored brochures that are predominately informational or educational in nature may be distributed while those that seem to be more promotional than informational may not be distributed.

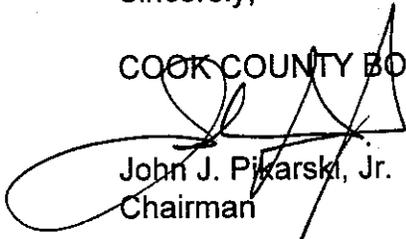
Therefore, while in this case it is permissible to use and display the donated products and materials, the County takes every precaution to avoid the appearance of impropriety and any inference that it is supporting or endorsing a particular brand name or product. Therefore, the Board has determined that manufacturers who provide product or material donations are not permitted to use a County departments' name in product promotion.

We hope this opinion addresses your concerns. The Board thanks you for inquiry and commends you for your conscientiousness in seeking to uphold the guiding principals of the Ethics Ordinance. Under the Rules and Regulations of the Cook County Ethics Ordinance, all requests for reconsideration of an advisory opinion must be filed within fifteen days of receipt of the opinion. Please do not hesitate to contact our office if you have additional questions or require additional information.

This opinion was unanimously adopted at the meeting of the Cook County Board of Ethics held on November 19, 1998.

Sincerely,

COOK COUNTY BOARD OF ETHICS



John J. Pixarski, Jr.
Chairman

JPM
Enclosures: 1

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