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August 3, 2011

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

Re: 11 A 0015: Gift Ban; District-owned Property
Board Consideration Date: August 3, 2011

Dear [REDACTED]:

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

FACTS

The Forest Preserve Foundation, Inc. (Foundation) is a independently governed, 501c(3) organization of like-minded individuals from the Forest Preserve District of Cook County (District), the business, civic, and not-for-profit communities who assist the District in addressing all the County's education, recreation and biodiversity protection needs. The Foundation will support the Forest Preserve District of Cook County in its mission, including without limitation, to acquire, restore and manage lands in a natural state for the education, pleasure and recreation of the public now and in the future. The Foundation will provide funding for Forest Preserve District programs and projects that go beyond the capacity of tax dollars.

The Foundation is scheduled to host a charitable golf outing at a Forest Preserve District of Cook County Golf Course. The Foundation will donate the money they raise to the Forest Preserve District Corporate Fund. The purpose of the golf outing is to raise money to support and provide educational programs at the Forest Preserve District for underprivileged children who generally are unable to take advantage of District facilities. The Foundation wants to seek corporate sponsorship from County and District vendors for the golf outing to defray some of the costs associated with the golf outing.

The golf outing is open to everyone who purchases a ticket including District employees. Some employees have been invited to attend free of charge as guest of individuals. The Foundation

Golf Committee has asked some employees to serve as volunteers with the approval of their supervisors at the golf outing.

ISSUE 1

Whether the Forest Preserve Foundation can solicit and accept corporate sponsorship from vendors of Forest Preserve District of Cook County and Cook County, and/or other businesses, to assist in defraying the costs associated with hosting a charitable golf outing?

ISSUE 2

Whether Forest Preserve District of Cook County employees are allowed to attend the golf outing?

APPLICABLE SECTIONS OF THE ETHICS ORDINANCE

Section 2-561- Definitions

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

District means the Forest Preserve District of Cook County and all government agencies of the Forest Preserve District of Cook County.

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

Gift means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment or the official position of an official or employee.

Official means any elected District official or appointed official regardless of whether the official is compensated or any appointed non-employee member of any agency of the District.

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, District 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, District 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, District 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 District 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 Subsection (a) does not apply to the following:
 - (8) *Food or refreshments not exceeding \$75.00 per person.* Food or refreshments not exceeding \$75.00 per person in value on a single calendar day; provided that the food or refreshments are consumed on the premises from which they were purchased or prepared or catered. For purposes of this subsection, the term “catered” means food or refreshments that are purchased ready to eat and delivered by any means.
 - (12) *Items valued at less than \$100.00.* Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.00.
- (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....

Section 2-576 District-Owned Property

No official or employee shall engage in or permit the unauthorized use of District -owned or District -leased property. District -owned and District -leased property shall only be used for official District business.

County-owned property has been interpreted to mean work-time paid to an employee with County funds. [Cook County Board of Ethics Advisory Opinion (November 05, 2001)].

Section 2-571 Fiduciary Duty

Officials and employees shall at all times in the performance of their duties owe a fiduciary duty to the District.

DISCUSSION

ISSUE 1

Section 2-574 Receiving and Soliciting Gifts and Favors

Generally, under Section 2-574, Forest Preserve District of Cook County officials and employees are prohibited from soliciting or accepting gifts from prohibited sources. However, in this situation, Section 2-574 does not apply for two reasons. First, Section 2-574 does not apply because this issue involves the Forest Preserve Foundation, not an employee or District official. Second, Section 2-574 does not apply because corporate sponsorship is not considered a gift.

Sponsorship is derived from the word sponsor which means “a person or an organization that pays for or plans and carries out a project or activity; especially: one that pays the cost of a radio or television program usually in return for advertising time during its course”. [sponsor. (2009). In *Merriam-Webster Online Dictionary*. Retrieved May 4, 2009, from <http://www.merriam-webster.com/dictionary/sponsor>]. Another source cites sponsorship as meaning “one that finances a project or an event carried out by another person or group, especially a business enterprise that pays for radio or television programming in return for advertising time”. [sponsorship. (n.d.). *The American Heritage® Dictionary of the English Language, Fourth Edition*. Retrieved May 04, 2009, from Dictionary.com website: <http://dictionary1.classic.reference.com/browse/sponsorship>]. Specifically, corporate sponsorship “is a form of advertising in which companies pay to be associated with certain events. [corporate sponsorship. In *US Legal Online Dictionary*. Retrieved May 4, 2009, from <http://definitions.uslegal.com/c/corporate-sponsorship/>]. Thus, corporate sponsorship is not considered a gift in circumstances where goods or services are provided in return for advertising.

Corporate sponsorship is a common practice among private companies and government agencies. Sponsorships are beneficial to these companies and government agencies because serving as a sponsor is a way of enhancing a company's image and visibility in the community, as well as providing needed support for a government agency.

The Forest Preserve Foundation is hosting a golf outing to raise money to offer educational programs to underprivileged children at the Forest Preserve District. The golf outing will include 18 holes of golf, lunch, dinner and a silent-auction. The Foundation wishes to provide a variety of items for guests to bid on in the silent-auction, and will seek sponsorship of those items by vendors of the District and the County in order to defray the costs involved.

The Board assumes that the Forest Preserve Foundation will clearly communicate to vendors of the Forest Preserve District of Cook County, and/or other businesses, that sponsorship of the Forest Preserve Foundation Golf Outing is purely voluntary. Based on this assumption, the Board concludes that the Forest Preserve Foundation may accept those items from current vendors, and/or other businesses, as long as no vendor is required to provide sponsorship and no vendor or business is promised additional business from the Forest Preserve District of Cook County or Cook County in exchange for its sponsorship. In addition, the specific vendor information, i.e., name of the vendor, must be publicly disclosed on the item(s) being sponsored. The disclosure of the various vendors/sponsors will serve to promote transparency in the Forest Preserve District of Cook County or Cook County government and avoid the appearance of impropriety.

ISSUE 2

Section 2-576 District-Owned Property

Section 2-576 of the Ethics Ordinance requires that District-owned property be used for official District business. District-owned property has been interpreted under the Ethics Ordinance to include District time.

In this situation, anyone can attend the Forest Preserve Foundation Golf Outing who purchased a ticket. However, District employees are not allowed to attend the Forest Preserve Foundation Golf Outing on District time. They must use a vacation, personal or furlough day. The Foundation Golf Outing is not an official event of the District. District employees asked by the Foundation to volunteer for the golf outing should also request a time accrued day off to avoid any appearance of impropriety.

In addition, District employees who are attending the Foundation Golf Outing as guest of an individual need to confirm that the person is not a District or County vendor to ensure that they are not violating the Ethics Ordinance. Under Section 2-574, Forest Preserve District of Cook County officials and employees are prohibited from soliciting or accepting gifts from prohibited sources. A prohibited source is defined as a person or entity that is seeking official action by the gift recipient, does business or seeks to do business with the Forest Preserve District of Cook County, conducts business regulated by the Forest Preserve District of Cook County, has interests that may be substantially affected by the performance or non-performance of the official duties of the official or employee, or is a registered District lobbyist.

However, if the individual is a prohibited source as defined by Section 2-574, the Ethics Ordinance does not allow for gifts to be split or divided in order to fall within one or more exceptions to the gift ban rule. Under Section 2-574(b)(8), the gift ban does not apply when the gift is for food or refreshments not exceeding \$75.00 per person. Also, under Section 2-574(b)(12), the gift ban does not apply when the gift is for any item or items having a value of less than \$100 during any calendar year. In circumstances where it may appear that a gift from a prohibited source falls under one or more exceptions to the gift ban rule, a gift will not be split into both a meal expense and event/outing expense, especially if the recipient of the gift is attending both aspects of the event. The Board will consider the gift as a whole and make a determination as to whether the gift can be accepted.

Here, the Board concludes that employees of the Forest Preserve District of Cook County may accept free tickets from individuals who are not defined by the Ethics Ordinance as prohibited

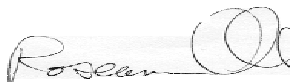
sources. However, if the individual is defined as a prohibited source, employees may accept free tickets to the Foundation Golf Outing only if the value of the golf outing tickets fall within one of the exceptions to the gift ban rule as outlined under Section 2-574(b). Additionally, the purpose of the Forest Preserve District of Cook County Ethics Ordinance, as stated in the Preamble to the Forest Preserve District of Cook County Ethics Ordinance, is for District employees to be independent and impartial; that District employment not be used for personal gain, and that the public have full confidence in the integrity and fair and honest administration of District government. With these goals in mind, it is important that the employees of the Forest Preserve District of Cook County (i.e., recipients of the tickets from District of County vendors) act to avoid even the appearance of impropriety. Thus, this conclusion is based on the Board's assumption that donation and attendance to the Forest Preserve Foundation Golf Outing is voluntary and no donor or sponsor of the Golf Outing is promised additional business from the District in exchange for contracts.

Please note that the determinations herein are based solely on the application of the Forest Preserve District of Cook County Ethics Ordinance to the questions posed in this opinion. Other laws or rules also may apply to this situation.

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. 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

A handwritten signature in cursive script, appearing to read "Roseann Oliver", with a large, stylized initial "O" at the end.

Roseann Oliver,
Chairperson