



Denver Board Of Ethics
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November 17, 2017

Ms. Gina Volpe-Beasley
Denver City Council Office – District 1

RE: Case 17 - 27 – your request for an advisory opinion

Dear Ms. Volpe-Beasley:

On November 15, 2017, after discussing the matter with you and Melissa Horn, an aide to another City Council member, the Denver Board of Ethics considered the request for an advisory opinion that you filed on October 24, 2017.

The facts as the Board understands them are as follows. You are an aide to City Councilman Rafael Espinoza. One of your functions is to help Councilman Espinoza prepare his twice-yearly gift disclosure forms. You have requested an advisory opinion from the Board of Ethics regarding three questions about the amendments made by City Council in March 2017 to the gift section of the Code of Ethics and in January 2017 to the Financial Disclosure Ordinance, as reporting practices by members of the Denver City Council may currently vary.

In summary, you ask:

- May City Council members accept small gift items from city departments and must they be reported on their gift-disclosure forms? Examples are scarves, poinsettia plants, geraniums, socks, baseball caps, scarves and coats. Some departments give such items once per year and some several times per year.
- What about items such as Elitch Gardens tickets that are donated by Elitch Gardens through the Councilman to a nonprofit neighborhood organization to sell for the benefit of North High School and must they be reported?
- What about free meeting space donated by a city department for meetings sponsored by the Councilman in city venues such as libraries or police stations and must it be reported?

Acceptance of gifts is regulated by Section 2-60 of the Code of Ethics:

Executive Director
L. Michael Henry

Board Members
Patrick D. Tooley – Chair
Julia C. Yeckes – Vice Chair
Roy V. Wood
Andrew S. Armatas
Sylvia Smith

Sec. 2-60. Gifts to officers, officials, and employees.

The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.

(a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:

(1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation;...

(b) Officers, officials, and employees and the members of their immediate family may accept the following even if the officer, official, or employee is in a position to take direct official action with regard to the donor, or, if the donor is a lobbyist or representative, the donor's client:...

(5) Unsolicited items of trivial value. "Items of trivial value" means items or services with a value of twenty-five dollars (\$25.00) or less, such as inexpensive tee shirts, pens, calendars, books, flowers, or other similar items and does not mean cash or gift cards;...

(c) It shall not be a violation of this article for an officer, official, or employee to solicit or accept donations to the city or to solicit, accept or redirect donations for charitable purposes to a 501(c) or other charitable organization or to provide assistance to individuals affected by illness, crime or disaster or who have educational or other charitable needs, provided, however, that

1) If an officer or employee soliciting such a donation is in a position to take direct official action with regard to the donor; and the city has an existing, ongoing or pending contract, business or regulatory relationship with the donor, any donation that is actually made as a result of the officer or employee's solicitation is reported by the officer or employee as required by Article V of this Chapter 2...

City Council also made several changes to the Financial Disclosure Ordinance (Section 2-70, et seq. of the Denver Revised Municipal Code) in January 2017. The relevant subsection is:

Section 2-72(c) ...The report shall include the identification, estimated value and the source of any gifts which may be accepted under sections 2-60(b)(4), (7) and (10) received by an officer during the reporting period...The report shall also include the identification, the estimated value and the source of any charitable donation personally solicited by the officer during the reporting period as permitted by Section 2-60(c), to the extent the officer is aware that the donation was actually made...Officers are required to report gifts and the solicitation of charitable donations from persons with whom the city has an existing, ongoing or pending contract, business or

regulatory relationship and over whom the officer may take direct official action as defined in Section 2-52(b).

The Board of Ethics advises you as follows:

1. Regarding gift items from city departments or agencies, there are two important points. First, City Council members are in a position to take direct official action regarding many city agencies, such as if they have contracts over \$500,000 that Council must vote upon. In addition, “the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor” (the individual city departments or agencies that offer gift items to City Council members). Therefore, Council members are prohibited by Section 2-60(a) from accepting gifts from city departments or agencies. Second, City Council is a separate and independent branch of city government from the executive branch departments and agencies and the restrictions in the gift section of the Code of Ethics apply with equal force, whether gifts are from entities or persons inside or outside of city government. Thus, the Board of Ethics rejects the interpretation of the gift section of the Code that City Council members or other city personnel may accept gifts from city agencies because they are all part of the same city government.
2. However, under the exception in Section 2-60(b)(5) City Council members and other city personnel may accept unsolicited items of trivial value worth \$25 or less. While such items are not required to be disclosed by Section 2-72(c) of the Financial Disclosure Ordinance, they may be reported at the discretion of the reporting person, especially to avoid the appearance of impropriety.
3. The Board also notes that the exception in Section 2-60(b)(5) does not apply where a gift or gifts worth more than \$25 are divided or distributed over time to circumvent the \$25 limit.
4. Regarding the pass-through of items such as Elitch Gardens tickets to a non-profit neighborhood group to benefit a school, this would be permitted by Section 2-60(c), since it amounts to accepting and/or redirecting donations for a charitable purpose to a charitable organization. Regarding disclosure of such items, both Section 2-60(c) of the Code of Ethics and Section 2-72(c) of the Financial Disclosure ordinance and the City Council Rules of Procedure require that if a city officer has solicited such a donation and he or she is aware that a donation has actually been made, then the officer must disclose the “estimated value” on the gift disclosure form. If the officer did not solicit the donation, disclosure is not required.
5. As for provision of free meeting space in a city building for public (not private) business, the Board of Ethics does not interpret this to be a gift. A City Council member, therefore, may use such space for public business and would not be required to report the use of such space as a donation on the Financial Disclosure form.

In summary:

- City Council members may accept items of \$25 or less in value from city departments and agencies and do not need to report such items on their gift disclosure forms.
- City Council members are required to disclose donations for a charitable purpose which they solicited if they are in a position to take direct official action with regard to the donor and the

city has an existing, ongoing or pending contract, business or regulatory relationship with the donor that they are aware are actually made as a result of their solicitation.

- Free meeting space in a city venue is not a gift and does not need to be disclosed.

Please understand that this advisory opinion from the Board of Ethics is based on the specific facts presented in your request, and to the extent that different facts and circumstances exist or arise, the Board's conclusions and opinion are subject to change. Accordingly, if the facts underlying your request for an advisory opinion differ from those set forth here, the Board encourages you to return to the Board for additional advice and guidance. We welcome the opportunity to continue a dialogue with you regarding the issues outlined in your request for advisory opinion.

The Board thanks you for submitting this request for an advisory opinion and thanks you and Ms. Horn for attending the Board meeting on November 15, 2017.

For the Board of Ethics:

A handwritten signature in black ink, appearing to read "Patrick D. Tooley", is centered on the page. The signature is written in a cursive style with a horizontal line at the end.

Patrick D. Tooley
Chair

Copy: Melissa Horn