

Stephan W. Fogleman, Chair
Donna M. Davis, Vice-Chair
Melodie Hengerer
Arnold Sampson
Vacant



Director: J. Christoph Amberger

BALTIMORE CITY BOARD OF ETHICS

**Baltimore City Board of Ethics
Ethics Opinion 22-003
(November 14, 2022)**

The Baltimore City Board of Ethics (“Board”) received a request for an advisory opinion regarding a private entity’s (“Entity A’s”) invitation for a public servant¹ to visit its facility. *See* Baltimore City Public Ethics Law (“Ethics Law”), City Code, Art. 8, § 4-1 (providing for advisory opinion requests).² Specifically, the request asked if a public servant’s acceptance of the invitation would comply with the Ethics Law.

In its invitational letter to the public servant, Entity A stated that the purpose of the trip was to discuss various technological matters and that the trip was to include dinners, policy discussion, and tours of Entity A’s facility. Entity A also proactively affirmed that it would pay expenses, including transportation, lodging, and meals, without the expectation of special treatment for Entity A or the expectation that the public servant’s organization would purchase or use Entity A’s products or services.

At the time of the request, Entity A was the principal of an active lobbyist registration filed with the Ethics Board³ and had recently obtained a City contract that received the public servant’s affirmative vote.

For the reasons that follow, the Board advised that the acceptance of Entity A’s payment for travel and lodging expenses by the public servant was prohibited by the Ethics Law’s restrictions on gifts from “controlled donors” and did not qualify for an exemption under the Ethics Law.

Analysis

1. “Controlled Donor”

Section 6-27 {“Acceptance prohibited”} of the Ethics Law mandates that “a public servant may not knowingly accept any gift, directly or indirectly, from any person that the public servant knows or has reason to know:

- (1) does or seeks to do business of any kind, regardless of amount:
 - (i) with the public servant’s agency; or
 - (ii) with another person in connection with or in furtherance of a contract that is being negotiated or has been entered into by the other person with the public servant’s agency;
- (2) engages or seeks to engage in an activity that is regulated or controlled by the public servant’s agency.
- (3) is or, within the preceding 12 months, has been a lobbyist with respect to matters within the jurisdiction of the public servant;

¹ The term “public servant” means “any official or employee.” City Code, Art. 8, § 2-23

² Unless otherwise indicated, all citations are to the Baltimore City Public Ethics Law, contained in Article 8 of the City Code.

³A public list of lobbyists registered with the Board is available on the Board’s website here: <https://ethics.baltimorecity.gov/lobbying>

- (4) has a financial interest that might be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties; or
- (5) is an owner, partner, officer, director, trustee, employee, or agent of any person described in items (1) through (4)."

A person who falls within one of these categories is referred to as a "controlled donor." *See* Ethics Regulation R 06.26.1.A.(2), § 6-26, and § 6-27. Because of Entity A's substantial business interests in and with the City, Entity A qualified as a "controlled donor," vis-à-vis the public servant's agency.

Section 6-28 enumerates qualified exemptions to the Ethics Law's restrictions on gift acceptance from controlled donors, subject to § 6-29 {"Exemption limitations"}⁴. In relevant part, the restrictions do not apply to the unsolicited receipt of reasonable expenses, actually incurred and verifiable, for food, travel, lodging, child or dependent care, and scheduled entertainment of the public servant, from a controlled donor, only if offered in return for a speaking engagement or participation on a panel at a meeting and so long as the expenses are associated with the meeting and, to the extent the expenses are anticipated to exceed \$500, the public servant has notified the Board before attending the meeting. § 6-28 (3).

The Board held that Entity A's invitation for the public servant to visit Entity A's facility did not constitute participation in a "speaking engagement" or "on a panel at a meeting." Similarly, State Ethics Opinion 81-6⁵ found that a State employee subject to comparable gift restrictions under the State Ethics Law, on which the City's Ethics Law is based, who was invited to a company's seminar did not qualify for the State Ethics Law's exemption permitting the acceptance of "food, travel, etc. in return for the employee's participation in a panel or speaking engagement" because the employee "was not invited to prepare a presentation, to participate as a panel member, or otherwise lead the seminar..." The State Ethics Commission further states that the seminar's purpose, "to address trends in technology," its location, the "Marketing Support Center," and the attendance of representatives from the company "would seem to

⁴ Section 6-28, in full, provides as follows:

Subject to § 6-29 {"Exemption limitations"} of this subtitle, the prohibitions in § 6-27 {"Acceptance prohibited"} of this subtitle do not apply to the unsolicited receipt of:

- (1) food or beverages received and consumed by the recipient in the presence of the donor or sponsoring entity;
- (2) gifts or awards that have insignificant monetary value, as defined by rule or regulation of the Board;⁴
- (3) in return for a speaking engagement or participation on a panel at a meeting,⁴ reasonable expenses, actually incurred and verifiable, for food, travel, lodging, child or dependant care, and scheduled entertainment of the public servant, but only if:
 - (i) the expenses are associated with the meeting; and
 - (ii) to the extent the expenses are anticipated to exceed \$500, the public servant has notified the Ethics Board before attending the meeting;
- (4) tickets or free admission given to an elected official to attend a specific charitable, cultural, or political event, if given by the person sponsoring or conducting the event as a courtesy or ceremony to the office;
- (5) a specific gift or class of gifts that the Ethics Board exempts on a written finding that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of City business. (...)."

⁵ Accessible on the Maryland Division of State Documents' website at <https://dsd.maryland.gov/advisoryopinions/Pages/advisoryo.1981.06.aspx>.

imply that the seminar is a part of the company's marketing or sales program," thus raising concerns about the seminar's intention to influence the employee's judgement.

Additionally, mindful of the City Ethics Law's provision that a public servant may only qualify for an exception if the gift would not tend to impair, was not designed to impair, and would not give the appearance of impairing the public servant's impartiality or independent judgment, § 6-29, the acceptance of Entity A's unsolicited gift of paid-for travel and lodging for the public servant on a visit to Entity A's facility raised concerns under the Ethics Law. (Emphasis supplied.)

2. Prestige of Office

Entity A's invitation to the public servant also raised concern under § 6-36 {Prestige of office}:

- (a) *In general.* A public servant may not intentionally use the prestige of his or her office or position for his or her own private gain or that of another.
- (b) *Constituent services.* The performance of usual and customary constituent services, without additional compensation, is not prohibited by this section.

There was insufficient information to determine that the public servant was not being offered a private benefit based on the public servant's City position. In other words, a concern would be raised even if the public servant had been invited based on the public servant's City role but were to attend in the public servant's private capacity. (See, § 6-36, *supra*.)

Board Determination

The Board determined that acceptance of Entity A's unsolicited gift of travel and lodging from a controlled donor by the public servant did not qualify for any of the exemptions in § 6-28. Additionally, the public servant's acceptance of the proffered gift from Entity A may reasonably "give the appearance of impairing the public servant's impartiality or independent judgment" and thus may be "detrimental to the impartial conduct of City business" pursuant to §§ 6-28(5) and 6-29. (See, *supra*.)

In addition, if Entity A's invitation were predicated on the public servant's City role, the Ethics Law's prohibition outlined in § 6-36(a) would be tolled.

Wherefore, the Ethics Board unanimously found that acceptance of the gift of free travel and lodging would run afoul of the Ethics Law's restrictions on gift acceptance in § 6-27 and did not qualify for an exemption to these restrictions under § 6-28.

Baltimore City Board of Ethics

Stephan W. Fogleman, Chair

Donna M. Davis

Melodie Hengerer

Arnold Sampson