

# *City of Detroit Board of Ethics*

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## **Advisory Opinion #2012-01** **Issued: April 27, 2012**

**Advisory Opinion #2012-01:** The 2012 Detroit City Charter Section 2-106.4., prohibits public servants from accepting gifts, gratuities, honoraria, or other things of value from any person or company doing business or seeking to do business with the City, is seeking official action from the City, has an interest that could be substantially affected by the performance of the public servant's official duties, or is registered as a lobbyist under applicable laws unless there is an exception allowed by Section 2-106.4(1-4). There is no requirement that the gift/gratuity or thing of value be received in exchange for some form of improper official action by the public servant. Further, there is no exemption for things considered of nominal value or generally permitted under the Ordinance unless exempt under one of the four exceptions provided in the Charter.

### **I. Procedural Background**

Request for Advisory Opinion #2012-01 (the "Request"), is dated January 6, 2012 and was received by the Board of Ethics (the "Board") by electronic communication on the same date. The Request was submitted by a current public servant as defined by Section 2-6-3 of the Detroit Ethics Ordinance (the "Ordinance"), who did not waive confidentiality with respect to identity.

At its meeting on January 10, 2012, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. At this meeting, the Board reviewed a Preliminary Analysis of the Request and discussed the question submitted. It was determined that additional consideration was required. At its February 21, 2012 meeting after discussion a draft opinion was requested. At its March 20, 2012 meeting the draft was discussed and additional revisions considered. At its April 17, 2012 meeting after consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion pursuant to Section 2-6-104(B)(3) of the Ordinance.

## **II. Facts Alleged In The Request**

In the Request, the Requestor states in summary as follows:

I would appreciate it if you could please provide an analysis and opinion regarding the new Charter's treatment of gifts to Council members, Mayoral appointees, and other City staff or officials. As you are well aware, the new City Charter became effective on January 1 of this year. It appears that the sections of the Charter referring to gifts have been significantly changed, with many new prohibitions added. It would be very helpful if you could please review the provisions of the new charter that relate to gifts, gratuities, invitations, etc., and draft an opinion regarding what is allowable and what is prohibited under the new charter.

By this request, the Public Servant seeks an advisory opinion as to the 2012 Detroit City Charter regarding the Ethics provisions specifically Section 2-106.4.

## **III. Applicable Charter Section and Ordinance Provisions**

The 2012 Detroit City Charter provides at Section 2-106.1 that the purpose of applying and enforcing these standards is to ensure that governmental decisions are made in the public's best interest by prohibiting city officials and employees from participating in matters that affect their personal or financial interests.

Section 2.106.4 provides as follows:

### **Sec. 2-106.4. Gifts and Gratuities**

A Public Servant shall not accept gifts, gratuities, honoraria, or other things of value from any person or company doing business or seeking to do business with the City, is seeking official action from the City, has interest that could be substantially affected by the performance of the public servant's official duties, or is registered as a lobbyist under applicable laws.

This prohibition shall not apply to: *EXCEPTIONS*

1. An award publicly presented to a Public Servant by an individual, governmental body or non-governmental entity or organization in recognition of public service.

2. Complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials.
3. A gift received from a Public Servant's relative or immediate *family* member, provided that the relative or immediate family member is not acting as a third party's intermediary or an agent in an attempt to circumvent this article.
4. Admission or registration fee, travel expenses, entertainment, meals or refreshments that are furnished to the Public Servant: 1. (i) by the sponsor(s) of an event, appearance or ceremony which is related to official City business in connection with such an event, appearance or ceremony and to which one (1) or more of the public are invited;  
or (ii) in connection with teaching, a speaking engagement or the provision of assistance to an organization or another governmental entity as long as the City does not compensate the Public Servant for admission or registration fees, travel expenses, entertainment, meals or refreshments for the same activity.

#### **IV. Application of the Charter to the Facts Presented**

The Board notes that this Request is not typical in that it does not present a specific fact situation or scenario but seeks general guidance as to the changes as a result of the 2012 City Charter concerning the receipt of gifts, gratuities etc. The changes are a significant departure from the former rules which established a broad general prohibition against public office for private gain. Section 2.6.3 of the current Ordinance defines *Private Gain* follows:

***Private gain*** means any benefit which is accepted or received by a public servant, or is perceived by a reasonable person to be accepted or received by a public servant, as remuneration for the purpose of improperly influencing an official action in a specific manner or for refraining from the performance of an official action in a specific manner, or as inducement for the public servant to act in favor of some interest other than in the public interest.

The definition then identified 20 examples of common things public servants were permitted to receive unless received for an improper purpose:

To clarify, unless the above-standard is violated, the following types of benefits, monetary payments or reimbursements, gifts, awards or emoluments are permissible to be received by a public servant:

- (1) Payment of salaries, compensation or employee benefits to a public servant by the city, or the payment of salaries, compensation or employee benefits to a public servant by an employer or business other than the city pursuant to a contract where the payment is unrelated to the public servant's status as a public servant;
- (2) Authorized reimbursement by the city to a public servant of actual and necessary expenses incurred by the public servant;
- (3) Fees, expenses or income, including those resulting from outside employment,

which are permitted to be earned by, or reimbursed to, a public servant in accordance with this Code and with city policies, rules or regulations;

(4) Campaign or political contributions which are made and reported by a public servant in accordance with state law;

(5) Admission or registration fee, travel expenses, entertainment, meals or refreshments a) that are furnished to a public servant by the sponsor(s) of an event, appearance or ceremony which is related to official city business in connection with such an event, appearance or ceremony and to which one (1) or more members of the public are invited, or b) that are furnished to a public servant in connection with a speaking engagement, teaching, or the provision of assistance to an organization or another governmental entity as long as the city does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshments for the same activity;

(6) Admission, regardless of value, to a charitable or civic event to which a public servant is invited in his or her official representative capacity as a public servant where any admission or other fees required of all persons attending the event are waived or paid for the public servant by a party other than the city or the public servant;

(7) An award publicly presented to a public servant by an individual or by a non-governmental entity or organization in recognition of public service, acts of heroism, or crime solving;

(8) An award, gift or other token of recognition presented to a public servant by representatives of a governmental body or political subdivision who are acting in their official capacities;

(9) A gift received from a public servant's relative or immediate family member, provided that the relative or immediate family member is not acting as a third party's intermediary or an agent in an attempt to circumvent this article;

(10) A registration fee for a seminar or other informational conference that a public servant attends in a capacity other than as a speaker, panelist, or moderator, where such registration fee that is charged for the public servant's attendance is waived or paid for the public servant by a party other than the city or the public servant;

(11) Expenses or gratuities, including but not limited to admission fees, lodging, meals or transportation, that are paid for a public servant and are related to the public servant's participation at a seminar, conference, speaking engagement or presentation in his or her official capacity as a speaker, panelist or moderator where such expenses or gratuities are waived or paid for, as the case may be, by a party other than the city or the public servant, provided that, within five (5) business days after the conclusion of the seminar, conference, speaking engagement or presentation, such public servant files with the city clerk a statement which contains the following information for each expense that is paid for or waived or for each gratuity that is provided: a) a description of the expense or of the gratuity; b) the amount of the expense or of the gratuity; (c) the date that the expense was incurred or that the gratuity was received; d) the date that the expense was

paid or waived, or that the gratuity was received; and (e) the name and address of the party who paid or waived the expense or who provided the gratuity;

(12) Meals or beverages provided to the public servant by an individual or by a non-governmental organization during a meeting related to official city business;

(13) Anything of value, regardless of the value, presented to or received by a public servant on behalf of the city where, pursuant to the applicable provisions of the 1997 Detroit City Charter and this Code, the thing of value is offered to, and accepted by, the city;

(14) A gift to a public servant that either is returned to the donor or is donated to the city or to a charitable organization within thirty (30) days of the public servant's receipt of the gift, provided that the public servant does not claim the donation as a charitable contribution for tax purposes;

(15) Complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials that are received by a public servant;

(16) Compensation paid to a public servant for a published work which did not involve the use of the city's time, equipment, facilities, supplies, staff or other resources where the payment is arranged or paid for by the publisher of the work;

(17) Compensation paid to a public servant for a published work which did involve the use of the city's time, equipment, facilities, supplies, staff or other resources where the payment of the compensation to the public servant is lawfully authorized by a representative of the city who is empowered to authorize such compensation;

(18) Receipt by the public servant of anything of value, where the payment, gift or other transfer of value is unrelated to, and does not arise from, a public servant's holding or having held a public position, and where the activity or occasion for which the payment, gift or other transfer of value given does not involve the use of the city's time, equipment, facilities, supplies, staff or other resources in any manner or degree that is not available to the general public;

(19) Hospitality that is extended to a public servant by an individual, or by an organization, for a purpose unrelated to the official business of the city, including a gift of food, beverage, or lodging; and

(20) Receipt by a public servant of a devise, bequest or inheritance.

The actual Standard of Conduct provided:

**Sec. 2-6-61. - Engaging in official duties for private gain prohibited.**

A public servant shall not engage in any act or omission in the discharge of his or her official duties for private gain.

Under the current Ordinance there is no *per se* gift, gratuity receipt prohibition but only

if the receipt was in exchange for the improper influence of some official action.

In analyzing the 2012 Charter Gift, Gratuity prohibition the Board is mindful that establishing broad categories of exemptions in an Advisory Opinion is of limited use in that most situations will depend on the particular facts presented. This Opinion will address what may be examples of conduct permitted before however no longer allowed. It is also significant that of the 20 exceptions allowed under the current Ordinance only 4 were retained and are included as exceptions to the per se prohibitions that are discussed more fully herein. The Board gives deference to the Charter Commission and the vote of the People of the City of Detroit in their establishing this stringent prohibition and expects that all public servants will do likewise.

The new provisions are fairly straightforward. They govern only the receipt of gifts from certain persons or entities (prohibited sources) - those having or seeking business with the City, those seeking official action from the City, those whose interests could be “substantially affected” by the Public Servant’s official actions, and registered lobbyists. Clearly contractors, vendors, developers, and professional services providers who are doing business with the City or seeking to do business are included in the category of entities and individuals from whom public servants should not accept things of value unless there is an exception provided within the rules.

Although the term “substantially affected” is not defined in the 2012 Detroit City Charter, the term is interpreted by the Board to require an interest in an official action of a nature or quantity significantly distinct from and greater than that of an ordinary citizen. Lobbyists who lobby “within the city government” are now “required to register with the City” under the provisions of Section 2-106.3, 2012 Detroit City Charter. Therefore these are the registered lobbyists envisioned by this provision.

The first three exceptions are as follows: The prohibitions do not apply to an “award publicly presented” for public service. “publicly presented” is not defined in the Charter, but refers to a presentation “in a public or open manner” based on the definition of “publicly” in Webster’s New World Dictionary, 3<sup>rd</sup> Edition. The prohibition also does not apply to the receipt of trade publications, magazines, calendars, and similar informational or educational material. Generally, the prohibition does not apply to gifts from relatives so long as these gifts are not intended to circumvent the provisions of the Charter.

The new provisions clearly bar meals paid for by the covered parties, even though official city business may have been discussed or reviewed during the meal. This may be the most dramatic change imposed by the 2012 Detroit City Charter. Purely private lunches, etc at which meals or other gratuities - even those of di minimis value, such as drinks - which are provided to the public servant by prohibited sources are no longer allowed by the Charter. The new gift provisions ban all gifts or things of value, as defined therein, whether of great or small value, if received from a prohibited source. The Charter makes no distinction between the fast food snack that may be offered and a gourmet meal at a five star restaurant if receipt is not permitted under one of the exceptions.

Section 2-206.4 (4) of the 2012 Detroit City Charter allows for receiving admission fees, registration fees, travel expenses, entertainment or meals under two exceptions. The first exception permits the public servant to receive these items from the sponsor of any event related to “official City business” so long as at least one member of the public is invited. The second exception outlined provides that a public servant may receive these accommodations from the sponsor of an event related to city business at which the public servant speaks, teaches or provides assistance to an organization or other governmental entity.

Likewise, it would appear that public servants may, for example, accept a meal at a block club meeting at which they are speaking. The sponsor, the block club, would furnish the food, and the public servant’s attendance would be “in connection with . . . speaking.” Assuming that the event is related to “official City business” such accommodations are permitted under the exception. The 2012 Detroit City Charter does not provide a definition of “official City business.” For elected officials, virtually any aspect of the city’s condition or governance may fall within the purview of “official city business” since their responsibilities encompass all of the city’s activities. For other public servants, the scope of “official city business” is likely be restricted to matters within the purview of their official duties, therefore advice should be sought in circumstances that may be questionable.

The Board recognizes that public servants, especially elected officials, may be invited to speak or teach at more exotic locales than local church basements. Expenses occasioned by travel can be substantial. Although the payment of such expenses by sponsors is permitted by the Charter, such expenses should be both reasonable and necessary.

The 2012 Detroit City Charter, raises new issues regarding the acceptance of gifts, gratuities, things of value or accommodations from outside entities. This Advisory Opinion is issued to address and clarify the per se prohibitions established and to give some general parameters of the exceptions. Due to the absence of specific facts submitted in the Request, when questions arise public servants are urged to exercise caution and seek guidance. Finally, in the absence of an Opinion, when in doubt the best advice is ” no thank you”.

## **V. Conclusion**

The Board of Ethics issues this general Advisory Opinion in order to clarify the new gift, gratuity prohibitions (Section 2-106.4.) of the 2012 Detroit City Charter. Public servants are prohibited from accepting gifts, gratuities or things of value from entities or individuals involved in business relationships with City government. Four limited exemption are allowed. Public Servants are encouraged to seek guidance regarding specific situations that present questions.

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