

City of Detroit Board of Ethics

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Advisory Opinion #2012-08

Issued: June 6, 2012

Advisory Opinion #2012-08: The 2012 Detroit City Charter Section 2-106.4., does not prohibit public servants (elected officials) from receiving campaign donations from fundraisers and supporters as long as the donations are made and accepted in compliance with applicable state laws regarding elections.

I. Procedural Background

Request for Advisory Opinion #2012-08 (the “Request”), is dated April 26, 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 May 22, 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. 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:

Does the 2012 Detroit City Charter prohibit elected officials from accepting fundraising offers from supporters, wherein donations will be collected ?

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. and seeks guidance

as to whether or not fund-raising events and donations are proper under the 2012 Charter.

III. Applicable Charter Section and Ordinance Provisions

The 2012 Detroit City Charter, at Section 2-105.A provides the following relevant definition:

27. **Public Servant** means the Mayor, members of City Council, City Clerk, appointive officers, any member of a board, commission or other voting body established by either branch of City government or this Charter and any appointee, employee or individual who provides services to the City within or outside of its offices or facilities pursuant to a personal services contract.

Section 2.106.4 provides as follows:

Section 2-106.2. Disclosures

1. Except as otherwise provided by applicable law, a Public Servant who exercises significant authority shall disclose:
 - d. Campaign contributions and expenditures, in accordance with applicable laws.

Section 2.106.4 provides as follows:

Section. 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.

Section 2.106.7 provides as follows:

Section. 2-106.7. Campaign Activities or Using City Property During Working Hours

Appointees, appointive officers and employees are prohibited from engaging in campaign activities using City property or engaging in such activity during working hours.

The Mayor, City Council members and City Clerk are prohibited from soliciting appointees, appointive officers and employees to work on political campaign activities using City property or during working hours.

IV. Application of the Charter to the Facts Presented

The inquiry concerns the ethical obligations of elected officials and as such, they are “public servants” as that term is defined in the 2012 Detroit City Charter. Consequently, their conduct is governed by the 2012 Charter provisions.

Specifically, their conduct is governed by the gifts and gratuities provisions, Section 2-106.4, 2012 Detroit City Charter, if it is applicable to the facts presented. The Section imposes a general prohibition on the acceptance of gifts 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 interests 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 section includes four limited exceptions to the prohibition: awards publicly presented, complimentary materials or publications, gifts from relatives, and certain expenses occasioned by appearances related to city business. Outside of these exceptions, public servants are prohibited from accepting gifts or things of value from prohibited sources.

In addition the Request raises questions regarding political fund-raising, therefore two other provisions of the 2012 Charter specifically refer to campaign related activities.

Section 2-106.2, provides that a “Public Servant who exercises significant authority shall disclose . . . campaign contributions and expenditures in accordance with applicable laws.”

Section 2-106.7 provides that elected officials, including are prohibited from soliciting appointive officers and employees to work on political campaign activities using City property during working hours.” These provisions and there requirements are self-explanatory.

The Board finds that the gifts/ gratuity prohibition is not applicable to the facts presented. This section should not be construed to prohibit properly donated and received political contributions for both constitutional and statutory reasons.

Political contributions have long been deemed a form of protected speech. “Certainly, the use of funds to support a political candidate is "speech"; independent campaign expenditures constitute `political expression `at the core of our electoral process and of the First Amendment freedoms.' " Buckley v. Valeo, 424 U. S. 1, 39 (1976) (per curiam)(quoting Williams v Rhodes, 393 U. S. 23, 32 (1968)).

In addition, campaign contributions to candidates for local elected offices are governed by the Michigan Campaign Finance Act, MCL 169.201, et seq. The act defines a candidate as a person who “files a fee, affidavit of incumbency, or nominating petition for public office” or “who receives a contribution, makes an expenditure . . . with a view to bring about the individual’s nomination or election to an elective office . . .” MCL 169.203 (1). A contribution is defined as a “payment, gift, subscription, assessment, expenditure . . . or anything of ascertainable monetary value . . . made for the purpose of influencing the nomination or election of a candidate . . .” MCL.169.204(1). Contribution also includes “the full purchase price of tickets or payment of an attendance fee for events such as dinners, luncheons, rallies, testimonials, and other fund-raising events . . .” MCL 169.204(2).

Importantly, a candidate must form a candidate committee, which must include a treasurer, within ten days after becoming a candidate. MCL 169.221 (1), (2). In addition, the candidate must file a statement of organization within ten days of forming this committee. MCL 169.224. Contributions must be directed to this committee. MCL 169.221.

The act, which is designed to “regulate political activity; regulate campaign financing; to restrict campaign contributions and expenditures; to require campaign statements and reports,.” imposes extensive restrictions and reporting requirements governing campaign contributions. MCL 169.101 et seq. It is a thorough and comprehensive law.

The Home Rule Cities Act expressly states “no provisions of any city charter shall conflict with or contravene the provisions of any general law of the state.” MCL 117.36. The provisions of the 2012 Charter should not be construed in a manner that conflicts with the provisions of the Michigan Campaign Act.

The gifts and gratuities prohibition of the Charter would govern any gift or contribution not falling within the definition of contribution as defined within the Michigan Campaign Finance Act.

The Request does not specifically indicate that the “donations” referred to are intended for campaign activities. If the donations are not for political purposes, then the receipt of such gifts would be governed by Section 2-106.4 of the 2012 Detroit City Charter and if received from a prohibited source, such gifts may be accepted only if they fall within one of the four exceptions to the rule. Regarding donations not received from a prohibited source, the public servant is free to accept them. If, however, the donations are designed for use in a political campaign, the receipt, reporting, and disbursement of such donations are governed by the Michigan Campaign Finance Act. and the public servant is permitted to accept them.

V. Conclusion

The 2012 Charter does not prohibit public servants from accepting donations and campaign contributions from supporters as long as their actions are in compliance with the Michigan Campaign Finance Act.

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