



# CITY OF ATLANTA

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## **Formal Advisory Opinion 2004-5 Travel Exception for Panel Participation**

### **Opinion Summary**

Because a fact-finding trip does not fall within the travel exception to a prohibited gratuity, city officials and employees may not accept expense reimbursements from a prohibited source to travel to another city to review a best-practices program.

### **Question Presented**

May a downtown organization that is a prohibited source pay the travel expenses for city officials and employees to review another city's street and park vending program for possible adoption in the City of Atlanta?

### **Facts**

The city established the Vending Technical Advisory Group in 2003 to review vending on public property and propose legislative changes to the code of ordinances. A city council member serves as chairman of the committee, which is composed of vendors, city employees, and representatives of Central Atlanta Progress and other interested organizations.

Central Atlanta Progress is a private, non-profit corporation that works on "innovative programs and public-private partnerships focused on the economic development, the physical environment and the marketing of Downtown Atlanta." Among its initiatives are the Downtown Atlanta Improvement District, Westside and Eastside Tax Allocation Districts, Atlanta Community Court, Livable Centers Initiative Plan, and Multi-Modal Passenger Terminal. CAP employs three individuals who are registered with the state as lobbyists at the city and county level.

As part of the vending group's evaluation of the best practices in the country, CAP offered to sponsor a fact-finding trip to the City of Chicago and pay the airfare for city council members and employees who oversee vending. The ethics officer rendered an informal advisory opinion that members of the committee could be reimbursed by CAP for their airfare because the trip was in connection with their participation on a civic panel, but that the city would have to pay the travel expenses for council members and employees who did not serve on the vending

committee. Subsequently, the ethics officer asked the Board of Ethics to address whether city officials and employees could accept offers for similar fact-finding trips in the future and, if so, under what circumstances.

## **Discussion**

The Code of Ethics bans gratuities, which it defines as “anything of value given by or received from a prohibited source.” See Atlanta, Ga. Code §§ 2-801, 2-817. A prohibited source is any person, business, or entity that seeks official action from the city, does or seeks to do business with the city, represents a client who seeks official action or city business, has interests that may be substantially affected by an individual’s performance of official duties, or is a registered lobbyist. See § 2-801 [m]. There are eleven exclusions to the meaning of the term “gratuity.”

Central Atlanta Progress’s offer to provide airfare to city officials and employees is a gratuity. It is a gift of travel from a prohibited source since CAP seeks official action from the city and is a registered lobbyist under state law. Therefore, city officials and employees may accept the offer only if the travel expenses meet one of the exceptions to the ban on gratuities.

The only express exception for travel allows reimbursements from non-city sources of reasonable hosting expenses, including travel, meals, and lodging, in connection with four specific situations. Officials and employees may accept travel expense reimbursements related to “speaking engagements, participation on professional or civic panels, teaching, or attendance at conferences in an official capacity.” See § 2-801 [g] (5). Within 30 days of receipt, the official or employee must report the expense reimbursements on a disclosure form filed with the municipal clerk and ethics officer. Among other information, the recipient must disclose the “date, location, and subject matter of [the] conference, speaking engagement or event.” See § 2-815.

The board concludes that a fact-finding trip to review another city’s program does not fall within one of the four types of events for which individual officials and employees may accept a gift of travel from a prohibited source. The trip does not involve speaking, participating on a panel, teaching, or attending a conference. The first three activities typically relate to a single official or employee making a formal presentation or rendering services at a meeting, the type of engagement that might generate the offer of an honorarium. See § 2-820 (d) – (f). It is a narrow exception that permits the host organization or sponsoring group to pay the travel expenses for the speaker, panelist, or teacher to appear at the event. The fourth situation is a broader exception that permits officials and employees to accept payment for travel expenses in order to attend a conference, convention, seminar, or similar event without giving a speech or presentation. In all four situations, the official or employee must disclose the travel expenses that were paid or reimbursed.

To understand when a gift of travel and related benefits may be accepted, the board presents the following hypothetical examples for officials and employees to consider.

### Examples of permissible expense reimbursements

#### *Illustration 1: Speaking*

The Mayor gives one of the keynote addresses at the annual meeting of a national advocacy group to end homelessness. She may accept an offer from a national airline to provide her round-trip airfare to her speaking engagement.

*Illustration 2: Participating on a professional panel*

An assistant general manager in the Department of Aviation is asked to participate in a panel discussion on concrete pavements as part of a federal research program. He may accept expense reimbursements for airfare, lodging, and a rental car from a national trade association representing concrete pavement contractors.

*Illustration 3: Participating on a civic panel*

A city council member is asked to serve on an awards panel of the National League of Cities. Because she is participating on a civic panel, she may accept travel expense reimbursements from the award's co-sponsor, a major city contractor, to attend a two-day meeting in Washington to judge the nominations.

*Illustration 4: Attending a conference in an official capacity*

A director in the Department of Watershed Management plans to attend a professional conference where he will accept an award on behalf of the city. While at the conference, he also plans to visit the accompanying trade show and examine new equipment that a contractor is proposing for a city project. He may accept the equipment manufacturer's offer to pay his airfare and conference registration fee since he is attending the conference in his official capacity.

*Illustration 5: Reimbursements from an entity that is not a prohibited source*

A local arts foundation offers to pay the travel expenses for city officials and employees to make a fact-finding trip to review art districts in other cities, but otherwise has no dealings with the city. It does not seek official action from the city, do business with the city, represent any person who seeks official action or business from the city, and does not have interests that may be substantially affected by the performance of the officials' or employees' official duties. Since the foundation is not a prohibited source, the trip is not a gratuity banned under the code.

Examples of impermissible expense reimbursements

*Illustration 6:* A project manager may not accept a prospective contractor's offer to pay travel, lodging, and meal expenses related to an on-site inspection of the company's plant and a nearby installation for the purpose of evaluating new equipment that will be included in a project bid proposal.

*Illustration 7:* A bureau director may not accept a commercial airline's offer of roundtrip airfare to attend a meeting with a sister city to discuss plans for a jointly sponsored music festival in Atlanta.

*Illustration 8:* A member of the pension fund board may not accept an invitation for an all-expenses paid trip to attend an investment firm's Annual Due Diligence Day at the company's national headquarters.

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