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Formal Advisory Opinion 2004-8 Holiday Gifts

Opinion Summary

The City's Standards of Conduct prohibit city officials or employees from accepting a personal gift from a prohibited source. When city officials or employees receive a prohibited gift or thing of value, they should return the gift, pay for it, or donate it to charity without taking any tax deduction. If the gift is a perishable item with a nominal market value, the official or employee may accept the gift on behalf of the agency and share it with public visitors and office employees.

Question Presented

When may city officials and employees accept holiday gifts under the Code of Ethics?

Facts

A department head has asked the Board of Ethics to reconsider its policy on holiday gifts. Adopted in November 2003, the policy prohibits city officials and employees from accepting any gift from a prohibited source, regardless of the gift's value, and directs the recipient to either return the gift or, in case of perishable items, donate them to charity. The department head requests that the Board consider a policy that allows employees to accept gifts, especially food and other perishable items, on behalf of their department so long as the gift is shared communally within the office.

Discussion

The Code of Ethics prohibits city officials and employees from receiving gratuities, defined as personal gifts or things of value from prohibited sources. Atlanta, Ga. Code § 2-817. There are several exceptions to this ban, including greeting cards, public receptions, and awards for public service; in addition, individuals may accept nominal gifts from representatives of other governments and gifts offered to the city. See § 2-801. Unlike an earlier version of the code, there is no exception for gifts below a certain dollar amount.

Several officials and employees have complained about the absolute ban on gratuities as imposing an impractical, unwanted, and unfair burden on them, especially during the holiday season. To comply with the Code of Ethics, they must return the item to the donor, pay the item's fair market value, or give any perishable item to a charity. Each option takes time or money. The "gift" becomes particularly troublesome when the donor is anonymous, the cost of returning the gift exceeds its value, or the gift will quickly spoil.

A review of other city and state standards shows that most codes permit the acceptance of gifts of food and refreshments under a variety of rules and exceptions. In general, the gifts must be below a certain threshold, ranging from \$25 to \$350, and gifts over a certain amount must be reported on a disclosure statement; some jurisdictions adopt more stringent rules for persons who have discretionary authority or for donors who have a business relationship with the agency.

Based on the practical problems created by an absolute ban, the policies adopted in other jurisdictions, and the exception in Atlanta's code for gifts accepted on behalf of the city, the Board adopts the following policy on holiday gifts:

The Code of Ethics prohibits city employees and officials from accepting personal gifts from prohibited sources, including persons doing business with the city or seeking official action from the city. If a city employee or official receives a gift or thing of value that is prohibited under the city's ethical standards, the recipient should return the gift to the giver, pay the market value of the gift, or donate the gift to charity without taking any tax deduction. However, if the gift is a perishable item, such as food, and has a nominal market value, the official or employee may accept the gift on behalf of the agency and share it with public visitors and office employees.

Adopted November 18, 2004

City of Atlanta Board of Ethics

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