



**City of Atlanta Board of Ethics  
Formal Advisory Opinion 2011-1  
No Direct Solicitations of Prohibited Sources**

**Opinion Summary**

City employees should not solicit donations for city programs from companies or individuals when they know or should know that the potential donor is regulated by, doing business with, or seeking business from the employee or the employee's agency or has a specific matter pending before the agency. Employees in other departments may solicit donations from prohibited sources as part of a broad public appeal that may include companies that do business with the City or seek official action from it.

**Question Presented**

Under what circumstances may city employees solicit donations from companies doing business with or seeking official action from their city office, department, or agency?

**Facts**

The Ethics Office last year reviewed whether a city-hosted dinner to honor a retiring department head was a violation of the Code of Ethics. In that instance, the employees who planned the event asked department contractors, vendors, and concessionaires to serve as sponsors and finance the event. The report concluded that there was no evidence that any city employee accepted a donation in exchange for any official action, but the employees' actions in seeking financial support from companies that did business with their department created an appearance of impropriety. As a result, the Ethics Officer recommended that the Board of Ethics reconsider its guidelines and directly address whether city employees may solicit donations from companies doing business with their department or seeking official action from it. To assist in deciding this issue, the Ethics Officer presents examples of existing or past practices for the Board to consider.

1. The Department of Human Resources wishes to seek donations of tickets from a professional sports team to give to police assessors who are in town assisting with police promotional examinations. The 36 assessors are employees from police departments throughout the country who have volunteered their professional services. DHR asks a member of the Mayor's staff to make the official request.
2. A department hosting an employee health fair asks the Department of Information Technology to contact the company providing city cell phone service and solicit a cell phone to give away as a prize in a drawing at an employee health fair.

3. A department that is holding an employee appreciation lunch contacts the department's vendors and contractors by email and phone seeking donations to finance the luncheon and for door prizes to be given away to persons attending the event.
4. The Department of Aviation hosts the Airport's Annual Customer Service Employee Recognition Program to honor airport employees who provide exemplary customer service. Aviation has established a customer service focus group composed of stakeholders in customer service, including concessionaires, airlines, parking companies, and the cleaning service. They choose who receives the customer service awards each month by secret ballot, and the general manager selects the annual winner from the monthly winners. Only 12 (9%) of the 133 recipients and nominees honored in 2010 were employees in the Department of Aviation. To ensure a fair process, the city employees in the customer service office are ineligible for the awards, and the department pays for any prizes that city employees win. Aviation's customer service manager solicits sponsorships and donations from the "Hartsfield-Jackson Family," whose employees are eligible for the award, and the funds received pay for the awards luncheon and the prizes.

### **Discussion**

The Ethics Code prohibits solicitations that are calculated to influence official action.

The Code of Ethics prohibits city officials and employees from soliciting or accepting anything of value that is "calculated to influence a vote, decision, or the exercise of official authority in any manner involving the City." See Atlanta, Ga. Code § 2-818. In a series of opinions, the Board of Ethics has considered the circumstances under which city employees may solicit and accept donations, gifts, prizes, and sponsorships in support of city programs and charitable organizations.

In the first opinion, the Board concluded that a department head may not personally seek charitable contributions on behalf of a private, non-profit organization that is unaffiliated with the City from firms that are under contract with the department or would like to do business with it. See FAO 2004-6 (no personal solicitation of a department contractor for a charitable or professional organization). Next, the Board determined that city employees could not solicit donations on behalf of their agency for gifts to be awarded to employees from any individual or entity that is a prohibited source or targeted solely because it is doing business with the City. See FAO 2005-2 (soliciting for employee awards). Applying this rule, the opinion concluded that the Department of Corrections could solicit donations from area businesses within the city limits to give away as door prizes at its annual luncheon during National Corrections Week whereas the employee who made recommendations about employee benefits could not solicit door prizes from the city's health care providers. Finally, the Board concluded that city officials and employees may solicit gifts and donations for city programs and projects that benefit citizens from any source as part of a broad public appeal, provided that the fund-raising is for an official city purpose and does not target prohibited sources. See FAO 2005-6 (soliciting for city programs that benefit citizens).

To eliminate coercion and special treatment, solicitations should not target prohibited sources.

Based on these opinions, the following guidelines were established for solicitations made by city officials and employees:

- The official or employee must solicit in an official capacity
- The solicitation must be made for a city purpose, project, or program
- The fund-raising campaign should make a broad public appeal for support
- The solicitation should not target prohibited sources
- The gift must be given to the City of Atlanta or one of its agencies
- The gift must be publicly disclosed on an online gift report form
- The gift cannot be calculated to influence any vote, decision, or official action

Despite these guidelines, there is anecdotal evidence that employees are still doing targeted solicitations. In practice, employees who raise funds from the private sector for a city program are most likely to solicit from persons with whom they work in their city job, and the companies most likely to respond to any fundraising appeal are the ones doing business with the City or seeking some action from it. While members of the Board understand the need for community involvement and assistance, especially during times of shrinking public resources, it also believes that some solicitations by their nature are so inherently coercive that they should be prohibited in all instances. The goal is to avoid fundraising activities and donations that create an expectation of special access or preferential treatment or raise a question about the employee's impartiality.

In adopting its guidelines, the Board has followed other jurisdictions that have placed limits on solicitations and fundraising activities by officials and employees. These restrictions ban solicitations and fundraising from companies bidding on a city project, regulated by a department, or doing business with a department. See FAO 2005-2. The City of Los Angeles bans city employees from soliciting any gift from restricted sources, which it defines as lobbyists, and has proposed extending the ban to any contractors, bidders, and persons with matters pending before the employee's agency. See Los Angeles City Ethics Commission, Policy Bulletin (Sept. 20, 2010). Similarly, New York City prohibits direct, targeted solicitations when the official knows or should know the prospective donor has a specific matter currently pending before the official or agency and the official has authority to affect the outcome of the matter. See New York Conflict of Interest Board, Advisory Opinion 2003-04 at <http://search.citylaw.org/isysquery/irl6792/4/doc>. The City of Honolulu prohibits employees with enforcement powers, such as regulators, police, and prosecutors, from soliciting any gifts. See Memorandum on Guidelines on Gifts to City Agencies from Honolulu Ethics Commission (March 20, 2006).

Targeted solicitations are direct, personal appeals to entities who are prohibited sources.

Because employees have continued to seek donations from companies doing business with the City, it is important to clarify what is meant by a broad public appeal and a targeted solicitation. A classic example of a broad public appeal is a mass mailing that makes a general request for support and gives the recipient the opportunity to choose to donate without any further interaction. It is usually directed to the company president, marketing director, or charitable division, rather than the individual who manages the city contract. Other examples of public appeals are speeches, press conferences, newsletters, press releases, public notices, advertisements, and media interviews that are directed to the general public or to a large group of potential donors. See NY Conflict Board Advisory Opinion 2003-4. In contrast, targeted solicitations "consist of one-on-one phone calls, meetings, [emails], and personal letters directed to potential donors." Id.

City employees should not solicit from persons that they or their department regulate, inspect, manage, or work with regularly.

Applying these definitions, city employees should not ask for donations from an individual or entity that they regulate, inspect, manage, work with on a regular basis, or that has interests that are substantially affected by how the employees perform their official duties. The Board believes this rule should apply to other employees in the same division, bureau, or department. Therefore, no employee should solicit donations in an official capacity for city programs from companies or individuals when they know or should know that the potential donor is regulated by, doing business with, or seeking business from the employee or the employee's agency or has a specific matter pending before the agency. If, in response to a public appeal, a prohibited source seeks more information, the city agency needs to ensure that the employee who responds is one who normally exercises no authority and has no dealings with the potential donor.

At this time, the Board does not think the rule against targeted solicitations needs to extend to other departments within the City. In other words, it would be inappropriate for aviation to seek airline tickets from the city's airlines, but the same prohibition does not extend to broad public appeals by other departments that do not contract, regulate, or negotiate with the airlines. Since other departments do not have any authority that affects the airlines, there is less opportunity for preferential treatment or abuse. Based on these guidelines, the Board considers the examples presented earlier.

1. The Department of Human Resources may ask professional sports teams for tickets to allow police officers from other jurisdictions to attend a game while volunteering their services to assist with police promotional examinations. The department employee or commissioner needs to make the request rather than employees in the Executive Offices since the Mayor's staff is involved in negotiating contracts and making decisions related to the sports franchises.
2. The department hosting an employee health fair may ask telephone companies to give a cell phone for a drawing at an employee health fair, but the DIT employee may not. The request must be made as part of a broad public appeal that asks for donations from all companies in the cell phone industry with local offices, rather than singling out only the companies with a city contract .
3. Employees in the department holding an employee appreciation lunch should not make one-on-one phone calls, meetings, emails, and personal letters directed to the department's vendors and contractors or companies regulated by the department. They may appeal to the general public for support and solicit donations from companies that are not prohibited sources, such as restaurants and grocery stores.
4. While the general rule is that Aviation employees should not solicit funds and gifts from airport contractors and concessionaires, the Board believes that the Airport's Annual Customer Service Employee Recognition Program is permissible due to safeguards that the department has instituted. First, the city-sponsored program recognizes and honors airport employees who deliver exceptional customer service, not just city employees. Second, the program's coordinator, the Department of Aviation's Customer Service Office, does not select, monitor, or regulate the businesses that sponsor and support the program through their donations and committee work and customer service employees are not eligible for any award. Third, the City is soliciting donations from companies at the airport whose employees can receive the award. Fourth, the City

reserves the solicited prizes to give to airport employees who do not work for the City of Atlanta; it purchases any prize that is awarded to a city employee who is recognized. To ensure openness and consistency with disclosure rules, the office needs to file a Gift to the City Report each year disclosing the donations received in support of this city project.

### **Conclusion**

City employees should not target prohibited sources as part of any fundraising effort or solicitation for donations or gifts. This rule means city employees should not solicit donations for city programs from companies or individuals when they know or should know that the potential donor is regulated by, doing business with, or seeking business from the employee or the employee's agency or has a specific matter pending before the agency. Other departments are not prohibited from seeking donations from companies that do business with the City or seek official action from it as part of a broad appeal made to the public.

Adopted March 17, 2011

#### **City of Atlanta Board of Ethics**

Caroline Johnson Tanner, Chair

MaryAnne F. Gaunt

Charles B. Crawford, Jr.

Cathy R. Daniels

Shukura Ingram