



CITY OF ATLANTA

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Formal Advisory Opinion 2013-1 Tickets Provision of New Stadium Project Memorandum of Understanding

Opinion Summary

The City's Standards of Conduct (Atlanta Ethics Code) prohibits the City or an entity acting as its agent from requiring that passes, tickets or gratuities be paid to officials or employees in connection with the execution of or performance under a contract or a lease. *Section 2-816 (a)*. Therefore, the subject contract language violates the Atlanta Code of Ethics.

Question Presented

Whether the following language contained in the Tri-Party Memorandum of Understanding for a Succession Facility to the Georgia Dome violates the Atlanta Code of Ethics:

Section 11.3 Seating Invest Atlanta will receive premium seating and rights to certain events at the NSP (New Stadium Project) for use by Invest Atlanta consistent with its statutory economic development mission on terms to be agreed to with StadCo. [Atlanta Falcon Stadium Company LLC] ?

Facts

During the March 14, 2013 meeting of the Atlanta City Council's Committee on Council, the Ethics Office received an oral inquiry about a provision in the Tri-Party Memorandum of Understanding for a Successor Facility to the Georgia Dome executed by the Atlanta Development Authority d/b/a Invest Atlanta, Atlanta Falcon Stadium Company LLC and Atlanta Falcons Football Club, LLC and the Geo. L. Smith II Georgia World Congress Center Authority. Members of the Committee on Council inquired whether the Seating provision of the MOU violated the Atlanta Standards of Conduct ("Ethics Code"). The question was referred to the Board of Ethics for its consideration. The Board held its regularly scheduled meeting on March 21, 2013 and began deliberations about this issue. On April 18, 2013 the Board conducted a Special Called meeting during which it considered presentations from Invest Atlanta, Common Cause and interested citizens regarding the Formal Advisory Opinion to be issued about this matter. During the Board's May 18, 2013 meeting, the Board decided to continue discussions about the proposed Formal Advisory Opinion during its Summer Retreat, which was held June

8, 2013. At the June 8, 2013, the Ethics Officer was directed to present a proposed draft of a Formal Advisory Opinion regarding this issue to the September 2013 meeting of the Board.

Discussion

Based on the plain language of Section 2-816 of the Ethics Code, the Board of Ethics concludes that Section 11.3 of the Tri-Party Memorandum of Understanding violates the Code. However, the inclusion of a Severability clause in Section 15.22 allows all other conditions and provisions of this document to remain in effect.

Prior to 1997, members of the Atlanta City Council received free tickets to sports and entertainment events, often as a part of a city contract. In 1997, the City Council amended Section 2-816 of the Atlanta City Code. The pertinent provision of the Code reads as follows:

- (a) ***No contract or lease with the city may require passes, tickets or gratuities to be given to officials or employees or permit reduced fees to be paid by officials or employees. The contracting party shall not provide gratuities or prerequisites to any official or employee in connection with execution of or performance under the contract or lease.***

Atlanta, Ga. Code of Ordinances Section 2-816 (a)

When the Code was amended in April of 2002, this provision of the Code remained intact and the city continued to be prohibited from requiring the provision of tickets to sports or entertainment events as a part of city contracts. On September 23, 2004 the Board of Ethics issued Formal Advisory Opinion 2004-7 regarding "Gifts of Tickets to Athletic and Entertainment Events," which addressed six scenarios regarding the provision of tickets to city employees or city officials. In sum, this Opinion concluded that city officials or employees were prohibited from accepting a gift of free or reduced tickets to an entertainment or athletic event that is offered due to their position with the city, unless the official or employee is performing an official duty at the event.

Since the issuance of FAO 2004-7, several informal advisory opinions have been issued by the Ethics Office related to the provision of tickets for entertainment or sports events with a distinction being made regarding a "gift" of tickets being given to city departments as opposed to individuals or specifically designated employees or officials. As stated in Ethics Advisory 2009-017, "The Code of Ordinances allows gifts to the City, and the Code of Ethics allows agencies to accept gifts on behalf of their department so long as the gift is disclosed."

Members of the public as well as counsel for Invest Atlanta raised several issues regarding the provision of the Memorandum of Understanding which is the subject of this Opinion including:

1. Whether the Atlanta Code of Ethics is applicable to the Atlanta Development Authority d.b.a. Invest Atlanta?
2. Whether the exception to the tickets provision which speaks to "performing an official duty at the event" would apply to the contract provision which is the subject of this Opinion?
3. Whether the Board of Ethics should clarify the distinction that allows tickets to be given to a city department but not to city elected officials?

First, it is the position of the Ethics Board that the Atlanta Ethics Code applies to the Atlanta Development Authority d.b.a. Invest Atlanta. The Atlanta Development Authority is a local government authority which is an instrumentality (an agent) of the City of Atlanta. While there are other city-related local government authorities which may not be subject to the Atlanta Code of Ethics, the Board has concluded that Invest Atlanta is distinguishable from other such entities because of its role as the official economic development arm for the City of Atlanta. Additionally, by the terms of the statute that created the Atlanta Development Authority, the Mayor of the City of Atlanta is the chairperson of the board of Invest Atlanta. Also, during the Ethics Board's deliberations on the "tickets provision of the NSP agreement, Council Member Michael Bond stated that it was the intent of the City Council that the Atlanta Development Authority be governed by the Atlanta Code of Ethics. The fact that this entity has previously sought a Formal Advisory Opinion from the Ethics Board on a matter also supports the conclusion that Invest Atlanta is governed by the Ethics Code. Specifically, Formal Advisory Opinion 2003-2 addressed the issue of "Conflicts of interest involving the Atlanta Development Authority President." The opinion does not specifically state that the Code applies to the entity; however, its application can be inferred from the contents of the Opinion. Consequently, the Board concludes that Section 2-816 (a) applies to Invest Atlanta.

Second, the Board concludes that it is not necessary to reach a conclusion on the issue of whether the exception for "performing an official duty at the event" applies to this situation since the plain language of the Tri-Party Memorandum of Agreement violates the Atlanta Code of Ethics. Therefore, the Board is not addressing the issue of whether "economic development" activities generally or specifically constitute "performing an official duty at an event." Neither the Ethics Code nor the Tri Party MOU defines the term "economic development activities," nor do guidelines about these activities exist. At this time, the Board of Ethics guidance on the "official duty exception" states that the "exception is a narrow one limited to a specific duty at a specific event and is not intended to give an official or employee an on-going right of free entry to a series of similar events based on continuing responsibilities to monitor or examine an situation."

Third, although it is not necessary to address the distinction between a department of city employees receiving free events tickets and city officials receiving tickets for purposes of this Formal Advisory Opinion, it is the Board's intention to review its prior opinions in this regard and to deliberate on this issue with the goal of providing clear guidance on this issue.

Approved

November 1, 2013

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