



**City of Atlanta Board of Ethics
Formal Advisory Opinion 2008-3
Gifts of Travel to the City from Prohibited Sources**

Opinion Summary

The City may accept gifts of travel from prohibited sources when the gift is donated to the City or one of its agencies, the travel is done in an official capacity on official city business, the travel is approved in advance, the expenses are reasonable, the agency receiving the gift discloses it on an online Gift to the City Report, and officials and employees disclose any travel financed under the travel gift program on an online Expense Reimbursement Report.

Question Presented

May the City accept gifts of travel from prohibited sources under the exception for gifts to the City and, if so, under what conditions?

Discussion

Ban on Gratuities and Exceptions for Travel and Gifts to the City

The Code of Ethics prohibits personal gifts to individual officials or employees from prohibited sources. No official or employee may accept a gratuity, and no person or entity may give a gratuity, which is defined as anything of value from a prohibited source. Atlanta, Ga., Code§ 2-801, 2-817. There are eleven exceptions to the ban on gratuities, including one for travel and one for gifts to the City.

[T]he term “gratuity” within the meaning of this division does not include any of the following:

.....

(5) Reimbursements from non-city sources of reasonable hosting expenses, including travel, meals, and lodging, provided to an official or employee in connection with speaking engagements, participation on professional or civic panels, teaching, or attendance at conferences in an official capacity; provided, however, that receipt of such reimbursements is subject to the reporting requirement governing disclosure of expense reimbursements found at section 2-815;

.....

(8) Anything of value when the thing of value is offered to the city, is accepted on behalf of the city, and is to remain the property of the city provided that the recipient complies with the provisions governing solicitation found at section 2-818

See § 2-801.

The travel exception is narrowly written. It permits an official or employee to accept expense reimbursements from a prohibited source in four limited circumstances: a speaking engagement, teaching, participating on a panel, or attending a conference. If officials and employees wish to travel on other official city business, the City pays for the trip. The gift exception expressly includes only gifts of property that are added to the city's inventory. The Charter, however, is more broadly written and gives the City the right to "accept or refuse gifts, donations, bequests, or grants from any source for any purpose related to the powers and duties of the city and the general welfare of its citizens, on such terms and conditions as the donor or grantor may impose." Atlanta, Ga. Charter § 1-102.

Because the Ethics Code's exception for travel is so restrictive, it does not permit officials and employees to accept travel paid by prohibited sources in some situations where the benefit to the City outweighs the personal benefit to the individual. For example, the travel exception does not include travel by officials and employees to examine model programs or facilities in other cities, attend a company-sponsored training program to learn about specific equipment the City has purchased, participate in an economic development trip that lobbies companies to move their headquarters to Atlanta, or chamber-sponsored trips to foreign companies seeking better trade and business relations. While the better practice is for the City to finance all travel by its officials and employees on city-related business, the reality is that funds are not always available for every legitimate trip that will benefit the City.

Gifts of Travel to the City Give the City More Control

On occasion, prohibited sources offer to pay for officials or employees to go on city-related travel that does not fall within the travel exception, but there is no existing mechanism for accepting the offer. There are at least three ways to remedy this situation under the Code of Ethics: amend the code to permit other types of business travel under the travel exception; require city officials and employees to seek an exemption from the Board on a case-by-case basis for travel for purposes other than the four listed in the code; or interpret the Gift to the City exception as permitting gifts of travel in certain situations where the City approves, controls, and benefits from the travel.

Each solution has its own disadvantages. Under the present exception for travel reimbursements, the donor generally chooses which city official or employee receives the gift, and there is an ability to manipulate the process by creating a speaking engagement or panel presentation to justify the trip. Under the second option, there would be an inherent delay in the Board reviewing and responding to each request due to its meeting schedule, and the exemption procedure involves the Board in the administration of travel by city employees. Although there is also the opportunity for inappropriate travel under the third option, the Board believes that it provides for better control, transparency, and accountability.

Research shows that other local and federal agencies permit acceptance of gifts of travel under their exception for gifts to agencies. As explained by the California Fair Political

Practices Commission, the rationale behind their regulation “is simple: where travel expenses and accommodations are of the type normally paid for by the agency, the true benefit of the gift is afforded to the agency and not to the official. Any benefit the official receives would be analogous to reimbursement for expense or per diem from his or her agency.” Travel Guide for California Officials and Candidates, <http://www.fppc.ca.gov/index.html>.

This approach removes the reality or appearance of a gift being given to an individual official or employee as a quid pro quo for favorable official action. Specifically, this policy would require the gift to be donated to the City instead of the individual officeholder. As a result, the process removes the temptation of private arrangements between the prohibited source and the city official or employee. The City, rather than the donor, controls the process: receiving the funds, approving the trip, and designating who goes on the trip. Finally, there would be full documentation of the gifts for city-related travel through the filing by departments of gift reports disclosing the donations and the filing by individuals of expense reimbursements for all travel funded by the gifts.

Because the Board believes that there are some travel reimbursements that are gifts to the City rather than gifts to the individual, it interprets the city gift exception as permitting the City and its agencies to accept gifts and donations from prohibited sources of reasonable expenses for travel related to official city business. This opinion is limited solely to donations of travel or travel-related expenses on official city business where the travel benefits the City, not any individual, and the gifts and travel are disclosed on online forms as provided in the Code of Ethics and previous board opinions.

Gifts Must be to the City, Reasonable, and Disclosed

Specifically, the Board interprets the exception for gifts to the City to include gifts of travel that meet the following conditions:

- the gift of travel must be to the City or one of its agencies
- the donor should not designate any particular official or employee as the recipient or user
- the City or its agencies must disclose the gift on an online Gift to the City Report
- the gift must be used solely for travel in an official capacity on official city business
- the travel expenses should be reasonable and cover only customary and ordinary expenses allowed under the city’s travel policy, such as air fare, meals, and lodging
- officials and employees whose travel is funded in whole or in part by the travel gift program should receive advance approval and file an Expense Reimbursement Report after the trip

There are three key provisions. First, the gifts must be made to the City and not as a personal gift to any individual. Second, the gift must be reasonable. The intent is to prevent lavish gifts that may be interpreted as an inducement or reward for favorable action. A reasonable cost is one that complies with the city’s travel policy on allowable expenses or is comparable to the cost of commercial flights. Third, the policy provides for dual disclosure: the agency that receives the gift must disclose it and the individual that travels must disclose how the gift is used. The failure of a city agency, official, or employee to comply with these disclosure requirements will render the person a delinquent filer subject to administrative sanctions under the Code of Ethics.

The Board recommends that the City establish written policies to operate the travel gift program that are consistent with the city's existing travel policy on city-financed travel. In determining whether to accept a specific gift or approve a proposed trip, the following factors would be relevant to consider:

- the purpose of the donation
- whether the donor seeks to earmark its gift for a specific beneficiary or program
- whether the donor has a matter pending before the City
- whether the donor would gain a direct or indirect financial benefit from actions taken or decisions made on the trip
- whether the individuals making the trip have any decision-making authority over any identified donors or matters pending before the individual or its agency

Finally, whether city-related travel is permitted under the travel exception or the city gift exception to the ban on gratuities, it is always appropriate and prudent to consider whether a gift of travel from a prohibited source is in the best interest of the City or creates the appearance of impropriety.

Approved March 20, 2008

City of Atlanta Board of Ethics

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