



## **City of Atlanta Board of Ethics Formal Advisory Opinion 2008-1 Prohibited Sources**

### **Opinion Summary**

Whether a particular individual, business, or entity is a prohibited source depends on the person or entity, its relationship to the City, and the action it seeks from the City. A prohibited source includes a person or company that is doing business with the City, is currently seeking the city's business, is actively promoting or opposing city legislation, has a matter pending before a city agency, or is registered as a lobbyist with the State Ethics Commission.

### **Question Presented**

Who is a prohibited source under the Code of Ethics?

### **Facts**

The Code of Ethics prohibits city officials and employees from accepting gifts, tickets, and honoraria from a prohibited source. There are 11 exemptions that permit a city official or employee to receive a thing of value given by a prohibited source. The most common exemptions permit the acceptance of salaries or fees paid for services rendered, campaign contributions, reasonable meals at a public event, expense reimbursements in connection with speaking engagements or attending a conference, awards given in recognition of public service, nominal gifts from other governmental bodies, and gifts to the City. The recipient must file reports under city or state law disclosing salaries and other sources of income, campaign contributions, expense reimbursements, and gifts to the City.

Because there has been uncertainty about the rules for accepting and disclosing travel expense reimbursements, Mayor Shirley Franklin has requested that the Board address whether specific organizations are a "prohibited source" as that term is defined in the Code of Ethics. She has provided a list of organizations that includes a city agency, other governments, public and private universities, and local, regional, state, national, and international non-profit organizations. In connection with these organizations, Mayor Franklin says that she may serve as an officer or on their board of directors, speak at one of their programs, attend a conference as their delegate, or serve as a delegation leader on their behalf.

The Code of Ethics defines a "prohibited source" as "any person, business or entity that an official or employee knows or should know:

- (1) Is seeking official action from the city; or
- (2) Is seeking to do or does business with the city; or
- (3) Represents a client who meets the definitions in subparagraphs (1) or (2) above; or

- (4) Has interests that may be substantially affected by performance or non-performance of the official's or employee's official duties; or
- (5) Is a registered lobbyist in accordance with state law.”

Atlanta, Ga., Code § 2-801.

### **Discussion**

It is difficult to state categorically whether a particular individual, business, or entity is a prohibited source. The answer usually depends on the specific facts of the situation, especially the entity's purpose, its relationship to the City, and the action it seeks.

The Board of Ethics has addressed the issue of prohibited sources only as part of a broader discussion concerning when city officials and employees may accept travel expense reimbursements or solicit donations for charities and city prizes. In previous opinions, the Board concluded that Central Atlanta Progress is a prohibited source because it seeks official action from the City and is a registered local lobbyist under state law, and law firms and corporations under contract with city departments are prohibited sources because they do business with the City. See FAO 2004-5 (a fact-finding trip does not fall within exception for expense reimbursements); 2004-6 (department heads should not solicit charitable donations for non-profit organizations from department contractors).

### Five Types of Prohibited Sources

Focusing separately on the five types of prohibited sources, the Board provides the following examples and explanation for each category.

#### *(1) Is seeking official action from the City*

Examples:

- Developer files for a rezoning of its property
- Corporation seeks a street closing
- Neighborhood civic association opposes rezoning or street closing
- Property owner applies for a special exception or variance
- Public university seeks permits for skywalks over city streets
- Corporation lobbies for bond funds to be used for traffic and crosswalk signals on street where its headquarters are located

Comments: The Code of Ethics does not set any time limit on how long an entity is a prohibited source. Under the provision's plain language, the person, business, or entity seeking official action is a prohibited source during the time the City knows or has reason to believe that the entity plans to seek favorable action from the City and while the legislation or matter is actually pending before the City, its employees, or its agencies.

Because the purpose of the code is to prohibit any acts that would tend to impair the independence or objectivity of officials or employees in performing their official functions, the Board adopts the rule that an entity remains a prohibited source for at least one year after the legislation is enacted or the matter is resolved. Whether a particular entity remains a prohibited source after one year depends on a variety of factors: the type of official action requested, its

size and significance, the entity's past history in seeking official action, the likelihood of similar requests in the near future, and the length of time that has elapsed.

*(2) Is seeking to do or does business with the City*

Examples:

- Any city contractor currently under contract or agreement with the City
- Any city vendor currently selling goods or services to the City
- Any person or business submitting a bid in response to a request for proposal or request for services
- Any individual or non-city entity seeking or receiving grant funds from the City or its agencies

Comments: The Board adopts the definition of "business" as meaning "commercial, industrial, or professional dealings; the buying and selling of commodities or services." See The American Heritage Dictionary of the English Language at 180 (1970). This type of prohibited source would include individuals, groups, and non-profit organizations that receive city grant funds to provide goods and services in the community. In contrast, a person, corporation, or association is not seeking city business or "doing business" with the City when it files a routine application for water service, pays a water bill, obtains a business license, or conducts other transactions involving ministerial actions by city employees.

Like the "official action" category, city contractors, vendors, and grant recipients remain prohibited sources throughout their bid, contract, and contract extensions and for at least one year after the contract or grant ends. Factors to consider in determining whether a former contractor or vendor is a prohibited source after one year include the nature and frequency of its past contracts with the City, the length of time that has elapsed since the end of the contract or grant, and the likelihood that the company will bid on city business in the future.

*(3) Represents a client who meets the definitions in subparagraphs (1) or (2) above*

Examples:

- Lawyer represents developer before Zoning Review Board
- Permit expediter represents property owner seeking subdivision application before planning bureau
- Brother represents sister in hearing before License Review Board on possible revocation of liquor license
- Union represents employees in personnel action before the Civil Service Board

Comments: While the term "represents a client" suggests that a person is being paid to appear on behalf of a person, business, or entity, this category would also apply to a family member, friend, neighbor, or minister who appears without pay on behalf of a person seeking official action or doing business with the City. The key is not whether the representative is paid for his or her services, but whether the client is seeking official action or city business or doing business with the City.

*(4) Has interests that may be substantially affected by performance or non-performance of the official's or employee's official duties*

Examples:

- A driver who runs a stop light is a prohibited source towards the police officer who stops the driver
- A resident who complains about the city's installation of a sidewalk abutting her property is a prohibited source towards the public works employees involved in the installation
- A person applying for a city job is a prohibited source towards the employees involved in the hiring process and decision

Comments: Unlike the other types of prohibited sources, this category depends on the specific transaction between the interested person, business, or entity and the city official or employee. The "interests" must be something more than a citizen's general interest in a project, cause, or matter, and typically will involve a financial interest or benefit. Besides looking at the interests of the outside person or entity, it is important to examine the role of the city official or employee and his or her duties and authority.

*(5) Is a registered lobbyist in accordance with state law*

Examples:

- Atlanta Downtown Improvement District
- Atlanta Housing Authority
- Atlanta Regional Commission
- Beltline Partnership
- Central Atlanta Progress
- Georgia Municipal Association
- Metro Atlanta Chamber of Commerce
- United Way of Atlanta

Comments: The Board interprets a "registered lobbyist" to mean any individual or group, except the City of Atlanta, that is registered as a lobbyist with the State Ethics Commission. It does not matter whether the organization is registered as a "state" or "local" lobbyist. The state commission maintains its registry of lobbyists at its website, and the listed examples are based on a search of its registry. See <http://ethics.georgia.gov/>.

The City cannot be a prohibited source of itself. Although the Atlanta Development Authority, like the City, is registered as a lobbyist at the state level, it is not a prohibited source because it is part of the City. The authority falls under the definition of a city agency, defined as "any board, bureau, body, commission, committee, department, or office of the city."

#### Avoiding the Appearance of Impropriety

The practical significance of this opinion is that city officials and employees cannot solicit or accept a gift or thing of value from an individual, business, or entity that is seeking favorable action from the officials or employees or their agencies. The code attempts to prevent acts that would tend to impair the objectivity of the officials or employees in performing their official duties

or would create “the justifiable impression in the public” of a conflict with the official duties of the official or employee.

Because the purpose of the code is to promote the integrity of government, the Board encourages city officials and employees to always consider whether the acceptance of any gift – whatever the source - would create the appearance of impropriety. If the gift is lavish or inappropriate or the individual is in doubt about its propriety, the safest course of action is to decline the gift.

### **Conclusion**

A prohibited source includes persons, businesses, or entities that have a contract or grant with the City to provide or receive goods and services, are currently seeking the city’s business, are actively promoting or opposing city legislation, have a matter pending for decision before the City or one of its agencies, or are registered as a lobbyist with the State Ethics Commission. In determining the status of a particular person or entity, it is important to consider the entity’s purpose, its relationship with the City, and the action it seeks; in some situations, the role and authority of city officials or employees may also be relevant. City officials and employees who remain uncertain about a particular entity may seek advice from the Ethics Office.

Adopted February 21, 2008

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

John Lewis, Jr., Chair

Cathy R. Daniels

MaryAnne Gaunt

Susan Housen