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## THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

The Honorable Covette Rooney, Chair  
Cassandra Burckhalter, Member  
Curtis Eugene, Member  
Anne Magner, Esq., Member  
Sharon Theodore-Lewis, Esq., Member

### BOARD ADVISORY OPINION

February 16, 2016

Re: Case Number 16-0152

Dear [REDACTED]:

On January 25, 2016 the Board of Ethics received an inquiry<sup>1</sup> regarding the ability of two employees of the Office of Human Resources Management ("OHRM") to accept meals from someone contracting with Prince George's County, Maryland ("County"). The Contractor provided numerous services to certain agencies within Prince George's County government, including OHRM. The meals in question occurred when the Contractor sponsored an event on January 14, 2016, in Tysons Corner, Virginia. The event was a compliance update breakfast<sup>2</sup>, where people could obtain updated and cutting edge information regarding their particular field of employment. This event focused particularly on compliance with the Affordable Healthcare Act ("ACA").

The two employees of OHRM that attended the compliance breakfast were the Manager [REDACTED] and the [REDACTED] Personnel Analyst. In addition to numerous other responsibilities, the manager participates on the Proposal Analysis Group ("PAG") for the County that is responsible for the selection of vendors for OHRM. In this instance, the manager actually participated in the PAG in 2015 that recently selected the Contractor for consulting services to OHRM. The Contractor will have a contract with OHRM and the County for approximately four years from the date of the selection by the PAG. The [REDACTED] Personnel Analyst's ("Analyst") responsibilities do not include participating on a PAG and therefore, the individual did not participate in the selection of the Contractor.

<sup>1</sup>The identity of the requestor of an Ethics opinion remains confidential and cannot be disclosed without the consent of the requestor.

<sup>2</sup> The cost of participating in the event, including the cost of the meal was \$37.00.

The Board of Ethics has determined that the County's conflict of interest laws are implicated in the receipt of a meal by one of the employees, and that activity is prohibited under the Prince George's County Ethics Code. Therefore, the Contractor should be reimbursed for the cost of the Manager's meal at the event. The Board of Ethics has determined that the conflict of interests laws are not implicated for the Analyst and therefore, the cost of the Analyst's meal does not have to be reimbursed to the Contractor.

**Applicability of Section 2-293 of the Prince George's County Code of Ethics**

The threshold questions are whether (1) the employees' receipt of gifts, which were meals provided by the Contractor is a conflict of interest and (2) the acceptance of the meals gives the appearance of impaired impartiality contained within Section 2-293 of the Prince George's County Code of Ethics.

Section 2-293 provides in pertinent part:

(d) Solicitation or Acceptance of Gifts.

- (1) An official or employee may not solicit any gift.
- (2) .....
- (3) No official or employee may knowingly accept any gift, directly or indirectly, from any person that he knows or has reason to know:
  - (A).....
  - (B) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duty; or
  - (C) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or
  - (D) ....
- (4) Unless a gift of any of the following would tend to impair the impartiality and the independence of judgment of the official or employee receiving it or, if of significant value, would give the appearance of doing so, or, if of significant value, the recipient official or employee believes, or has reason to believe, that it is designed to do so, paragraph (3) does not apply to:
  - (A) Meals and beverages consumed in the presence of the donor or sponsoring entity;
  - (B)....
  - (C) Unsolicited gifts of nominal value that do not exceed \$20.00 in cost or trivial items of informational value;
  - (D) .....

County employees and officials are prohibited from accepting gifts from individuals or entities "doing business with" the County. "Doing business with" is defined as "[h]aving or negotiating a contract that involves the commitment (either in a single or combination of transactions) of Five Thousand Dollars (\$5,000.00) or more of County or County-controlled funds; or...[b]eing regulated by or otherwise under the authority of the County..." *Prince George's County Code of Ethics* §2-291(a) (4). A gift is

defined as "the transfer of anything of economic value regardless of the form without adequate and lawful consideration." *Prince George's County Code of Ethics* §2-291(a) (6).

Here, we have a Contractor with the County, specifically OHRM, that sponsors a compliance breakfast regarding the ACA, and two County employees attend. One of the employees, the manager, participates on the PAG for the selection of vendors for OHRM. The employees attended the event at no cost; they received a meal and training through panel discussions with subject matter experts. *See Contractor Self Certification Form*. Attending the event and the meal could be seen as a gift as defined in the Ethics Code. Also, the Contractor has financial interests that may be substantially and materially affected and is engaged in an activity regulated or controlled by the official's or employees governmental unit. *Prince George's County Code of Ethics* §2-293.

However, the Ethics Code provides an exception for certain classifications of gifts. Section 2-293 states, [u]nless a gift of any of the following would tend to impair the impartiality and the independence of judgment of the official or employee receiving it or, if of significant value, would give the appearance of doing so, or, if of significant value, the recipient official or employee believes, or has reason to believe, that it is designed to do so, paragraph (3) does not apply to...Meals and beverages consumed in the presence of the donor or sponsoring entity...Unsolicited gifts of nominal value that do not exceed \$20.00 in cost or trivial items of informational value..."

#### **Applicability of Section 2-290 of the Prince George's County Code of Ethics**

Section 2-290 provides in pertinent part:

- a. The Prince George's County Council, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.
- b. It is evident that this confidence and trust is eroded when the conduct of the County's business is subject to improper influence and even the appearance of improper influence.
- c. For the purpose of guarding against improper influence, the County Council enacts this Code of Ethics to require County elected officials, officials, employees, and individuals appointed to boards and commissions to disclose their financial affairs and to set minimum standards for their conduct of local business.
- d. It is the intention of the Council that this Division, except its provisions for criminal sanctions, be liberally construed to accomplish this purpose.

Both employees technically meet the elements for the articulated exception in the Ethics Code. However, the stated intent and policy of the Code of Ethics is to ensure that that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained. The Code is to address the appearance of improper influence which can erode public confidence and trust in County government and is to be liberally construed to accomplish this purpose. *Prince George's County Code of Ethics*, § 2-290. Here, the manager participated in the PAG and then attended the event. Moreover, the manager can

influence the contracting process prospectively. The breakfast meeting was not only for current clients but also for prospective clients, which made it more of a marketing opportunity than strictly an informational session. This could give the appearance of impartiality.

### Conclusion

The acceptance of the manager's<sup>3</sup> meal from the Contractor gives the appearance of impartiality under the Code of Ethics and therefore, the County should reimburse the Contractor for the cost of the meal. In this instance, Contractor's purpose of the meeting was to inform clients and prospects of tax and compliance issues, which could give the appearance of impairing the employee's impartiality. Avoiding the appearance of improper influence is an important purpose of the Code of Ethics. The manager's attendance and acceptance of the meal should not be seen as creating a level of impartiality, especially since the manager was a participant in the PAG that chose the vendor. The meal and the event could be seen as a means to gain favor with one of the decision makers for awarding contracts.

Additionally, the manager's role in selecting contractors gives that position authority to substantially and materially affect a potential contractor's financial interests. Consequently, the perception of improper influence would call into question the manager's impartiality and independent judgment should the Contractor participate in the next procurement.

The analyst does not have to reimburse the costs of the breakfast. The analyst responsibilities do not include participating on a PAG, which is a key factor that goes into the analysis of impartiality. Accordingly, analysis of the issue of impairing the employee's impartiality is not relevant here. Therefore, the analyst does not have to reimburse the Contractor for the cost of the meal at the ACA compliance event.

For the Board of Ethics:



Covette Rooney, Chair

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<sup>3</sup> The █████ Personnel Analyst attendance at the event falls within the exception articulated within the Code of Ethics. Therefore, the employee does not need to reimburse the monies for attending the event.