PRINCE GEORGE'S COUNTY MARYLAND

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THE PRINCE GEORGE'S COUNTY GOVERNMENT
BOARD OF ETHICS

BOARD ADVISORY OPINION

June 26, 2017

Case #AO-17-0151

The Board of Ethics ("the Board") was notified that the Office of Ethics and Accountability (OEA) received a written exception filed by a County official to an annual Lobbying Report filed naming the official as a recipient of a gift.

The lobbyist was engaged as a registered lobbyist on behalf of a company during the reporting period of January 1, 2016 thru December 31, 2016. The lobbyist submitted to the OEA the required annual Lobbying Report on behalf of the company on January 30, 2017. In the report submitted, it included an expenditure for special events at a cost of \$544.20. The report also included the names of two (2) officials who had benefited from the reported expenditure.

The OEA sent written notices to the officials named in your Lobbying Report. Upon receipt of the notice, one of the officials filed a written exception to the report. The official also sent a letter to the lobbyist, which was forwarded to the OEA, stating they were unaware the event reported was a gift and enclosed a check for the value of the gift attributed to them, \$181.40. Subsequently, the lobbyist filed a new Lobbying Report removing only that official's name and they also sent a letter to the official advising of the newly filed Lobbying Report and returned the check to the official.

For the reasons discussed herein, the reported event is a gift as defined by the County Ethics Code (the "Code") that must be reported both the registered lobbyist and by the receiving County officials. Alternatively, the lobbyist's receipt and acceptance of the payment remitted by the official would negate the gift and the lobbyist would not be required to report the gift <u>as to that</u> official; nor would the offical be required to report the event as a gift on their financial disclosure statement.

Applicable Law

Sec. 2-291. – Definitions.

.... (6) **Gift** means the transfer of anything of economic value regardless of the form without adequate and lawful consideration. "Gift" does not include the solicitation, acceptance, receipt, or regulation of political campaign contributions ...

(10) **Official** means an elected official, an employee of the County, or a person appointed to or employed by the County or any County agency, board, commission, or similar entity whether or not paid in whole or in part with County funds and whether or not compensated.

Sec. 2-293. - Prohibited conduct and interests.

.... (d) Solicitation or Acceptance of Gifts.

... (3) No official or employee may knowingly accept any gift, directly or indirectly, from any person that he knows or has reason to know:

... (D) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.

(4) Unless a gift of any of the following would tend to impair the impartiality 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:

... (E) Gifts of tickets or free admission extended to an elected official to attend charitable, cultural, or political events, if the purpose of this gift or admission is a courtesy or ceremony extended to the office;

Sec. 2-294. - Financial Disclosure.

.... (e) All statements filed pursuant to this Section shall be on a form developed by the Board with the assistance of the Office of Ethics and Accountability, and shall disclose the following interests, if known:

... (4) Gifts. A schedule of each gift in excess of Twenty Dollars ($20.00) in value or a series of gifts totaling One Hundred Dollars ($100.00) or more from any one person received at any time during the year for which the statement is filed by the person making the statement, or by any other person at the direction of the person making the statement, from, or on behalf of, directly or indirectly, any person who does business with the County; provided, however, that neither gifts received from the spouse, children, or parents of the person making the statement need be disclosed. This schedule, as to each such gift, shall include:

(A) The nature and value of the gift; and
(B) The identity of the

Sec. 2-295. - Lobbying Disclosure.

.... (g) Each lobbyist shall file with the Board one report covering the period beginning January 1 through December 31 filed by January 31 of the following year. If the lobbyist is not an individual, an authorized officer or agent of the entity shall sign the form. A separate activity report shall be filed for each person on whose behalf he acts. The report shall include:

... (2) Total expenditures on lobbying activities in each of the following categories:
(A) Total compensation paid to the lobbyist not including expenses reported under subparagraphs (B) through (I), below. Total compensation includes salaries, compensation, or reimbursed expenses for the staff of the lobbyist;

... (F) Meals and beverages for Prince George's County officials or employees or their spouses or dependent children;
(G) Special events, including parties, dinners, athletic events, entertainment, and other functions to which officials or employees are invited;
(H) Reasonable expenses for food, lodging, and scheduled entertainment of officials or employees for a meeting which is given in return for participation in a panel or speaking engagement at the meeting;
(I) Other gifts to or for officials or employees or their spouses or dependent children; and
(J) Other expenses.

(3) Except for gifts reported in subparagraphs (2)(G) and (H), above, the name of each official or employee or his spouse or dependent child who has benefited from gifts from the lobbyist with a cumulative value of Seventy-five Dollars ($75.00), or more, during the period covered by the report whether or not given in connection with the lobbyist's lobbying activities. When the Seventy-five Dollars ($75.00) cumulative value is met or exceeded, all succeeding gifts shall also be itemized by date, beneficiary, amount or value, and nature of the gift. Expenses reported in subparagraphs (2)(G) and (H), above, shall be itemized as to date, location, and expense of the event, but allocation to individual officials or employees need not be listed.

(h) (1) If any report filed under Subsection (g) contains the name of an official or employee or his spouse or dependent child as required under paragraph (3), thereof, the Board shall notify the official or employee within thirty (30) days. The Board shall keep the report confidential for sixty (60) days following the receipt of it.

(2) Following notification of the inclusion of his name or that of his spouse or dependent child, in a report filed by a lobbyist, an official or employee shall have thirty (30) days to file a written exception to the inclusion of his name or that of his spouse or dependent child.

Analysis

A gift is defined by Section 2-291(a)(6) of the Code, as the transfer of anything of economic value regardless of the form without adequate and lawful consideration. Section 2-293(d)(4)(A) of the Code provides an exception to the general gift prohibition and allows for the acceptance of gifts, of tickets or free admission extended to an elected official to attend charitable, cultural, or political events, if the purpose of this gift or admission is a courtesy or ceremony extended to the office.

The gift at issue in this matter was an event hosted by the lobbyist's company on July 27, 2016. The event was a hospitality reception at the Democratic National Convention. An invitation was extended to all members of the County Council. Based on the information provided, the gift is exempted under the Ethics Code. However, <u>the exemption does not remove the gift from its status as a gift</u>. The exemptions listed in Section 2-293(d)(4) only allows for an official or employee to accept what would otherwise be a prohibited gift. Therefore, an official or employee who receives such a gift, that is valued in excess of Twenty Dollars ($20.00) or a series of gifts totaling One Hundred Dollars ($100.00) or more, <u>must</u> report the gift on their financial disclosure statement if they are a required to file one. The Lobbying Report valued this gift at a total of $544.20, of which $181.40 was attributed to the objecting official. The value of the gift, makes it one which must ordinarily be reported by the receiving official. Further, pursuant to Section 2-295(g)(2)(G), the lobbyist is also required to disclose the gift as it was a special event to which officials or employees were invited. If the Lobbying Report names the official or employee, as did occur in this matter, pursuant to Section 2-295(h) of the Code, the official is provided notice of the disclosure and given an opportunity to file an exception.

The official filed an exception to the report stating the event was an exempted gift under the Code and therefore should be excluded from disclosure. The official also sent a check to the lobbyist in the amount of the gift. Upon receipt of the written exception and the official's payment, the lobbyist filed a new Lobbying Report, removing the name of the objecting official and returned their payment. The actions by the lobbyist and the official do not do away with the required disclosures under the Code. As explained above, the event was a gift as defined by the Ethics Code. As such, it is required to be reported by the lobbyist, as well as the receiving official. A gift is the transfer of anything of economic value regardless of form, without adequate and lawful consideration. The official's payment in the full amount of the value of the gift, would be considered adequate and lawful consideration. Therefore, the lobbyist's acceptance of such payment would have negated its status as a gift and thus, removed the requirement that the official disclose it on their financial disclosure statement and the lobbyist would have been allowed to properly amend their Lobbying Report to remove the official's name. However, upon receipt of the payment, the lobbyist erroneously returned it.

It is the belief of this Board that the intentions of both parties were to both follow the requirements of the Code, as well as to take the necessary steps to negate the gift. In order to achieve the desired result, the payment sent by the official to the lobbyist for the value of the gift, should be returned to lobbyist and they must then accept it. Upon both parties taking the above actions, the amended report will be accepted and the official will not be required to report the event on their financial disclosure statement.

Covette Rooney

Covette Rooney
Board Chair