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THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

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

BOARD ADVISORY OPINION

September 27, 2017

Case #AO-17-0226

On June 5, 2017, the Board of Ethics (the "Board") received a request for a formal opinion from a Prince George's County official regarding the filing of the required 2016 Financial Disclosure Statement (FDS). At issue was whether or not the official was required to disclose their attendance at an event hosted by a registered lobbyist.

Background

On January 30, 2017, a registered Lobbyist filed the required annual Lobbying Report. The report listed an expenditure for a special event valued at \$544.20. The event was a hospitality reception at the Democratic National Convention, held on July 27, 2016. The official was listed on the Lobbying Report as an official who had benefited from the reported expenditure. The Lobbying Report listed the official and a guest as attendees and assigned a value of \$342.80. On February 17, 2017, the Office of Ethics and Accountability (OEA) sent a written notice to the official advising of the disclosure as required by Section 2-295(h) of the Prince George's County Code of Ethics (Code of Ethics). The notice stated the official had thirty (30) days to file a written exception to the inclusion of your name.

On May 30, 2017, a representative from the Lobbyist's employer, sent the official an email notifying the official of the prior written opinion they had received from the Board regarding the event. The email also stated that based upon the advice provided by the Board, the official's attendance at the event was considered a gift and should be reported on their financial disclosure.¹ The representative also stated that if the official wished, they could remit the value of the gift and not report it on their FDS.

On June 5, 2017, the official filed their 2016 Financial Disclosure Statement and disclosed in Schedule Summary D, that they had received a gift described at a value of \$181.40. However, simultaneously the official filed a written exception with OEA disputing the disclosure requirement as to this gift asserting they should not be required to disclose the event. The official averred that because they did not attend the event as a Council Member per se but as a delegate for the State of Maryland Democratic Party, disclosure should not be required. The official also disagreed with the

¹ On May 5, 2017, the Board in a related matter issued a formal advisory opinion to the Lobbyist explaining the event in question was a gift as defined in the Code of Ethics and did not qualify as an exception, and as such would need to be reported on the FDS of any County official who received such gift. The opinion further advised that the gift could be negated if the recipient of the gift reimbursed Pepco for the value of the gift.

value of gift which had initially been reported by the Lobbyist as \$362.80. Sometime between July 10 and July 12, 2017, the official contacted the Lobbyist and disputed bringing a guest to the event and averred the amount should be \$181.40, to reflect just only their attendance. Subsequently, on July 17, 2017, the Lobbyist filed an amended Lobbying Report and reported the amount of \$181.40.

For the reasons discussed herein, the reported event is a gift as defined by the Code of Ethics that must be reported by the official. Alternatively, payment to the Lobbyist for the value of the gift would negate the gift and disclosure would not be required.

Applicable Law

Sec. 2-291. – Definitions.

.... (4) **Doing business with** means:

(A) Having 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) Being regulated by or otherwise under the authority of the County; or

(C) Being registered as a lobbyist in accordance with Section 2-295 of this Division.

(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 person from whom, or on behalf of whom, directly or indirectly, the gift was received.

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

Section 2-294(a)(1) of the Code of Ethics states that members of the County Council are required to file a Financial Disclosure Statement each year during that person's term in office. Any gifts received valued in excess of twenty dollars (\$20.00) or a series of gifts totaling one hundred dollars (\$100.00) or more must be reported stating the nature and value of the gift and the identity of the person from whom received.

A gift is defined by Section 2-291(a)(6) of the Code of Ethics, 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 of Ethics 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 Prince George's County Council in addition to several other guests. Based on the information provided, the acceptance of the gift is exempted from prohibition under the Code of Ethics. However, this exemption does not remove the gift from its status as a gift. 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, must report the gift. The Lobbying Report submitted on July 17, 2017, valued this gift at \$181.40. The value of the gift, makes it one which must be reported. A review of the invitation sent on behalf of the Lobbyist to guests, included a disclaimer which stated "this event is not an official event of the Democratic National Convention and is not an endorsement of any candidate for political office. The cost of your attendance at this event may be reportable by you or the [company]"

The official contends that the reporting requirement should not apply in this situation as they did not attend the event as representative of the Prince George's County Council. Instead, they averred that they attended as a delegate to the State of Maryland Democratic Party. The Lobbyist's guest list of those invited to the event, denotes the official's affiliation with Prince George's County Council. There were other attendees invited who were also delegates and the guest list denotes such affiliation. Given those facts combined with the designation on the Lobbying Report which indicated it was given to the official as a representative of Prince George's County Council, this Board believes that is the appropriate category to ascribe this gift. The Board does not question that the official attended the event as a delegate, the prevailing factor however is the intention of the lobbyist who gave the gift and the official capacity in which the gift was extended to the official.

As explained above, the event was a gift as defined by the Code of Ethics. As such, it is required to be reported. Any gifts received by a County official from or on behalf of, directly or indirectly, any person who does business with the County must report said gift. A registered lobbyist is considered doing business with the County. A payment to the Lobbyist in the full amount of the

gift's value would be considered adequate and lawful consideration. Such payment would negate its status as a gift and thus, remove the requirement that it be disclosed on the official's Financial Disclosure Statement. Upon taking the above actions, the Lobbyist could amend the Lobbying Report to remove the official's name. However, if the official chooses not to negate the gift as described, it must be reported on their 2016 Financial Disclosure Statement.

Sincerely,

/s/

Covette Rooney
Board Chair