



City of Scranton

Ethics Board

340 N. Washington Avenue
Scranton, PA 18503

Board Members: Andrew Heller, Carol Migliorino,
Bruce Reddock, Mary Jo Sheridan

Solicitor: John M. Hart, III

April 16, 2020
Via Electronic Mail

Joseph G. Price, Esq.
Assistant City Solicitor
Scranton Law Department
City Hall
340 N. Washington Avenue
Scranton, PA 18503
jprice@scrantonpa.gov

RE: Advisory Opinion 2020-1

Dear Atty. Price:

Enclosed is a signed copy of Advisory Opinion 2020-1.

Be safe,


John M. Hart, III, Esq.

Enclosure

CITY OF SCRANTON – BOARD OF ETHICS
ADVISORY OPINION 2020-1

I. INTRODUCTION

The Board of Ethics (“Board”) received a letter dated April 13, 2020 from Joseph G. Price, Esquire, requesting an Advisory Opinion as to: (1) whether or not a temporary exemption may be made to enable the Mayor and City employees to assist in fundraising for non-profit entities which provide direct services – especially food - to Scranton residents in need, and (2) whether or not during a declared State of Emergency, City Employees, specifically First Responders and Department of Public Works Employees, would be in violation of the City’s Code of Ethics if they were to accept food donations from the public for their personal consumption.

II. AUTHORITY

Section 8 of the City of Scranton Code of Ethics provides that the Board may render advisory opinions concerning matters of governmental ethics, shall consider questions as to ethical conduct, conflicts of interest and application of ethical standards set forth in the Code of Ethics. The Board hereby decides, by the publication of this Advisory Opinion, that the request for advisory opinion is proper and that the request for an advisory opinion on the matters set forth within Attorney Price’s letter is within the scope of Section 8 of the Code of Ethics.

III. FACTS

Per the April 13, 2020, letter from Attorney Price, currently an Assistant City Solicitor for Mayor Paige Cagnetti, the Mayor’s office and City employees are desirous of offering assistance to entities that are providing direct services to Scranton residents during the current unprecedented times of the COVID-19 pandemic. For example, on Tuesday, April 7, 2020, the Friends of the Poor held a drive-through food giveaway that saw miles-long lines throughout the seven hours of the event. The need for food and other life-sustaining goods and services will only increase as the economic impact of the current pandemic worsens. This proposed fundraising assistance by the Mayor’s office and City employees would entail promoting direct donations to these entities and aiding in the collections of donations. To be clear, these donations would not be made to the public official or employee in their personal or professional capacity but would be made to the entities conducting the fundraiser and only using the public official or employee as courier or liaison on the entity.

Additionally, the Mayor’s office has received numerous inquiries from citizens and business owners who have expressed an interest in donating food and beverages to the City’s dedicated First Responders and Department of Public Works employees who are continuing to work during this pandemic to ensure that our City remains safe and clean during this declared state of emergency.

IV. ADVISORY OPINION

The Mayor’s office as well as all Employees of the City of Scranton are to be commended for requesting this advisory opinion from the Board of Ethics, especially during these troublesome and unprecedented times.

A. City Officials and City Employees' Aiding Separate Entity's Fundraisers

The first question this Board addresses is whether or not the Mayor's Office and other City Employees may provide assistance to entities in receiving donations from private individuals and/or businesses by promoting these fundraisers and receiving direct donations on behalf of these entities solely for the purpose of forwarding all proceeds to the entities themselves. The Board is appreciative of the cautious approach by the Mayor's office in handling these potential ethical dilemmas.

Section 3, Subsection (Q) provides a definition for "gifts", however, we need not delve into the legal definition of a gift for this question as the focus is not to be placed on what constitutes a gift or solicitation but rather on who the actual recipient of the gift or donation would be.

It is the City officials and City employees' intentions to promote and aid fundraisers created and operated by separate governmental entities. The City officials and/or employees will be aiding in their official capacity not as recipients of the gifts/donations but as courier(s) or liaison(s) of the separate entities. The donations are not being made to the City officials/employees for their own benefit. The donations are being made to the separate entities by way of City officials or City Employees.

Likewise, any promotion of these food drives or the like by City officials and/or City employees would not constitute solicitation as the promotion would not be made for [their] own benefit.

Accordingly, the aforementioned collections of donations and fundraising efforts by the Mayor's Office and City Employees to aid separate entities (Friends of the Poor, etc.) would not be considered "receipt of a gift" nor a "solicitation of a gift" pursuant and subject to the Scranton Code of Ethics

B. Donations of Food/Beverages to City's First Responders
and Department of Public Works Employees

The second question this Board addresses is whether or not City Employees, specifically First Responders and Department of Public Works Employees, would be in violation to the City's Code of Ethics if they were to accept food donations from the public.

The Board is of the opinion that Section 6.B. entitled "Prohibited Behaviors" applies to this situation. The section reads, in part, "Every City official and employee is a public servant. Public servants must treat members of the public fairly and equitably. Receipt of money, favors, gifts, gratuities, invitations, food, drink, loans, promises or other benefits (collectively and subsequently referred to in this section as "gifts") offered to a public servant because of that person's position, may create the appearance of a conflict interest, if not an actual conflict of interest. Similarly, solicitation of gifts by a public servant in that person's capacity as a public servant, for that person's own benefit, likely establishes a conflict of interest."

Section 3, Subsection (Q) provides a definition for "gifts" as follows:

1. The term "Gift" for the purpose so this Code shall mean: any gratuity, benefit, or any other thing of value, which is accepted by, paid for, or given to a City Employee or City Official, or by another Individual or Organization on behalf of a City Employee or City Official, either directly or indirectly, without consideration of equal or greater value.

This definition may include, by way of illustration and without limitation to, the following: ... (iii) food or beverage, other than that consumed at a single sitting or event[.]

It should be noted that Section 6 (B)(2) enumerates 10 exceptions to this general rule. Specifically, subsection (B)(2)(d) states:

Gifts of food (cookies, candy, etc.) received shall be made available for consumption on the premises to the public and employees when such offer may not be reasonably seen as seeking to influence the public servants or to induce more favorable treatment toward the donor.

While a donation of food to a First Responder of Department of Public Works employee may be acceptable under this exception, the execution of the donation in full compliance of the Ethics Code would be impossible in light of the current state of emergency of the city as the donation of food/drink would need to be made available to the public as well as the employee(s).

During this declared state of emergency, the City must be cognizant of promoting public safety first and foremost. In order to be in full compliance with the Code of Ethics, the donation/gift of food made to the City Employees would have to be made available to the public as well. An attempt to comply with the Code would be impracticable at this time as we are all asked to stay home and avoid any public places.

The Board of Ethics is not suggesting or implying that any City employee has solicited any gift or accepted any gift based on any understanding that his or her official actions or judgments would be influenced. To the contrary, there is no evidence to suggest or imply this, and the Board is extremely sympathetic and understanding as to why the public is expressing immense willingness to provide donations of food and beverages to its courageous public servants during these trying times. However, full compliance of the code would be impracticable at this time, and therefore, the Code of Ethics would cause such a presumption to be created which is why the acceptance of such donations by city employees is to be avoided in light of the COVID-19 pandemic.

V. CONCLUSION

For the reasons set forth herein, it is the opinion of the Board of Ethics that the Mayor's Office and City Employees would not be prohibited by the provisions of the Code of Ethics from providing fundraising assistance to separate entities by acting as liaisons/couriers of the donations. Furthermore, it is the opinion of the Board of Ethics that the First Responders and Department of Public Works employees are to avoid accepting donations of food and beverages from the public at this time as it would be impracticable to do so in full compliance of the Code of Ethics by making the donations available to the public as well in light of the COVID-19 pandemic.

CITY OF SCRANTON, BOARD OF ETHICS

By: _____

John M. Hart, III, Solicitor
City of Scranton Ethics Board

Adopted: April 16, 2020