ADVISORY OPINION 2007-12

Effect of Public Act No. 07-1 on "Gifts to the State" from Restricted Donors

INTRODUCTION

The Citizen's Ethics Advisory Board ("Board") issues this advisory opinion at the request of an assistant general counsel who was presented with various hypothetical scenarios involving the recently amended General Statutes § 1-79 (e) (5), a gift exception in the Code of Ethics for Public Officials ("Code").

RELEVANT FACTS

The first of those hypothetical scenarios involves a restricted donor that has created a program for teacher professional development. Under that program, it would like to invite teachers from the state's technical high schools to attend, at no expense to the state, weeklong math or science workshops. The technical high schools would select which teachers attend the workshops.

In the second hypothetical scenario, a state agency is statutorily required to author a report to be submitted to the General Assembly. The agency head would like to assemble a panel that would consist of volunteers from the private sector, some of whom may be restricted donors, to provide services (e.g., legal services) to assist the agency in developing the legislative report.

The third hypothetical scenario involves a company located in New York City that is under contract with a state agency. Employees of the state agency must meet with the company's employees to discuss the contract's implementation and tour the company's facilities to monitor its activities. The company, a restricted donor by virtue of its state contract, has offered to pay or reimburse the state agency for the necessary travel costs associated with getting the appropriate state employees to the meeting/facility tour in New York City.

In the final hypothetical scenario, a restricted donor has offered to make a nonearmarked cash contribution to a state agency. The cash contribution would be deposited into one of the agency's accounts and used for multiple purposes, such as purchasing equipment and supplies and paying for its employees to travel to and attend meetings and conferences. In regard to meetings and conferences, the state agency would implement a procedure under which an individual attending a conference or meeting would not be permitted to authorize the distribution of account funds. Rather, the department head or an individual of superior rank would determine whether the individual's attendance at the conference would serve a legitimate agency interest and whether the funds should be used for a more pressing agency need.

QUESTIONS

Based on those hypothetical scenarios, the Board must answer the following questions:

1. Whether a state technical high school may accept a "gift to the state" from a restricted donor in the form of weeklong math or science workshops for its teachers.

2. Whether a state agency may accept volunteer services from restricted donors in order to complete a statutorily required legislative report.

3. Whether a state agency may accept a contractor's payment or reimbursement of travel expenses in order for agency employees to attend a meeting in New York City to discuss the implementation of a state contract and tour the contractor's facilities.

4. Whether a state agency may accept a nonearmarked cash contribution from a restricted donor that would be deposited into an agency account and used for, among other things, paying for its employees to travel to and attend meetings and conferences.

ANALYSIS

I

The first question is whether a state technical high school may accept a "gift to the state" from a restricted donor in the form of weeklong math or science workshops for its teachers.

Under the Code, a public official or state employee may not knowingly accept any gift from a restricted donor, which includes registered lobbyists and any persons the official or employee knows or has reason to know are (1) doing business with or seeking to do business with his or her department or agency, (2) engaged in activities directly regulated by such department or agency, or (3) prequalified under General Statutes § 4a-100.[1]

The term "gift" includes "anything of value, which is directly and personally received, unless consideration of equal or greater value is given in return."[2] It does not include what are commonly known as "gifts to the state."[3]

The "gift to the state" provision previously exempted the following from the definition of the term "gift":

[1]See General Statutes § 1-84 (j) and (m).
[2]General Statutes § 1-79 (e).
[3]See General Statutes § 1-79 (e) (5).

> Goods or services (A) which are provided to the state (i) for use on state property, or (ii) to support an event or the participation by a public official or state employee at an event, and (B) which facilitate state action or functions. . . .[4]

The former State Ethics Commission ("former Commission") read that exception—particularly its language "to support . . . the participation by a public official or state employee at an event"—to permit a state agency to accept, among other things, payment of certain expenses (e.g., travel expenses) by a restricted donor when one if its employees attended a job-related educational conference.[5]

Then came the addition to the Code of a new provision, codified at General Statutes § 1-84 (q),[6] which referenced the "gift to the state" exception. We were asked to issue an advisory opinion regarding § 1-84 (q) and did so in Advisory Opinion No. 2006-3, concluding that it prohibited the acceptance of all "gifts to the state" from restricted donors, "even if they [did] not incidentally benefit a particular state official or employee." Thus, when it came to restricted donors, a state agency could no longer accept "gifts to the state" that incidentally benefited a particular public official or state employee (e.g., payment of expenses in connection with a job-related educational conference) and those that did not (e.g., a fax machine).

The legislature then eliminated § 1-84 (q)[7] and amended the "gift to the state" exception, which now reads, in relevant part, as follows (with the bracketed language being deleted and the underlined language added):

> Goods or services (A) which are provided to **[the state]** <u>a state agency or quasi-public agency</u> (i) for use on state <u>or quasi-public agency</u> property, or (ii) **[to]** <u>that</u> support an event, **[or the participation by a public official or state employee at an event,]** and (B) which facilitate state or <u>quasi-public agency</u> action or functions. . . .[8]

By deleting the phrase "or the participation by a public official or state employee at an event," the legislature eliminated the language under which it was permissible for a state agency to accept payment of expenses by a restricted donor in connection with a public official's or state employee's attendance at a job-related educational conference. And based on Senator Gayle Slossberg's comments, this appears to be precisely what the legislature set out to do: "[T]he legislation aimed to prevent a regulated donor from

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[4]General Statutes (Rev. to 2007) § 1-79 (e) (5).

[5] See Advisory Opinion No. 97-14.

[6] Section 1-84 (q) provided as follows: "No public official or state employee shall knowingly accept, directly or indirectly, any goods or services provided to the state under subdivision (5) of subsection (e) of section 1-79 by a person prohibited from making gifts to public officials and state employees under this section or section 1-97."

[7]By eliminating § 1-84 (q), the legislature in effect overruled Advisory Opinion No. 2006-3.

[8] Public Acts 2007, No. 07-1, § 5.

making gifts to individuals, public officials or state employees, for their direct and personal benefit *under the guise of a conference or an . . . informational trip.*"[9]

Based on the new language of § 1-79 (e) (5) and the provision's legislative history, we conclude that a state technical high school may not accept a "gift to the state" from a restricted donor in the form of weeklong math or science workshops for its teachers.

II

The next question is whether a state agency may accept volunteer services from restricted donors in order to complete a statutorily required legislative report.

A similar question was addressed in Advisory Opinion No. 94-19. There, the Commission on Hospitals and Health Care ("CHHC"), which was mandated to assist the Office of Health Care Access in preparing legislative recommendations, asked Blue Cross and Blue Shield, a restricted donor, to provide the services of its staff to aid CHHC in developing these recommendations.[10] Asked whether CHHC's receipt of this gift was permissible under the Code, the former Commission responded: "It is clear that providing CHHC with the necessary staff . . . to assist in the development of the agency's responsibilities is a valid gift to the state."[11]

Although based on that opinion, the answer to the second question is an unequivocal yes, we must determine whether it changes by virtue of the recent amendments to § 1-79 (e) (5), which, broken into its constituent parts, requires

1. goods or services which are provided to a state agency or quasi-public agency

2. for use on state property, *or*

3. that support an event, *and*

4. which facilitate state or quasi-public agency action or functions.

The first and fourth parts, both of which are mandatory, are satisfied: The restricted donors would be providing "services" (e.g., legal services) to a state agency and, as in Advisory Opinion No. 94-19, those services would assist the agency in fulfilling its statutory responsibilities.[12]

That leaves us with parts two and three, and the statute requires one or the other, either that the services be "for use on state property" or to "support an event."[13] Those

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[9](Emphasis added.) 50 S. Proc., Pt. 2, 2007 Sess., p. 444.
[10]Advisory Opinion No. 94-19.
[11]Id.
[12]See General Statutes § 1-79 (e) (5).
[13]See id.

requirements were added to § 1-79 (e) (5) to ensure that donations to state agencies would "be properly used for a legitimate state function or use."[14] To that end, in interpreting the phrase "for use on state property," the former Commission stated that consulting services that "facilitate a state action or function may be donated to the state . . . as long as the [end] product is implemented and used by the state servant in his or her state office."[15] Here, because the end product of the volunteer services provided by the restricted donors would be incorporated into the agency's legislative report and ultimately submitted to the General Assembly, part two is satisfied.

We conclude therefore that a state agency may accept volunteer services from restricted donors to complete a statutorily required legislative report.

III

The third question is whether a state agency may accept a contractor's payment or reimbursement of travel expenses in order for agency employees to attend a meeting in New York City to discuss the implementation of a state contract and tour the contractor's facilities.

As noted above, the legislature amended § 1-79 (e) (5), eliminating the bracketed language:

> Goods or services (A) which are provided to **[the state]** a state agency or quasi-public agency (i) for use on state or quasi-public agency property, or (ii) **[to]** that support an event, **[or the participation by a public official or state employee at an event,]** and (B) which facilitate state or quasi-public agency action or functions. . . .[16]

As it is no longer permissible for a state agency to accept goods or services that support "the participation by a public official or state employee at an event," we must determine whether the goods or services at issue would do precisely that. If so, then the state agency would have to decline the proffered "gift to the state."

Here, the payment or reimbursement of travel expenses would support "the participation by a public official or state employee" at the meeting/facility tour, so the only question is whether the meeting/facility tour constitutes an "event." Because the word "event" is susceptible to more than one reasonable interpretation, we look to see what the former Commission considered an "event" for purposes of § 1-79 (e) (5).

By way of staff opinion, the former Commission approved the following "gifts to the state" and, in doing so, considered each activity an "event":

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[14] Advisory Opinion No. 97-18.
[15] Id.
[16] Public Acts 2007, No. 07-1, § 5.

- The payment of travel expenses by a manufacturer of athletic field surfaces in order for employees of a state university to visit the manufacturer's facility in Belgium to research the material and observe the installation process.[17]

- The payment of travel expenses by a vendor in order for a state employee to fly to the vendor's "headquarters to personally visit and experience their operations, see new technology available, and experience innovative methods for the company's providing products and services."[18]

- The payment of travel expenses by a restricted donor in order for a state employee to attend a meeting in Santiago, Chile, to finalize a memorandum of understanding between the Hartford and Santiago Chambers of Commerce.[19]

- The payment of travel expenses by a restricted donor in order for state officials to travel to a Pennsylvania nuclear plant to view the fabrication of nuclear storage containers.[20]

In the only formal advisory opinion touching on the issue, the former Commission confirmed its view that a facility tour constitutes an "event" under § 1-79 (e) (5).[21] Specifically, it was asked whether employees of the Commission on the Arts could accept complimentary tickets to attend performances held by its constituent organizations in order to monitor their activities.[22] Relying specifically on the language "to support . . . the participation by a public official or state employee at an event," the former Commission concluded that the complimentary tickets were permissible "gifts to the state" under § 1-79 (e) (5).[23] It then stated that "this determination is less problematic when the *event* in question is less desirable (e.g., *a tour of a prison or waste treatment facility*)."[24] Implicit in that statement is the former Commission's belief that a facility tour constitutes an "event" for purposes of the phrase "to support . . . the participation by a public official or state employee at an event."

Based on those opinions, it is apparent, we believe, that the meeting/facility tour at issue constitutes an "event," and that the payment or reimbursement of travel expenses would therefore support "the participation by a public official or state employee *at an event*." As this is no longer permissible under § 1-79 (e) (5), we conclude that the state agency may not accept the contractor's "gift to the state."

IV

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[17] Request for Advisory Opinion No. 2753.
[18] Request for Advisory Opinion No. 3056.
[19] Request for Advisory Opinion No. 2255.
[20] Request for Advisory Opinion No. 3096.
[21] See Advisory Opinion No. 2002-7.
[22] Id.
[23] Advisory Opinion No. 2002-7.
[24] (Emphasis added.) Id.

The final question is whether a state agency may accept a nonearmarked cash contribution from a restricted donor that would be deposited into an agency account and used for, among other things, paying for its employees to travel to and attend meetings and conferences.

The question here is not whether a state agency may accept a nonearmarked cash contribution from a restricted donor, which it most certainly may do—otherwise, for example, the fundraising efforts of the state universities would be severely hampered, which is precisely what the legislature sought to prevent by eliminating § 1-84 (q), amending § 1-79 (e) (5), and in effect overruling Advisory Opinion No. 2006-3, in which we prohibited all "gifts to the state" from restricted donors."[25] Rather it is whether a state agency may place a restricted donor's nonearmarked cash contribution into an agency account and use the funds to pay for its employees to travel to and attend conferences and meetings.

To answer that question, we look to the intent underlying the recent amendments to § 1-79 (e) (5), namely, to prevent a restricted donor from providing gifts to "individuals . . . for their direct and personal benefit . . . under the guise of a conference or an . . . informational trip."[26] The present scenario is distinguishable, as here the restricted donor is not making any gift for the "direct and personal benefit" of a particular public official or state employee. Rather it is making a nonearmarked cash contribution to be used by the state agency for whatever purpose it deems necessary. Thus assuming that a cash contribution from a restricted donor is truly "nonearmarked"—that is, given without even a hint or suggestion that its purpose is to pay or reimburse the state agency in connection with an employee's attendance at a conference, meeting, or the like—we conclude that a state agency may place it into an agency account and use it to send its employees to conferences and meetings.

As a final observation, we note that it would make little sense to conclude otherwise given the fungible nature of cash. For example, if a state agency wanted to send its employees to a conference or meeting, it could simply use its own funds to cover the travel expenses and then use the funds from a nonearmarked cash contribution to fill the gap created by the expenditure. The only way to prohibit this from happening would be to prohibit cash contributions in the first place, which, as noted above, would completely undermine the intent of the legislature in eliminating § 1-84 (q) and amending § 1-79 (e) (5).[27]

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[25] In discussing the purpose underlying the amendment, Senator Gayle Slossberg explained that Advisory Opinion No. 2006-3 "evoked widespread problems within our state agencies, our quasi-public agencies, and, specifically, our institutions of higher education. The University of Connecticut has been unable to receive any of the donations from companies that it traditionally relied upon. Donations to their foundations that supplies scholarships for students in need have been largely curtailed." 50 S. Proc., Pt. 2, 2007 Sess., p. 445. She continued: "Obviously, there is a long list of unintended consequences that, if not corrected, will cripple our higher education institutions and many of our state agencies. The amendment . . . represents a clarification of the original legislative intent and restores common sense to a system that has been turned upside down." 50 S. Proc., Pt. 2, 2007 Sess., p. 446.

[26] 50 S. Proc., Pt. 2, 2007 Sess., p. 444.

[27] See footnote 25.

CONCLUSION

The Board concludes as follows:

1. A state technical high school may not accept a “gift to the state” from a restricted donor in the form of weeklong math or science workshops for its teachers.

2. A state agency may accept volunteer services from restricted donors in order to complete a statutorily required legislative report.

3. A state agency may not accept a contractor’s payment or reimbursement of travel expenses in order for agency employees to attend a meeting in New York City to discuss the implementation of a state contract and tour the contractor’s facilities.

4. A state agency may accept a nonearmarked cash contribution from a restricted donor that would be deposited into an agency account and used for, among other things, paying for its employees to travel to and attend meetings and conferences.

By order of the Board,

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Robert Worgaftik, Chairperson

Dated_____