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BALTIMORE CITY BOARD OF ETHICS

Baltimore City Board of Ethics
Ethics Opinion 22-002
(April 6, 2022)

The Baltimore City Board of Ethics (“Board”) received a request for an advisory opinion pertaining to an elected official’s attendance at a sporting event for ceremonial purposes such as throwing a first pitch, flipping a coin, presenting a trophy, etc. Specifically, the request asked how the Ethics Law’s gift restrictions and exemptions apply to a situation in which an elected official is offered a free ticket or admission to a sporting event for the purpose of conducting a ceremonial function.

As explained below, the Board advises that application of the Ethics Law’s gift provisions depends on the identity of the person or entity providing the free ticket or admission and the purpose for which the official attends the event. As a general rule, an elected official *may not* accept a free ticket or admission to a sporting event from a “controlled donor,” regardless of the official’s intended function at the event. An elected official *may* accept a free ticket or admission to a sporting event from a non-controlled donor depending on the circumstances, including where the official’s intended function at the event is related to performing a usual and customary constituent service; such service could include a ceremonial function.

Because application of the relevant Ethics Law provisions depends on the facts of the situation, the Board invites officials to consult with Board staff as occasions arise.

Relevant Law

In pertinent part, the Ethics Law prohibits a public servant from soliciting and/or accepting a gift, directly or indirectly, from a person or entity who:

- 1) does or seeks to do business with the public servant’s agency;
- 2) does or seeks to do business with another person in connection with the other person’s contract with the public servant’s agency;
- 3) engages or seeks to engage in an activity that is regulated or controlled by the public servant’s agency;
- 4) is—or within the preceding 12 months was—a lobbyist with respect to matters with the public servant’s jurisdiction;

- 5) has a financial interest that might be substantially and materially affected by the public servant's duties; or
- 6) is an owner, partner, officer, director, trustee, employee, or agent of any person described above.

§§ 6-26 and 6-27.¹ A person who falls within one of these categories is referred to as a “controlled donor.” *See* Ethics Regulation R 06.26.1.A.(2).

Free Tickets or Admission to a Sporting Event from a Controlled Donor

There are a number of exemptions to the general prohibition on accepting a gift from a controlled donor. In pertinent part, Section 6-28(4) exempts the unsolicited receipt of “tickets or free admission given to an elected official to attend a specific charitable, cultural, or political event, if given by the person sponsoring or conducting the event as a courtesy or ceremony to the office.” § 6-28(4). Although there may be an argument that the category of “cultural event” includes certain sporting events, principals of sound statutory interpretation point against that conclusion.

First, the plain language of this exemption does not include tickets or free admission to a sporting event. *See, e.g., Wheeling v. Selene Finance LP*, 473 Md. 356, 376 (explaining that statutory interpretation begins “with the normal, plain meaning of the language of the statute”). Second, an examination of the relevant legislative history supports this reading, revealing that the State Ethics Law, on which the City's Ethics Law is based, explicitly removed the category of “sporting event” from its substantially similar exemption several years ago. *See* Md. Code Ann., General Provisions Art. (“GP”), § 5-505(c)(2)(viii) (containing the State's substantially similar exemption to Section 6-28(4)); 1999 Maryland Laws Chapters 129 (S.B. 1) and 130 (H.B. 1) (removing the category of “professional or intercollegiate sporting event[s]” from this exemption, which was then located in Md. Code Ann, State Government Article, Section 15-505).²

¹ Unless otherwise indicated, all references are to the Baltimore City Public Ethics Law, contained in City Code, Article 8.

² 1999 S.B. 1 and H.B. 1 effected a number of amendments to the State Ethics Law recommended by the Special Study Commission on the Maryland Public Ethics Laws. With regard to the exemption at issue, a note in S.B. 1's Bill File explained that, according to the Study Commission,

[a] “courtesy or ceremony to the office” should be limited to situations in which the [official's] presence helps further the responsibility of the office in recognition of important events such as opening or milestone events. Common or everyday events that do not benefit from or require the presence of [an official] are not appropriate as a courtesy or ceremony to the office. This change is intended to clarify that ticket acceptance [to a charitable, cultural, or political event] should be limited to events of importance to the sponsor and generally where the sponsor is present or participates as an integral part of the event.

Maryland Legislative Wrap Up (No. 99-14), contained in 1999 S.B. 1's Bill File.

Because the City Ethics Law's conflict of interest provisions for elected officials must be at least as strict as those required by the State Ethics Law, GP Section 5-808(b), the City Council followed suit and deleted the category of "sporting" event from Section 6-28(4)'s exemption more than a decade ago. *See* Ordinance 11-484.

Finally, in its regulations, the Board explicitly exempts tickets or free admission to a sporting event, but only in specific contexts. Section 6-28(5) allows the Board, through regulation, to exempt "a specific gift or class of gifts" it has determined "would not be detrimental to the impartial conduct of City business." § 6-28(5). Under this exemption, the Board permits an elected official to accept "[u]nsolicited tickets or free admissions to attend a specific charitable, cultural, or sporting event that is sponsored or conducted by" a federal, state, or local governmental educational institution, if that institution is the one offering the tickets or free admissions. R. 06.28.5(C) (emphasis added). Similarly, the Board, under Section 6-28(5), permits an elected official to accept "[u]nsolicited tickets or free admissions to attend a specific charitable, cultural, or sporting event . . . if the tickets or free admission are being offered by or on behalf of an instrumentality or unit of State government." R 06.28.5(D) (emphasis added).

If the Board understood the term "cultural event" to encompass a sporting event, it would not have needed to explicitly include the term "sporting event" in these two exemptions. *See Wheeling*, 473 Md. At 376 (explaining that the plain meaning of statutory language should be read "as a whole, so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory." (internal quotation marks and citation omitted)).

For all these reasons, a sound interpretation of the "cultural event" exemption in Section 6-28(4) does not include a "sporting event."³ Accordingly, unless another exemption applies, an elected official is not permitted to accept free tickets or admission to a sporting event offered by a controlled donor, *unless* the controlled donor qualifies as an educational institution, or a State government unit or instrumentality, under one of the two regulations discussed above. This general prohibition holds regardless of the elected official's intended role at the sporting event.⁴

Free Tickets or Admission to a Sporting Event from a Non-Controlled Donor

An elected official may be permitted to accept free tickets or admission to a sporting event offered by a non-controlled donor, depending on the circumstances. As a general matter, public servants, including elected officials, are not precluded by the Ethics Law's gift restrictions from accepting gifts offered by non-controlled donors. However, this general permissibility is inherently limited

³ We are aware that the line between a "cultural event" and a "sporting event" may sometimes be a fine one. Although the term "sporting event" is not defined in the City or State's Ethics Law, it is defined by the Maryland Code in the context of sports betting, in pertinent part, as any professional or intercollegiate sports or athletic event, any motor race event, or any horse race. Md. Code Ann., State Government Article, § 9-1E-01(i)(1).

⁴ If an elected official is expected to perform an official role or to otherwise represent the City at a particular sporting event, the City or the official should pay for the ticket or admission rather than a controlled donor. But see the discussion below regarding situations where a non-controlled donor offers the free ticket or admission.

by the Ethics Law's "prestige of office" provision, which prohibits a public servant from "intentionally us[ing] the prestige of his or her office or position for his or her own private gain or that of another." § 6-36(a).

Determining whether the acceptance of a particular gift is precluded by Section 6-36's prestige of office prohibition requires a case-by-case analysis. Section 6-36 makes clear that the prestige of office prohibition does not apply to "[t]he performance of usual and customary constituent services, without additional compensation." § 6-36(b). Accordingly, we can foresee scenarios in which an elected official's "usual and customary constituent services" may include performing a ceremonial function at a sporting event that is important to the official's constituents. In these scenarios, as long as the free ticket or admission is not provided by a controlled donor, the elected official likely could accept the free ticket or admission without falling afoul of Section 6-36(a).

However, if the elected official will not be performing a function connected with constituent services, it is more likely that a free ticket or admission to a sporting event is being offered solely by virtue of the official's "prestige of office." Acceptance of the free ticket or admission, therefore, would be prohibited by Section 6-36(a). Again, however, the application of Section 6-36(a) depends on the facts of the situation, so the Board invites officials to consult with Board staff in advance.

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