

**City of Memphis
Board of Ethics**

January 4, 2017

Advisory Ethics Opinion No. 17-02

This opinion responds to a specific question presented, particularly whether certain behavior is permissible pursuant to the City of Memphis Code of Ethics, Ordinance 5206. It does not address any other applicable policy, local, state or federal laws. The Board of Ethics' jurisdiction is limited to the applicability of the City of Memphis Code of Ethics, Ordinance 5206, as amended. This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

Question

Whether or not it is permissible for City employees to accept "small tokens of gratitude for...continued partnership and hard work" from a Company doing business with the City, working directly with that department of the City?

Whether or not the Code of Ethics and/or Mayor's Executive Order provide an Exception?

Opinion

City employees are generally prohibited from accepting gifts from individuals or entities that do business with the City. Small tokens of gratitude for previous hard work would be considered reward for past action, and thus a gratuity. It is not permissible to accept the items, especially when "small token" is not completely defined.

There does not appear to be an Exception in the Code of Ethics or the Mayor's Executive Order.

Facts

OneExchange, a Company doing business with the City, (hereinafter referred to as Company) asked a City Employee if it was permissible for the Company to send, and the Employee to accept, "some Willis Towers Watson items such as coffee cups, USB chargers, pens, etc." "as a small token of gratitude for you and your teams continued partnership and hard work."

Analysis

Chapter 2-10 Code of Ethics for City Officials provides, in pertinent part:

"Section 2-10-5. Acceptance of gratuities, etc. An employee may not accept, directly or indirectly, any money, gift, gratuity, or other consideration or favor of any kind from anyone other than the city: For the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; or [t]hat might reasonably be interpreted as an attempt to influence his action, or **reward him for past action**, in executing business of the city." [Emphasis added.]

Sections 5) of the Mayor's Executive Order also provides very similar language.

In reviewing the Exceptions, it does not appear that these items would be considered 6)b) [i]nformational materials, such a books, periodicals, audio or video, or sample merchandise helpful as a part of the employee's duties in determining the appropriateness of the product for use as a part of City business." (Mayor's Executive Order)

Nor do the items fall within 6)c), "Unsolicited tokens or awards of appreciation, honorary degree or *bona fide* awards in recognition of public service, provided that any such item cannot be readily converted into cash." (Mayor's Executive Order)

In the instant case, it appears that the tokens of appreciation are given to reward employee(s) for past action, and the items can be readily converted into cash.

Conclusion

Based upon the foregoing, it is my opinion that the acceptance of the "small token of gratitude for you and your teams continued partnership and hard work" is not permissible.

This would be considered a gratuity, as contemplated by the Code of Ethics and the Mayor's Executive Order. There does not appear to be an Exception.

Board of Ethics, City of Memphis



Latonya Sue Burrow
Chief Ethics Officer

Requested by:

Bruce McMullen, City of Memphis Attorney
Alexandria Smith, Chief HR Officer, City of Memphis