

City of Memphis Board of Ethics

February 17, 2014

Advisory Ethics Opinion No. 14-01

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 it is appropriate for a vendor to donate 500 microchips to the Memphis Animal Shelter for its community outreach campaign.

Opinion

City employees are generally prohibited from accepting gifts from individuals or entities that do business with the City. However, acceptance of a donation of several items which are earmarked for citizens; which will not benefit a particular employee or his or her family; and is not an attempt to influence an employee's actions or reward an employee for past action, is permissible.

Facts

Datamars, Inc. (www.datamars.com) is a company which provides electronic identification equipment and services for companion animals. Specifically, it provides microchips, which are implanted into companion animals and readers/scanners, which read the information on each microchip. Datamars, Inc. also provides 24/7/365 registry and recovery services for companion animals. In accordance with procurement procedures, Datamars, Inc. submitted a successful bid to the City of Memphis (Memphis Animal Shelter) to provide products and services.

Memphis Animal Shelter has instituted a community outreach campaign for pet owners and will be hosting an event for this purpose. In an effort to assist the Memphis Animal Shelter with its community outreach, Datamars, Inc. has agreed to donate, at no additional cost to the City, 150 Microfinder Standard T-IS microchips and 350 Microfinder Value microchips, which includes the implanters and free registration for each. Memphis Animal Shelter will give the donated microchips to citizens who desire to track their pets. The purpose is to increase the likelihood that lost pets will be returned to its owner.

Analysis

City Ordinance No. 5206, Section 5 provides, in pertinent part, that:

“[a]n officer or 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: ...[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.”

Executive Order No. 2-2009 further explains that:

“no employee shall solicit or accept, directly or indirectly, on behalf of *himself* or *herself* or *any member of the employee’s household*, any gift ... from any person or entity that: [h]as or is seeking to obtain contractual or other business or financial relations with department... of the City in which the individual is employed; [c]onducts operations or activities that are regulated by the department, division or agency of the City for which the individual is employed; or [h]as interests that may be substantially affected by the performance or nonperformance of the employee’s official duties.” (emphasis added)

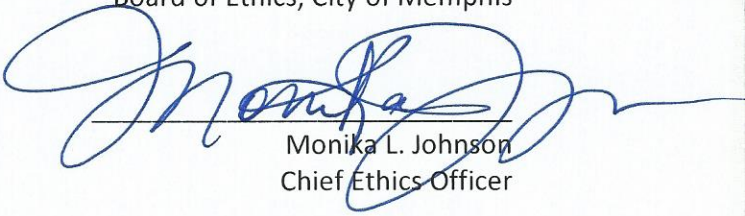
In the instant case, this Board has been advised that the vendor, Datamars, Inc., was selected to provide goods and services for the City of Memphis through its competitive bid process. Accordingly, it does not appear that the proposed donation is an attempt to influence or reward a particular individual for his or her actions in executing City business. Further, based upon the information provided, it does not appear that any particular City employee will benefit directly or indirectly from the donation of the microchips since they will be distributed to citizens in the community.

However, Executive Order No. 2-2009 also provides that an employee shall avoid any action which might create the appearance of “[g]iving preferential treatment to any person”. Accordingly, Memphis Animal Shelter and its staff should take appropriate measures to ensure that it does not appear to the public that the City endorses Datamars, Inc. as opposed to other companies who provide the same or similar goods and services. One way to accomplish this is to allow other companies the opportunity to participate in the community outreach campaign.

Conclusion

Based upon the foregoing, it is my opinion that because City employees are not benefiting directly or indirectly from the proposed donation of microchips, the donation is permissible.

Board of Ethics, City of Memphis

A handwritten signature in blue ink, appearing to read 'Monika L. Johnson', is written over a horizontal line. The signature is stylized and cursive.

Monika L. Johnson
Chief Ethics Officer

Requested by:

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