

City of Memphis
Board of Ethics

November 4, 2015

Advisory Ethics Opinion No. 15-01

This opinion responds to a specific question presented, particularly whether certain behavior is permissible pursuant to the City Code of Ethics, Ordinance 5206 and the Executive Order by the Mayor 2-2009. 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 and the Executive Order by the Mayor 2-2009. 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 permissible for a City Employee (Zone Manager of Code Enforcement), to operate an Outreach Ministry at Apartments, on a rent-free basis, while directly or indirectly supervising Code Inspectors responsible for inspecting the Apartments?

Opinion

A City employee may not accept gifts or gratuities which might reasonably be interpreted as an attempt to influence his action, or reward him for past action, in executing business of the City. A Zone Manager should not maintain a rent-free presence at the Apartments over which he has direct or indirect responsibility for inspecting and documenting code violations. Such circumstances might reasonably be interpreted as accepting a gift or gratuity in an attempt to influence his action, or reward him for past action, in executing business of the City.

Facts

A City Employee and Zone Manager of Code Enforcement, (hereinafter referred to as Zone Manager) has been running an Outreach Ministry out of the Peppertree Apartments (hereinafter referred to as Apartments) for approximately eight years. The Apartments allow the Zone Manager to use the facility rent-free, and the Zone Manager receives a Love offering of \$100 per month as the Pastor of the ministry. In 2008, the Zone Manager left a salaried position as a Pastor in another Tennessee city to minister to the residents of the Apartments. This transition happened after the Zone Manager was promoted to Senior Code Inspector, no longer having direct contact with the Apartments in his capacity as Code Inspector.

Analysis

The City of Memphis Code of Ethics, City Ordinance No. 5206, as amended, provides, in part, as follows:

Section 2-10-5. Acceptance of gratuities, etc.

- A. 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:

1. 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
2. That might reasonably be interpreted as an attempt to influence his action, or reward him for past action, in executing business of the city.

The fact that the Zone Manager paid no rent to use the facility could be viewed as receiving a gift, the monetary value being equal to whatever the fair market value would be for the rent of a similar space for similar purposes, for like time frames. As Zone Manager of Code Enforcement, the Zone Manager could have influence in deciding whether or not The Apartments were in violation of code standards. That "gift" might reasonably be interpreted as an attempt to influence him to refrain from performing an act, such as citing the Apartments, in the regular course of his duties. And, of course, the Zone Manager's not citing the Apartments would work to the benefit of the Zone Manager's Outreach Ministry.

Section 2-10-8. Use of position or authority.

- B. An officer or employee may not use or attempt to use his position to secure any privilege or exemption for himself or others that is not authorized by the charter, general law, or ordinance or policy of the city.

The Zone Manager's actions of using rent-free space in the Apartments could reasonably be interpreted as securing a privilege because of his position as a Zone Manager of Code Enforcement. There is no evidence that such opportunity exists for other citizens.

The Executive Order by the Mayor No. 2-2009 provides, in part, as follows:

3. **Employee responsibilities.** Each employee shall avoid any action, whether or not specifically prohibited by statute, regulation or this Order, which might result in or create the appearance of:
 - ...
 - ii. Giving preferential treatment to any person;
 - iii. Impeding government efficiency or economy;
 - iv. Losing complete independence or impartiality;
 - ...
 - vi. Affecting adversely the confidence of the public in the integrity of the government.
4. **Gift.** 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, including but not limited to any gratuity, service, favor, food, entertainment, lodging, transportation, loan, loan guarantee or any other thing of monetary value from any person or entity that:

...

- iii. Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

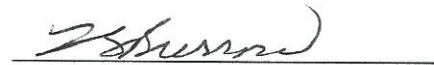
The Zone Manager's rent-free usage of space at the Apartments could be seen as giving him preferential treatment. If, in fact, it influenced the Zone Manager in deciding whether or not to cite the Apartments, this is impeding government efficiency or economy. The Zone Manager's rent-free presence at the Apartments could cause him to lose complete independence or impartiality, because to cite the Apartments could conflict with his interest in maintaining the Ministry's rent-free presence. Finally, the confidence of residents of the Apartments and the public at large, in the integrity of the government, could be adversely affected, when viewing the situation in this light.

Conclusion

Based upon the foregoing, it is my opinion that, there is no evidence that an actual conversation was had, or an agreement made, between the Apartments and the Zone Manager to allow the Zone Manager rent-free use of space at the Apartments, in exchange for his preferential influence in Code Enforcement; however, this situation might reasonably be interpreted as such. There exists the appearance of impropriety, at best.

Therefore, it is my opinion that a Zone Manager should not maintain a rent-free presence at the Apartments over which he has direct or indirect responsibility for inspecting and documenting code violations. Such circumstances might reasonably be interpreted as accepting a gift or gratuity in an attempt to influence his action, or reward him for past action, in executing business of the City.

Board of Ethics, City of Memphis



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