

ED GAINEY
MAYOR



LEANNE DAVIS
EXECUTIVE DIRECTOR

CITY OF PITTSBURGH
ETHICS HEARING BOARD
CITY-COUNTY BUILDING

OPINION OF THE BOARD

September 27, 2024

To the Requesters:

David Green, Director of the Department of Permits, Licensing and Inspection ("PLI")
William Sperry, PLI Code Training and Development Supervisor
Via electronic mail

RE: 24-A-015 Green, Free Training

Dear Director Green and Supervisor Sperry:

Issues: You ask whether conflict of interest rules permit Inspectors to receive training from a member of the regulated community, and if so, may Inspectors/the City accept such training at a free or discounted rate?

Short Answers:

- (1) The presented facts would not pose a conflict of interest to accept training from a member of PLI's regulated community.
- (2) We find a waiver to be appropriate to permit the Inspectors to accept the described training for free as set out in this letter.

Statement of Facts: Advice is issued based on the facts submitted, with no independent investigation of such submission, nor speculation of potential omissions. [City of Pittsburgh Code of Ordinances \("Code"\) § 197.13](#). It is the burden of each requesting party to truthfully disclose all material facts relevant to the inquiry – the protective function of our advice is limited to the specific facts and circumstances described. *Id.*, [Code § 197.16](#). The facts as given are:

- You are the Director of PLI and the Code Training and Development Supervisor. Your inquiry relates to your department's Inspectors.
- PLI's mission is to provide a better quality of living to our residents by increasing safety in the built environment.
- Inspectors enforce civil building codes and regulate contractors.
- The knowledge base required of Inspectors to perform their job is extensive.
- Two main types of educational training opportunities exist for Inspectors. One relates to the text of the building codes and the other – at issue here – relates to the physical performance of skills used in specific building trades.
- This performative training is mainly offered through the trade unions (if not exclusively given the recent closure of local trade schools).
- The staff who conduct trainings on behalf of the trade unions ("Trainers") are generally individuals who are current contractors, and consequently members of PLI's regulated community. Accordingly, Trainers may have active work subject to Inspector's review.
- Trainings have been offered for free.
- You ask whether it is a prohibited conflict for Trainers to teach Inspectors, and if not, whether it is permissible to accept such training for free or at a discounted rate.

Relevant Law: The State Ethics Act and our City Code contain conflict of interest restrictions and rules on gifts. [65 Pa.C.S. §§ 1103\(a\), and 1102; Code § 197.03\(a\)](#), and [Home Rule Charter § 706](#). Improper influence is also unlawful. 65 Pa. C.S § 1103(b) and (c). Several terms within these laws have statutory definitions. Relevant laws and definitions are listed at the end of this letter.

Legal Analysis

Standing: As a preliminary matter, the Board may only advise parties who are subject to its enforcement under the ethics laws. [Code § 197.13](#). Accordingly, the Board generally cannot opine on third party conduct. The Board has issued an exception to permit supervisors to request advisories as to their subordinates' conduct. [Pawlak](#), Opinion 24-A-009.

Authority: The Ethics Hearing Board has the power to advise on "the interpretation or application of this Code." [Code §§ 197.13\(a\)](#) and 197.11(d)(1.). The Board, by the same majority vote of quorum, is also empowered to "adopt rules and regulations for its operations and procedures as it deems necessary to administer, implement and enforce this Chapter, *including fact-specific waivers*." [Code § 197.09\(k\)](#) (emphasis added).

Summary of Law: Inspectors are considered public employees covered under the Ethics Act, which restricts government action relating to conflicts. Statutory conflicts of interest involve the use of the authority of one's position to benefit themselves, their family, or a business or property with which they or their family is associated. [65 Pa.C.S. §§ 1103\(a\),\(d\), and 1102; Code § 197.03\(a\)](#). Conflicts and other ethics requirements are applicable whether a gift is "to the City," made on behalf of the employee, or offered directly to the employee. [Neff](#), Order 1484; [Confidential Opinion](#), 16-001; [51 Pa. Code §17.6\(b\)](#). Acceptance of a gift to attend a work-related

conference or training that is purely educational (as opposed to a vendor's promotional or marketing event) is widely recognized as permitted by the State Ethics Commission and other ethics agencies.

Notably, we find a 1996 Opinion issued by the State Ethics Commission on the propriety of accepting gifts from members of the regulated community to be precedent applicable to this matter. [Confidential Opinion, 96-001](#) ("Fax case"). In Fax case, a state department ("Department") was offered a monetary gift by an entity regulated by Department in order to update Department's equipment. At the time, Department lacked fax modems, answering machines, and other basic computer and printing capabilities, which was "inadequate to serve the needs of the [regulated community]," causing delays and inefficiencies. *Id.* at pages 1-2. The Commission held the offered gift, including "governmental computers, fax modems as well as telephones, postage, staff, other equipment, research materials, or any other property could not be used as a means, in whole or part, to carry out private business activities." *Id.* at page 6, citing [Pancoe](#), Opinion 89-011. In the Fax case, the Commission held that the regulated entity was permitted to offer the gift without posing an unlawful conflict of interest to Department's employees because no private use would result.

Our Code has additional restrictions on gifts; under the City Code, we generally ban gifts from interested parties, unless one of a number of exceptions apply. [Code § 197.02](#); [Code § 197.07](#). Trainers, as members of the regulated community, are interested parties. They have an interest which could be substantially affected by the Inspectors' use of their position. Exceptions to the gift restrictions delineated in our current Code do not include purely educational trainings or conferences. Code § 197.07.

Application of Law to Stated Facts: Here, based on the stated facts, we conclude the gifted training is permissible under the ethics rules and appropriate to accept. Though the Trainers are members of the regulated community, that fact alone does not demonstrate any prospective "use" of position by the Inspectors in attending the work-related training to achieve unlawful personal gain. [Kistler v. State Ethics Comm'n](#), 22 A.3d 223 (Pa. 2011). If the reverse were true, and the Inspectors were conducting the trainings and charging contractors or other members of the regulated community to attend Inspector-led trainings, then an unlawful use of position could occur – that is not the case before us.

We have a codified duty to administer and interpret the ethics laws within our jurisdiction. Code §§ 197.09(k), 197.11(d)(1), and 197.13(a). Accepting the free training as described would not present a conflict of interest and the application of the gifts rules produces a technical violation that we find to be minor and therefore not subject to the Board's enforcement. [See](#), 197.12(a)(4). We find it is in the public interest to issue a fact-specific waiver to permit the acceptance of gifted training from the Trainers, and other work-related educational trainings and conferences consistent with this opinion.

The gift is to the City, or made on behalf of the employees, and must be reported by the recipient Inspectors if the actual value of the training is above reporting thresholds. [Giles](#), Advice, 24-540, [65 Pa.C.S. 1105](#), [Code §§ 197.07](#) and [197.08](#), [Neff](#), Order 1484. You are advised that any discounted or free training must be offered voluntarily, without improper influence, unrelated to official actions/decisions, without personal benefit/use, and without endorsement (unless part of a formal sponsorship agreement).

Reliance: This advice is based on the facts summarized in this opinion letter. [Code §§ 197.13 and 197.16\(a\)](#). Please contact our staff if these facts are inaccurate or incomplete – or if the facts change in the future. Advice can be appealed or amended. [Code § 197.13](#). Requests for reconsideration must be actually received within thirty days. [Id.](#)

The Ethics Hearing Board works from the City's Code of Conduct, which adopts the entirety of the State Ethics Act, along with portions of the City Code and Home Rule Charter. [Code § 197.01](#). The State Ethics Commission is the authority on the Act. If the State Ethics Commission provides a more restrictive view than this writing, the State's position will govern. [65 Pa.C.S. §§ 1107](#), and [1109](#). In complement, the Board and its staff adopt or exceed State Ethics Commission interpretations of the Act. [65 Pa.C.S. § 1111](#).

Conclusion: Ethics rules would not prohibit Inspectors from attending the described training, including attending the training for fee.

Thank you again for contacting our office regarding this inquiry, please contact our staff with any questions.

Sincerely,



Maryann Herman, Chair

Relevant Governmental Ethics Provisions:

65 Pa.C.S. § 1103 (a) Conflict of interest.--No public official or public employee shall engage in conduct that constitutes a conflict of interest.

65 Pa.C.S. § 1102 (a) "Conflict" or "conflict of interest." Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a

member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

Code § 197.03 (a) - CONFLICT OF INTEREST. No public official or public employee shall exert influence with respect to property or a business with which he or a member of his or her direct family is associated.

Code § 197.02 (l) "GIFT." Any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of these or anything else of value received or given without equivalent compensation. The term shall not include a political contribution otherwise reportable as required by law or a commercially reasonable loan made in the ordinary course of business.

Code § 197.02 "GIFT."

Any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of these or anything else of value received or given without equivalent compensation. The term shall not include a political contribution otherwise reportable as required by law or a commercially reasonable loan made in the ordinary course of business.

Code § 197.02 (g) "Interested Party"

- (1) A person or agent having or seeking to obtain a contract, grant, employment or any financial relationship with the City or any of its departments, agencies, boards, commissions or authorities;
- (2) A principal, agent and/or attorney in legal proceedings in which the City is then an adverse party; or
- (3) A person with an interest that may be substantially affected by the performance or nonperformance of the official duties of the public official or City employee.

§ 197.07 OFFERING, SOLICITING OR ACCEPTING GIFTS.

- (a) *General rule on soliciting gifts.* A Public Official, Public Employee, or City Employee shall not solicit anything of value from any person or entity that the Public Official, Public Employee, or City Employee knows, or has reason to know, is an Interested Party, subject to the exception in subsection (d)(1), and subsection (i).
- (b) *General rule on accepting gifts.* A Public Official, Public Employee or City Employee shall not accept anything of value from any person or entity that the Public Official, Public Employee or City Employee knows, or has reason to know is an Interested Party, subject to the exceptions in subsection (d).

- (c) *General rule on offering gifts.* No interested party shall offer or give anything of value to a Public Official, Public Employee, or City Employee subject to the exceptions in (d or g).
- (d) *Exceptions.*
 - (1) Any gift occasioned by an immediate family relationship.
 - (2) Complimentary food and refreshment of nominal value, not to exceed four (4) times per year from the same organization or individual.
 - (3) When offered by the sponsoring organization, and attended by the Employee in an official capacity, admission, attendance, food and refreshment at a public event or ceremony sponsored by a non-profit organization, or by a civic, political, community, sports or cultural organization. This exception is limited to two (2) tickets per employee per event, not to exceed four (4) events per year from the same organization or individual. These gifts are subject to the gift disclosure rules set forth in Section (e).
 - (4) Accompaniment as an immediate family member or spouse to a public event or ceremony where the immediate family member or spouse is acting in an official capacity.
 - (5) Memberships, events or admissions associated with any boards on which an Employee serves either in his/her official capacity or as a private citizen.
 - (6) A nonpecuniary award publicly presented, in recognition of public service.
 - (7) Gifts from one (1) City Employee to another in recognition of a special occasion, illness or holiday.
 - (8) Gifts of nominal value in recognition of a special occasion such as the birth of child, marriage or retirement.
 - (9) Nonpecuniary gifts of nominal value.
 - (10) Reasonable expenses for travel and accommodation where the travel is business related.
- (e) *Electronic gift disclosure.* In addition to the financial disclosure requirements set forth in the Pennsylvania Public Official and Employee Ethics Act, Public Officials and Public Employees employed by the City of Pittsburgh shall disclose any gifts received:
 - (1) Which exceed one hundred dollars (\$100.00) in value per gift or aggregated together from any one (1) source (an individual or an organization) unless from immediate family members.
 - (2) Such gifts shall be reported on a form developed by The Department of City Information Systems, to the webmaster of the City of Pittsburgh internet site. The report shall include a description of the gift and its approximate value, and the name and employer of the donor.
 - (3) The Department of City Information Systems will maintain an on-line database reflecting all gifts reported under subsection (c). The list will be updated no less frequently than monthly.
- (f) *Ethics Board review of gifts valued at five hundred dollars (\$500.00 or higher.* The Ethics Board will designate two (2) members (hereinafter the Subcommittee) who will evaluate the propriety of gifts valued at five hundred dollars (\$500.00) or more. The subcommittee members will rotate their duties on a quarterly basis, according to the initials of the Board members' last names. Contact information for the Subcommittee will be posted on the City's website. Requests for approval of gifts valued at five hundred dollars (\$500.00) or

more shall be made in written hard copy or e-mail to the Subcommittee, and shall specify the nature of the gift, its approximate value, the name and employer of the donor, the public purpose of the gift, and any other material facts. The Subcommittee will evaluate the propriety of the gift according to the following criteria:

- (1) The value of the gift and its relation, if any, to the Employee's official functions;
- (2) The public purpose of the gift.

The Subcommittee will issue a written opinion within twenty-one (21) days unless the Employee requests a shorter timeline. The opinion will include all material facts relied on by the Subcommittee, and articulate a basis for the decision. All opinions will be posted on the City's website. The Employee will have the right to appeal the decision to the entire Ethics Hearing Board. Gifts from immediate family members are exempt from this subsection.

Home Rule Charter § 706: No elected official, officer or employee shall in any manner receive benefit from the profits or emoluments of any contract, job work or service for the City, or accept any service or thing of value directly or indirectly upon more favorable terms than those granted to the public generally, from any person, firm or corporation having dealings with the City. No elected official, officer, or employee shall solicit or receive any compensation, gratuity or other thing for any act done in the course of public work. This section shall be broadly construed and strictly enforced. Any violation of this section shall cause the offending official, officer, or employee to forfeit office or employment.

State Ethics Act 65 Pa. C.S § 1103 (b) Seeking improper influence.--No person shall offer or give to a public official, public employee or nominee or candidate for public office or a member of his immediate family or a business with which he is associated, anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment based on the offeror's or donor's understanding that the vote, official action or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.

State Ethics Act 65 Pa. C.S § 1103 (c) Accepting Improper Influence- No public official, public employee or nominee or candidate for public office shall solicit or accept anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment, based on any understanding of that public official, public employee or nominee that the vote, official action or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.