



City of San Antonio, Texas

Ethics Advisory Opinion No. 2014-01

January 3, 2014

Issued By: City Attorney's Office

I. Issue:

May a City employee purchase a table at a charity event using city money? Does it matter if his wife serves on the board of directors of the entity hosting the event? May non-city guests attend the event as the employee's guests?

II. Inquiry

A City employee has asked whether or the use of City funds to purchase a table at a charitable event hosted by an entity for whom his wife serves as a director would violate the City's Ethics Code. He has also asked if non-City employees, such as spouses of City employees, may be invited as guests.

III. The Texas Constitution

City employees are often asked if the City can donate something for charitable purposes. Civic groups ask for cash donations, sponsorships of events, tables, entertainment, or booths at a carnival or other event.

When asked if a local government may lawfully use its funds for these types of purposes, or whether such use of public funds might be prohibited, the answer is usually that the donations are unlawful, but there are exceptions in appropriate circumstances.

Article III, section 52(a) of the Texas Constitution provides that "the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation." TEX. CONST. art. III, § 52(a); *see also id.* art. III, § 51 (legislature has no power to authorize the making of any grant of public money to any individual).

The constitutional prohibition against donating public funds to private individuals does not prevent governmental entities from using public funds to carry out their public purposes. *See City of Austin*, 331 S.W.2d at 743. Purchasing a table at a charitable

event could serve a public purpose, but those facts have not been provided. For the purpose of this opinion, we presume a public purpose will be served by the expenditure of public funds for the event, and would not be in violation of the Constitution.

IV. City Ethics Code

A. Conflicts of Interests Provisions

The Ethics Code has two “conflicts-of-interest” provisions applicable to all city officials and employees. First, a city official cannot take any official action that is likely to affect the economic interests of the:

- 1) official;
- 2) the official’s family within the 2nd degree, and members of the official’s household;
- 3) businesses in which the official or his or her family members hold an ownership interest;
- 4) employers of the official or the official’s family members;
- 5) business entities or non-profit organizations for which the official serves in an executive or decision-making capacity;
- 6) individuals or businesses with whom the official is engaged in business or employment negotiations; and
- 7) any outside client of the official.

Ethics Code, Section 2-43. The purchase of a table for the charity event, and the invitation to attend extended to family and friends would affect the financial interests of the employees and others who accept the invitation to the event, as they would not have to spend their own money to attend the event. Further, the purchase of the table would affect the economic interests of the non-profit organization for which the official’s wife serves in a decision-making capacity, which, while not a true violation, creates the appearance of impropriety, something employees are urged to scrupulously avoid.

B. Prohibition against the Unfair Advancement of Private Interests

The second conflict-of-interest provision states that a city official cannot use his or her position with the city to unfairly advance or impede private interests or to secure for any person any form of special consideration, treatment, exemption or advantage beyond that which is lawfully available to other persons. Ethics Code, Section 2-44. This provision requires officials and employees to take official action based on the merits and not on personal considerations or relationships.

In its “Statement of Purpose,” the Ethics Code offers this guidance:

Public service is a public trust...To ensure and enhance public confidence in city government, each city official must not only adhere to the

principles of ethical conduct set forth in this code and technical compliance therewith, but they must scrupulously avoid the appearance of impropriety at all times.

Section 2-44 of the Ethics Code prohibits a city official or employee from using their official position to unfairly advance or impede private interests. Absent information to the contrary, the purchase of a table at a charitable event for an entity for which his wife serves as a director appears to be favorable treatment or consideration for both the entity and his spouse, which is not available to other entities, and would be an inappropriate use of public funds. The employee may, however, purchase a single ticket to the event for himself, using City funds, because a public purpose is served by his presence at the event. If the entire table is purchased, the employee must ensure the presence of City employees or non-City guests who attend clearly serve a public purpose, and that the purchase was made not because of the position his spouse holds with the organization, but was made on the merits of the matter.

IV. Conclusion

As stated above, state law permits public funds to be used to purchase a table to a charity event, if a public purpose is being served. It is not appropriate for city employees to buy tables at non-city events with city money, if there is no clear public purpose being served by that large purchase. The decision to purchase the table must be made on the merits, and not on personal considerations or relationships. The employee may, however, purchase his own ticket with City funds, as his presence at the event serves a public purpose. City funds may be used to buy the whole table, provided that City employees whose presence serves a public purpose, or non-City attendees who have clear relationships serving City interests are the users of those tickets, and none are attending solely as spouses of the employees.