

Advisory Opinion 2012-01

Question Presented

May Seattle Police Officers and Firefighters accept an offer of discounted rent at a downtown apartment building without violating the City's Ethics Code?

Short Answer

Yes, the property owner is making the offer to enough City and non-City personnel to eliminate any reasonable claims that they are trying to influence City decisions with the offer of discounted rent.

Facts

The owner expects to complete work on the 654-unit building in early 2013, and would like to make 100 apartments available to Seattle teachers,¹ police officers and firefighters at a reduced rent for one year. The 100 units would be available on a first come, first served basis. The owner states this it is "hopeful that by offering [discounted units] to Seattle public servants, more of them will have an opportunity to experience the benefits of an urban lifestyle and choose to live downtown long-term, which would be of benefit both to the individuals and downtown Seattle."

Relevant Code Provision

Pursuant to SMC 4.16.070.3, a City employee may not "receive any...thing of monetary value from any person or entity where the...thing of monetary value has been...received or given or, to a reasonable person, would appear to have been...received or given with intent to give or obtain special consideration or influence as to any action by the Covered Individual in his or her official capacity." The Code therefore prohibits soliciting or receiving a gift that: 1) was in fact given, solicited or received with the intention to give or obtain special consideration or influence; or, 2) would appear to a reasonable person to have been given, solicited or received with the intention to give or obtain special consideration or influence.

The Gift Rule

The Commission has also adopted an administrative rule regarding gifts. The rule describes several "safe harbors", specific situations in which the Commission believes a reasonable person would not conclude a gift was intended to influence a City employee's official actions. Although the rule does not specifically address employee discounts, it does make it clear that the rules regarding gifts to employees who "participate in contractual or regulatory

¹ Seattle teachers are subject to the School District's Ethics Policy and not to the City's Ethics Code. While the rules that govern teachers, firefighters and police officers are similar, the Commission does not have authority to interpret the School District's Ethics Policy.

decisions involving the giver of the gift” are stricter than the rules that apply when the employee has no such relationship with the donor.

The Commission’s Previous Advisory Opinions

The Commission has addressed employee discounts in previous advisory opinions. In Advisory Opinion 02-02, the Commission advised that “[t]he Code of Ethics does not prohibit City officers and employees from accepting discounts offered by City contractors to *all* City employees and to the employees of similarly situated customers.” (Emphasis added.)

In Advisory Opinion 09-01, the Commission declined to establish a blanket rule for offers to select groups of City employees. Instead, the Commission announced three questions to guide the analysis of such offers: “(1) How large is the class? (2) What, if anything, is the nexus between the offeror and the work performed by the class, and (3) Is the discount available to similar groups of non-City employees?”

Framework for the Analysis

Applying the principles contained in the Code, the Gift Rule, and the Commission’s previous Advisory Opinions, we conclude the focus of the analysis should be on the degree to which the program could reasonably be seen as being “targeted” to City employees who are in a position to provide special consideration to the donor.

City employees whose duties have a nexus with the provider of a personal employee discount can nevertheless participate in a sufficiently broadly-based discount program because the program would not appear to a reasonable person as being targeted to them. For example, City employees who purchase goods from a vendor as part of their duties could participate in the vendor’s discount personal purchasing program **if** the discount is available to all City employees, because the City employees whose duties have a nexus with the vendor is a small percentage of all eligible employees.

On the other hand, the same City purchasing agent could not purchase discounted goods under the vendor’s personal discount program if the program was limited to purchasing agents, because the program would appear to be targeted to those who are in a position of influence City actions that affect the vendor. This is true even if the personal discount was available to all purchasing agents who work for any of the vendor’s customers, both City and others, because a very high percentage of the eligible employees, both City and non-City, are in a position to influence their organization’s actions that affect the vendor.

Analysis of This Discount Program

There is no reason to think this particular employee discount is in fact intended to influence City employees’ official actions, so the focus of our analysis is on whether it would

appear to a reasonable person the employee discount has been given or received with the intention to give or obtain special consideration or influence.

a) Size of the Eligible Class

The number of people eligible for the discounted rent is large, approximately 5,500 City and School District employees. There are approximately 2,700 teachers in the Seattle School District, 1,800 Seattle police officers, and 1,000 Seattle firefighters. While ultimately no more than 100 units will be available at the reduced rent, the “first come-first served” nature of the program means the donor has no control over which 100 of the approximately 5500 eligible employees receives the discount. The 2,800 police officers and firefighters comprise roughly one quarter of the City’s total workforce and approximately one half of the 5500 total eligible employees.

The large size of both the total class and the class of eligible City employees weighs in favor of the conclusion the program would not appear to be targeted to City employees who are in a position to influence City actions that affect the sponsor.

b) Nexus

The nexus between the property owner and the work performed by those City employees eligible for discounted rent varies. Firefighters inspect all Seattle apartment buildings and commercial buildings to ensure that they comply with Seattle’s fire code. Police officers patrol the City’s streets and respond to emergency 911 calls. While an eligible firefighter’s duties might include inspecting the sponsor’s property, or an eligible police officer’s duties might include patrolling the neighborhood or responding to a 911 call at the property, those possibilities are just that – possibilities - and should not by themselves preclude an eligible employee from participating in the program. Very few of the eligible City employees would in fact participate in contractual or regulatory decisions involving the program sponsor. If Seattle firefighters or police officers in fact move into the property, the potential for conflicts of interest can be dealt with via disclosure to the employing department and giving the department the opportunity to develop appropriate policies, if any are required.

c) Availability to Non-City Employees

The offer is also available to approximately 2,700 teachers in the Seattle School District. There does not appear to be a nexus between the duties of the teachers and the sponsor of this rental discount program. This factor also weighs in favor of the conclusion that the program does not appear to be intended to influence official actions.

Conclusion

The first-come first served rental discount program open to all Seattle firefighters, all Seattle police officers, and all Seattle School District teachers is a sufficiently broad-based employee discount program so that it would not appear to a reasonable person to be intended to influence eligible City employees' official actions. Eligible City employees can participate in the program without violating the gift provisions of the City Ethics Code.