



# Committee of Seventy

Fighting for Better Local Government

## **Testimony on Proposed Regulation No. 10**

Philadelphia Board of Ethics

November 20, 2013

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I am Ellen Mattleman Kaplan, Vice President and Policy Director of the Committee of Seventy, a non-partisan and not-for-profit watchdog organization fighting for honest and effective government, fair elections and better informed citizens.

For months, this Board has been grappling with a proposed regulation on city government's policy for employees accepting gifts.

Why not make this simple: no city employee – elected or appointed, paid or unpaid – may accept a gift of any value from any source.

A total ban on the acceptance of gifts would not violate the inalienable rights of city employees. It would not impose a great hardship. And I suspect the city would not lose valuable employees, or drain the pool of people interested in working here, by forbidding them to accept gifts.

We are not naïve in believing Philadelphia would enact a zero-tolerance gifts policy. All cities permit the acceptance of *some* gifts by city employees. Since the Board's staff has done considerable research on gifts policies in other cities, I won't describe them here.

We hypothesize about a total ban only to underscore that only under very limited circumstances should it be permissible for individuals who work for city government to accept gifts.

And it shouldn't extend just to people who engage in, or are seeking, city business. Even people who don't do business with the city could be tempted to give gifts to city employees.

No one should sound this trumpet louder than the Board whose job it is to administer and enforce the city's ethics laws.

Today I will focus on a few key points.

**1. The Committee of Seventy urges the Board of Ethics to set an annual limit of no more than \$50 in non-monetary gifts, and no cash gifts, to city employees.**

Seventy agrees that a financial threshold above which gifts cannot be given is preferable to the city's existing gifts rule – which says employees can't accept anything of “substantial economic value that might reasonably be expected to influence” them in doing their jobs.

But only if the financial threshold will actually prevent potential abuses. Seventy is impatient for ethics reforms. But not at the expense of putting a bad regulation on top of a bad law.

We recognize that the Board's staff and some of its members sincerely believe “substantial economic value” should be interpreted in Regulation No. 10 to permit a \$200 ceiling on non-monetary gifts, and a \$50 limit on cash gifts. Anything less, as I understand their view, would not fit this definition.

Seventy implores the Board to lower the non-monetary threshold to no more than \$50 and to absolutely prohibit cash gifts of any amount. In our view, gifts above \$50 at least raise a perception that the giver expects something from a city employee or is thanking the employee for a service already performed.

The specter of city employees accepting even \$1 in cash sends chills up our spine. It is virtually impossible to account for cash gifts. Cash is stuffed in someone's pocket and no one is the wiser. It is far too easy for abuses to occur. They have and they will.

A \$50 non-monetary limit is reasonable and in step with gifts policies in several other cities. The threshold is not so high that it is likely to influence city employees' behavior. And it is not so low that it would disallow gifts of relatively minimal value. Frankly, Seventy would readily endorse an even lower bar.

We understand that the proposed regulation underscores that the acceptance of gratuities of any value is strictly prohibited.

However, let's face it: In real life, there is a very fine line between a gratuity and a gift. No donor will say that he or she is making – and no recipient will ever say he or she is receiving – a gratuity. As a result, we take no comfort in the ban on gratuities as an insurance policy against improperly given gifts.

## **2. The Committee of Seventy urges the Board of Ethics to recommend only limited exceptions to a citywide gifts policy.**

Regulation No. 10 covers a lot of ground, including permissible gifts, gifts from restricted sources and gifts from prohibited sources.

We will not comment on each and every one of the provisions. Overall, the guiding principle should be one of common sense.

It is common sense to allow city employees to accept gifts of unlimited value from close family members or life partners. It is common sense to allow city employees to accept food and beverages provided in the ordinary course of a work meeting that is not held at a restaurant. It is common sense to allow city employees to enjoy entertainment at a gala to which they are invited and attending as a representative of the city.

Since there was significant conversation at prior Board meetings about an exception for gifts from close personal friends, I will specifically address this.

We concur that a “friendship” exception could be difficult to enforce. It would strain the staff and resources of the Board – already too limited to begin with – to investigate every claim that a gift was given out of friendship.

The easiest antidote is not to carve out a friendship exception. It’s that simple. Any true friendship will survive.

If the Board feels the need for a “friendship exception,” why not require recipients and donors to justify to the employee’s supervisor and to the Ethics Board, in writing, gifts given out of genuine friendship? This hurdle is sufficiently high that it would serve as a deterrent for those whose claims of friendship are untruthful or exaggerated.

**3. The Committee of Seventy urges the Board of Ethics to disallow any city employee from *soliciting* gifts.**

Seventy agrees with the view raised in the November 19 *Daily News* OpEd by the city’s Chief Integrity Officer and Inspector General that permitting city employees to solicit gifts is deeply problematic.

We understand that the word “soliciting” comes directly from the city’s gifts rules. But under no circumstances should any city employee ask anyone, with or without city business, for a gift of any value. To do so would send a frightening message that the employee can be bought. Even if this is not the employee’s intention, it could be perceived that way.

The Ethics Board should urge City Council to remove this reference from the city’s gifts rules.

#### **4. The Committee of Seventy urges the Board of Ethics to recommend an overhaul of the city's gifts rules to the mayor and City Council.**

Members of this Board have said in previous meetings that they are “hamstrung” by existing city rules on the acceptance of gifts by city employees.

The Board should not hide behind this excuse to endorse what we believe to be a potentially dangerous regulation.

In fact, the Philadelphia Code explicitly gives the Ethics Board the authority to tell the mayor and City Council when its laws are too weak or unclear:

The Board shall, whenever it deems necessary, make recommendations to the Mayor and to City Council which seek to improve the administration and enforcement of [the Code's Chapter on Conduct and Ethics], including any legislative changes which help strengthen or clarify the standards of conduct and ethics. Phila. Code, Section 20-606 (1)(l)(ii).

On a number of occasions in past years, the Board has taken this role to heart by recommending legislative or Philadelphia Home Rule Charter changes, including on the city's gifts policy. For example:

- In its 2008 Annual Report, the Board proposed amending the City Code to “...create a single gift rule to apply to all City officials and employees that would prohibit them from accepting anything of value from a ‘prohibited source,’” which would “generally include any person or business that is in the City, does business with the City, or is subject to action by the City.”
- In its 2009 Annual Report, the Board encouraged Council to consider greater controls on gifts and expressed its belief “that public confidence in government is enhanced when legislation reduces or eliminates the potential of gifts, family relationships, and personal financial interests to influence government decision-making.”
- In its 2010 Annual Report, the Board recommended amending the City Code to “create a stricter, clearer gift rule to apply to all City officials and employees.”

We strongly suggest that this is one of those times for the Board to “deem necessary” an overhaul of the city’s gifts policy.

It is the perfect moment to do this. In 2015, the city will elect a new mayor. Mayor Nutter’s tighter gifts acceptance policy, which governs people who report to him, will expire.

There should be one gifts acceptance rule that governs all employees in city government, elected or appointed, paid or unpaid. Not one set of rules for the executive branch and another for the legislative branch and row offices.

This Board of Ethics should lead the charge to get this done.

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The Committee of Seventy appreciates the Board’s consideration of its testimony today and its comments on proposed Regulation No. 10 during previous Board meetings.

We are also grateful for the opportunity to provide input over the last few months to staff.

In conclusion, we urge the Board not to endorse this regulation as it is proposed. Tell City Council that – based on the Board’s experience since its creation by city voters in 2006 – it has reached the conclusion that the existing gifts policy is unacceptable. That it invites subjective and inequitable determinations both as to whether a gift is of “substantial value” or “reasonably expected” to influence the city employee.

City employees must know what they can and cannot do. Rules that are unclear and open to discretion open the door to misbehavior. This Board should do whatever it can to slam that door shut.

A gifts policy with a \$50 financial threshold for non-monetary gifts would obviate the need for guesswork. And the policy should apply to everyone who works in city government, elected or appointed, paid or unpaid.

It's up to City Council to enact laws governing the acceptance of gifts by city employees. If Council is not acting on this on its own – and so far it has not, despite pleas by Seventy, Mayor Nutter's Task Force on Ethics and Campaign Finance Reform and others – the Board of Ethics should use its powerful voice to demand action.

We look forward to working with the Board, and with City Council and the mayor's office, for as long as it takes to get this right.

Thank you.