

April 24, 2013

Cedar Rapids City Council-Person Kris Gulick  
Cedar Rapids City Hall  
101 1<sup>st</sup> Street SE  
Cedar Rapids, Iowa 52401

Sent via email only-no hardcopy to be sent

Re: Request to Cedar Rapids Board of Ethics for Advisory Opinion

Dear Council-Person Gulick:

The Cedar Rapids Board of Ethics met on April 19, 2013 in response to your March 28<sup>th</sup> request for an advisory opinion.

Your request stated that you are on the board of directors of the Cedar Rapids Area Convention and Visitor's Bureau and that the bureau:

“obtains a substantial amount of funding from the city’s hotel motel tax funds. I have not [received] personal financial gain from my membership on the board. In the past my practice has been to recuse myself from voting on actions that provide funding to the organization out of an appearance of a conflict of interest.”

You also stated that members of boards and commissions and council members do participate in not for profit organizations as members or as board members. These organizations make a variety of requests to the city.

We are assuming that you are a voting member of the bureau’s board of directors and that the bureau receives funding from other sources including member organizations.

#### Conflicts of Interest

There are five different actions that result in a conflict of interest violation defined in the Cedar Rapids Municipal Code, Section 6.22.

1. Subsection 6.22(c)(6)(A) states that a conflict of interest action occurs when a City Official has or can reasonably be expected to have a “Private Financial Interest in the outcome.” A Private Financial Interest or Private Gain is defined at Subsection 6.22(c)(9) as any direct or indirect economic benefit or other consideration that is not otherwise a benefit or consideration to the general public. This benefit

or consideration goes to the City Official or a member of their immediate family or it goes to any business entity or organization that employs the City Official or their immediate family or in which the City Official or their immediate family has an ownership interest of 5% or more of the voting power or capital interest.

**The Board has concluded** that this definition does not apply to your situation.

2. Subsection 6.22(c)(6)(B) states that a conflict of interest action occurs when a City Official accepts gifts and other things of value in violation of applicable provisions of the Iowa law or the City's Municipal Code.

**The Board has concluded** that if you accept a gift or something of value from the not for profit that is prohibited by City Ordinance or Iowa law then there is a conflict of interest. The Code of Iowa, Chapter 68B.22, para. 4(f) exempts from the gift restrictions:

Items received from a bona fide charitable, professional, educational, or business organization to which the donee belongs as a dues-paying member, if the items are given to all members of the organization without regard to individual members' status or positions held outside of the organization and if the dues paid are not inconsequential when compared to the items received.<sup>1</sup>

3. Subsection 6.22(c)(6)(C) states that a violation occurs when a City Official acts in a private capacity on matters dealt with as a City Official and the official's act does not involve participating in a City program or process like any member of the general public.

This subsection focuses upon the City Official's private actions when the City Official has a public duty to act on the same matter. The Ethics Board has not defined "private action". A private action could have a financial component that benefits a third party but does not benefit the City Official as defined above. This could be interpreted as restricting actions as a not for profit board member in a certain matter if in your status as a City Official you have acted on such matter as well.

The 2005 City Charter directed the City Council to establish the Board of Ethics to administer and enforce a conflict of interest and financial

---

<sup>1</sup> The City Attorney's Office may provide guidance on this state statute and the municipal ordinance.

disclosure ordinance. The Charter states: "The use of public office for private gain is prohibited." Examples include "acting in a private capacity on matters dealt with as a public official." Subsection 6.22(c)(9) defines both "private financial interest" and "private gain" as "direct or indirect economic benefit or other consideration."

The current ethics ordinance language follows the Charter intent by prohibiting "direct or indirect economic benefit or other consideration" received by the City Official. The intent is to restrict the actions of City Officials in the performance of their official duties to prevent financial gain. The intent is not to restrict private actions such as fulfilling duties as a not for profit board member. **The Board has concluded** that if your private action as a board member in a matter previously dealt with by you as a public official does not result in a financial gain to you or a member of your immediate family then no conflict of interest occurred, in this particular respect.

4. Subsection 6.22(c)(6)(D) states that "use of confidential information for purposes other than the fulfillment of the City Official's official duties" is a conflict of interest.

**The Board has concluded** that if non-public information obtained in your capacity as a City Official is provided to your not for profit organization, there is a conflict of interest violation.

5. Subsection 6.22(c)(6)(E) states that it is a conflict of interest to make "appearances" on behalf of the private interests of third parties without full and complete disclosure of:
  - a. your relationship with the third party;
  - b. your status as a City Official; and
  - c. that your appearance is on behalf of the third parties and not in any official capacity as a City Official.

An "appearance" is defined by Subsection 6.22(c)(1) as "any communication by a City Official of any kind...regarding a matter or issue to be determined by any City Agency."

**The Board has concluded** that this prohibition requires you to disclose your relationship to the not for profit organization when talking with city staff or officials. When there is discussion or action related to that organization in your role as a City Official, there must also be disclosure. Failure to do so is a conflict of interest violation. The disclosure must be documented.

This disclosure requirement, in and of itself, does not require a recusal. You must refer to the other prohibitions discussed above in making

that decision.

#### Federal Rules

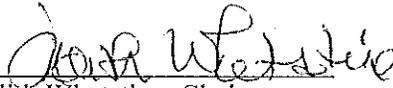
You also asked for a determination whether or not your action might violate rules in the use of federal grants and funding. The City's Finance Department is aware of the federal regulations that define conflicts of interest and include circumstances where there can be an "appearance of a conflict of interest."

These federal rules are not within the jurisdiction of the Board of Ethics. You may wish to consult with the City's Finance Department for further guidance.

Thank you for your request for an advisory opinion. On behalf of the Board's members, we hope that it provides the guidance you were seeking.

Cedar Rapids Board of Ethics

By:



Judith Whetstine, Chair

Copies to:  
Cedar Rapids Mayor and City Council  
Cedar Rapids Finance Department

## Stevenson, Amy

---

**From:** Kris Gulick <krisgulick@gmail.com>  
**Sent:** Thursday, March 28, 2013 9:35 AM  
**To:** Stevenson, Amy  
**Subject:** Board of Ethics Advisory Opinion Request

Amy – I would like to request that the board of ethics evaluate and provide an advisory opinion. Specifically and generally I as well as many council members and board and commission members belong to not for profit organizations as members or board members who have a variety of requests to the city. These could be requests for zoning changes, requests for hotel motel tax funds, requests for fund raising event permits, etc. As a not for profit organization board members and other members receive no personal financial benefit from these organizations however these same members typically are very engaged with their respective organizations. My request of the board of directors is to provide some guidance and an advisory opinion as to whether these situations could result in conflict of interests and require the recusal of voting on issues before their respective body that involve these not for profit organizations upon which they are involved as either a member or a board member.

In my specific case I am on the board of the Cedar Rapids Area Convention and Visitor's Bureau who obtains a substantial amount of funding from the city's hotel motel tax funds. I have not personal financial gain from my membership on the board however in the past my practice has been to recuse myself from voting on actions that provide funding to the organization out of an appearance of a conflict of interest.

I suspect that this is a common issue that could arise with other members so I would like to have the board provide an opinion on issues such as these on a broader basis than just my specific example.

Should the board have any questions please do not hesitate to have them contact me. Thank you.

Kris

*"True leaders are catalysts to bold action or meaningful change. They teach, persuade, and inspire. They change minds and attitudes. They mobilize people. The credentials of a real leader are the list of things he or she reforms for the better." - Michael Josephson, Character Counts*

Sign up for the District 1 e-mail distribution list. Just send an e-mail with "District 1 Newsletter" in the subject line.

Kris G. Gulick  
Council Member - District 1  
101 First Street SE  
Cedar Rapids, Iowa 52401  
Telephone - 319-286-5051  
[Kris.Gulick@Cedar-Rapids.org](mailto:Kris.Gulick@Cedar-Rapids.org)  
[www.Cedar-Rapids.org](http://www.Cedar-Rapids.org)

2013 MAR 28 A 11:09  
CITY CLERK'S OFFICE  
CEDAR RAPIDS, IOWA