

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

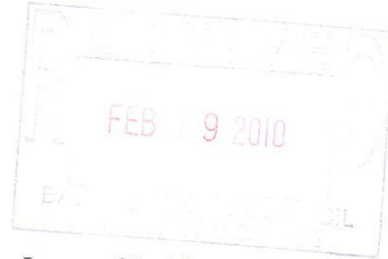


DEPARTMENT OF LAW

GEORGE A. NELSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

February 18, 2010

The Honorable President and
Members of the Baltimore
City Council
c/o Karen Randle, Executive Secretary
409 City Hall
Baltimore, MD 21202



RE: City Council Bill 10-0446 – Public Ethics Law – Clarification
and Expanded Coverage

Dear President and Members

You have requested the advice of the Law Department regarding City Council Bill 10-0446. City Council Bill 446 amends Article 8 of the Baltimore City Code known as the Baltimore City Ethics Code. The bill proposes to clarify certain definitions and the provisions regarding restrictions on participation and the solicitation and acceptance of gifts and financial disclosure.

City Council Bill 446 amends the definition in Section 2-5 of “business with the City” to include any sales, purchases, leases or contracts that are made “to or from or with another person in connection with or in furtherance of a contract that is being negotiated or has been entered into by the other person with the City or an agency of the City.” This language proposes to clarify that a person can be doing business with the City even when they are not a party to a contract with the City if they have a contract with another person who is entering into an agreement with the City and their contract is related to that agreement. The bill also removes from the definition of “business with the City” the requirement that the contract or other transaction be made within the reporting period for which disclosure is required. This expands the definition to cover all agreements regardless of when they are entered into.

The bill also amends the restrictions on a public servant’s participation in a matter by striking the word “direct” prior the “financial interest” in several subsections of Section 6 -6. Financial interest is defined in Section 2-16 of the Ethics Code. Removing “direct” has no substantive effect as did not enhance the definition of “financial interest” in any meaningful way.

City Council Bill 446 expands the prohibition against the solicitation and acceptance of gifts in Sections 6-26 and 6-27 by prohibiting a public servant from soliciting/accepting a gift from any person who does or seeks to do business “with another person in connection with or in furtherance of a contract that is being negotiated or has been entered into by the other person with the public servant’s agency.” This change will prohibit solicitation/acceptance of gifts from any person who has connections to a City contract with the public servant’s agency even if that

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person is not a party to the contract with the City but has a relationship with the contracting party that involves the contract with the City. The bill further expands the scope of the prohibition to include any owner, partner, officer, director, trustee, employee or agent of any person described in subsection 1-4 of Sections 6-26 or 6-27. These definitional changes also affect financial disclosure requirements. Although this is within the authority of the City Council, these changes are extremely broad (consider, for example, the janitor employed by a \$6,000 subcontractor on a \$10,000,000 City job as a "person doing business with the City) and may make it difficult at best for public servants to determine from whom they are prohibited from soliciting and accepting gifts or which gifts they have to report on their financial disclosure forms.

Article VII, Section 105 of the Baltimore City Code states that the Mayor and City Council of Baltimore shall adopt ordinances to execute the provisions of "the Maryland Public Ethics Law" of the Annotated Code of Maryland to be administered by the Board of Ethics. Article 8 of the Baltimore City Code was enacted pursuant to this authority. Section 15-803 of the State Government Art. of the Maryland Ann. Code require all local governments to enact ethics laws for local officials governing conflicts of interest, financial disclosure and lobbying. Section 15-804 requires that the conflict of interest provisions enacted by a county or municipal corporation under § 15-803 of this subtitle shall be similar to the provisions of Subtitle 5 of this title, but may be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction. The revisions to the City Ethics Code found in City Council Bill 10-0446 are consistent with the authority granted in the Charter and are consistent with the requirements of State law.

City Council Bill 10-0446 is consistent with the authority of the City Council. The Law Department, therefore, approves the City Council Bill 10-0446 for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro
Chief Solicitor

cc: Honorable William H. Cole, IV
Angela Gibson, City Council Liaison
George A. Nilson, City Solicitor
Ashlea Brown, Assistant Solicitor
Hilary Ruley, Assistant Solicitor
Terese Brown, Assistant Solicitor
Minda Goldberg, Assistant Solicitor