



Testimony on Gifts Rules in Pennsylvania

Pennsylvania Senate State Government Committee

April 28, 2014

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

I write to strongly support this Committee's efforts to strengthen state government's gifts acceptance policies. We hope you will accept this letter and enter it into the public record of today's public hearing.

Given the exceedingly troubling allegations surrounding the Attorney General's aborted sting operation, your efforts could not come at a better time.

But it's more important to do this right than to do it quickly as a reflexive response to these allegations. Although the Senate is understandably impatient for reform, it should not be at the expense of deliberate decision-making. There is too great a risk of enacting gifts rules that are likely to be misunderstood and, therefore, violated.

The Committee of Seventy feels particularly qualified to talk about gifts rules.

We have an unparalleled track record of accomplishments related to ethics reforms. Most recently, they include (1) spearheading the creation of the Philadelphia Board of Ethics by city voters in 2006; (2) leading the successful effort to enact a city law requiring lobbyists to register and report their expenses in 2010; (3) prompting Mayor Nutter to create a Task Force on Ethics and Campaign Finance Reform in 2008; and (4) assisting the Philadelphia School District in improving its administration and enforcement of ethics rules, beginning in 2012 and still continuing.

Seventy regularly speaks out on issues related to ethics and integrity in government. We testify before City Council and the Board of Ethics. We discuss ethics issues with Mayor Nutter's internal ethics watchdogs – his Chief Integrity Officer and Inspector General – and also with the city's outside watchdogs, the City Controller and District Attorney. We conduct ethics trainings for other non-profit organizations. We are the go-to source for the regional media on ethical government.

We are particularly proud of our recent leadership in advocating for Philadelphia's new gifts rules. Since it's relevant to today's hearing, I'll talk about this in some detail.

Last fall, Seventy waged a very public and months-long battle for citywide gifts reforms. The Philadelphia Board of Ethics, which is responsible for administering and enforcing the city's ethics

rules, proposed a regulation to interpret the then-existing citywide gifts ordinance – which said city employees and elected officials couldn't accept anything of "substantial economic value that might reasonably be expected to influence" them in doing their jobs.

The first version of the regulation proposed by the Ethics Board's staff would have permitted cash gifts of up to \$50 and non-cash gifts of up to \$200.

Seventy vigorously opposed the proposal and urged the Ethics Board to instead:

- Outlaw cash gifts entirely. Under the existing ordinance, cash gifts were permitted.
- Establish a \$50 limit on non-cash gifts. In the existing ordinance, which did not have any dollar limit, each city employee and elected official was free to make his or her own determination of what constitutes "significant economic value." Obviously what is substantial to one person may not be substantial to another.
- Forbid any "solicitation" of gifts. Solicitation was permitted under the existing ordinance.

In December 2013, after four months of public debate, the Ethics Board reached a consensus on the regulation: No gifts of cash or cash equivalents; non-cash gifts of up to \$50; no solicitation of gifts.

It was by then clear that Council was likely to amend the existing citywide gifts ordinance. The ordinance ultimately passed by Council in March 2014 echoed the Ethics Board's consensus on no gifts of cash or cash equivalents and no solicitation of gifts.

However, Council rejected the Ethics Board's recommendation for a limit of \$50 on non-monetary gifts and instead raised the allowable threshold to \$99.

Seventy continues to support a \$50 limit on non-cash gifts. And there are a few other provisions in the new gifts ordinance that we believe are not as stringent as they should be.

Significantly, around 85% of the city's workforce who work under the jurisdiction of Mayor Nutter is bound by more stringent rules in the mayor's Executive Order on gifts. That order prohibits all gifts to executive branch employees with very limited exceptions, not just gifts above \$99.

This rule, of course, does not apply to city employees who do not work for the mayor: City Council and its employees, City Controller, District Attorney, Sheriff, City Commissioners and these row offices' employees. They are covered by the rules just passed by Council – as future city employees in the executive branch will be if Mayor Nutter's Executive Order is rescinded by the next mayor of Philadelphia who takes office in January 2016.

I give the Committee this recent history to illustrate that you do not have to start from scratch in constructing gifts rules. A lot of research and debate for you to draw on exists elsewhere – not just in Philadelphia, but also around the country. For instance, the National Conference of State Legislatures is an excellent resource on gifts restrictions in other states. A state-by-state chart can be found at: <http://www.ncsl.org/research/ethics/50-state-table-gift-laws.aspx>.

The Committee of Seventy would be very pleased to assist in any way we can. And we hope to be invited to another hearing once actual legislation is introduced.

In the meantime, as you decide what that legislation should look like, we urge you to consider the following key points:

1. Outlaw gifts of cash and cash equivalents.

There is no justification for any state employee – appointed or elected – to be offered, or to accept, gifts of cash or cash equivalents (checks, money orders, pre-paid debit or gift or credit cards). Permitting cash gifts of any amount invites petty corruption on a mass scale.

Or at least the perception of this in the eyes of the public. 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.

The inclusion of a no-cash provision in state gifts rules is so self-evident that an argument to the contrary is inconceivable.

2. Set a bright-line financial threshold above which gifts cannot be given, with limited exceptions.

Pennsylvania places no dollar figure on the value of gifts that can be accepted.

At this moment, many people are calling for a zero-tolerance gifts policy. A total ban on the acceptance of gifts would not violate the inalienable rights of state employees. It would not impose a great hardship. I suspect the state would not lose valuable employees or elected officials by forbidding them to accept gifts.

However, we are not naïve in believing that zero-tolerance gifts rules are likely to be enacted. Most cities and states permit acceptance of *some* gifts by employees. We hypothesize about a total ban only to underscore that only under very limited circumstances should it be permissible for individuals who work for state government, and represent state taxpayers, to accept gifts.

We urge you to establish a *reasonable* financial threshold – the amount of which should be carefully considered and publicly debated. Pennsylvania has had its fair share of ethical scandals related to the acceptance of gifts. Don't invite more scandals by setting a limit you would find hard to justify to your constituents. The threshold should not be so high that it is likely to influence the behavior of state employees and elected officials. And it should not be so low that it would disallow gifts of relatively modest value.

3. Create only limited exceptions to a statewide gifts policy.

Most gifts rules cover a lot of ground, including exceptions under which gifts are permissible.

Again, we urge the Senate to take its time in determining which exceptions make the most sense for Pennsylvania. The guiding principle should be one of common sense.

It is common sense to allow state employees to accept gifts of unlimited value from close family members or life partners. It is common sense to allow state employees to accept food and beverages provided in the ordinary course of a work meeting. It is common sense to allow state employees to enjoy entertainment at a gala to which they are invited and are attending as a representative of the state.

Other exceptions are not as obvious. Let me say a few words about one: gifts from friends.

This exception is especially difficult to enforce. It would strain the staff and resources of the enforcers of the gifts rules 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.

With respect to gifts from lobbyists, there is no question that gifts from lobbyists have triggered innumerable scandals, here and elsewhere. Lobbyists exist for the express purpose of influencing official action and policy. There is nothing wrong with this. But it does shine a greater spotlight on gifts from lobbyists than other classes of gift-givers.

For this reason, some states impose tighter limits on gifts from registered lobbyists. California, for example, makes it unlawful for a lobbyist, or lobbying firm, to make gifts to one person aggregating more than \$10 in a calendar month. In Minnesota, a lobbyist or principal may not give a gift or request another to give a gift to an official. An official may not accept a gift from a lobbyist or principal. Other states make no distinction between categories of gift-givers.

"Best practices" in other states are not necessarily "best practices" for Pennsylvania. But when it comes to gifts from lobbyists, we urge you to err on the side of extreme caution.

4. Apply gifts rules both to people with *existing* state business and those *seeking* state business.

In addition to applying to people who already have business with state government, gifts rules should apply to those seeking state business, e.g., a job applicant, a vendor who has responded to an RFP, a social services agency who wants state dollars.

Gifts from people pursuing state business (e.g., through a job application or a contract proposal) are potentially as troubling as gifts from people whose interests are already established. And perhaps even more alarming because, in many instances, their identities are completely unknown or at the least hard to find. Enforcement would be virtually impossible.

5. Ban state employees from *soliciting* gifts.

Permitting the solicitation of gifts is deeply problematic. Under no circumstances should any state employee ask anyone, with or without state business, for a gift of any value. To do so would send a frightening message that the employee or elected official can be bought. Even if this is not their intention, it could be perceived that way.

As with cash gifts, a viable argument favoring solicitation is inconceivable.

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The Committee of Seventy appreciates the Committee's consideration of its testimony today. Our remarks are by no means comprehensive. There are other related ethics reforms we hope the Senate will also consider, for example, tighter financial disclosure rules, restrictions on per diems and campaign contribution limits.

For a start, we hope today's hearing bodes well for strong and enforceable gifts rules that Pennsylvanians can trust.

The Committee of Seventy looks forward to working with you to accomplish this result.

Thank you.