


GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Memorandum 2010-1
April 6, 2010

TO: All Deputy Mayors, Department, Agency and Office Heads

ORIGINATOR: Office of the Mayor 

SUBJECT: **RULES OF CONDUCT GOVERNING DONATIONS AND HONORARY GIFTS TO THE DISTRICT OF COLUMBIA GOVERNMENT**

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(11) of the District of Columbia Home Rule Act, Pub. L. 93-198, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code §§ 1-204.22(11), and section 115 of the District of Columbia Appropriations Act, 2003, approved February 20, 2003, Pub. L. 108-7, D.C. Official Code §1-329.01 (2009 Supp.), the following rules of conduct are hereby issued. The rules of conduct shall apply to all employees of the District of Columbia government and to all donation-related activities covered by Mayor's Orders 2008-33 and 2010-60, which established the Office of Partnerships and Grant Services (OPGS). Any District government employee who does not comply with a rule set forth in this memorandum may be subject to adverse personnel action.

I. GENERAL

- A. As used in this memorandum, "donations" are funds, services, or property given to the District of Columbia government specifically to assist an agency or office to carry out an authorized duty of that office. Donations can come from foreign or domestic sources. "Honorary gifts" are items of an honorary, celebratory, or commemorative nature, of modest value, presented to the Mayor or to the Mayor's staff in lieu of the Mayor, which are not intended to assist with official government business.
- B. Congress has authorized the District to augment its budget as passed by Congress pursuant to section 115 of the FY 2003 Appropriations Act (codified, and hereinafter referred to as, D.C. Official Code § 1-329.01 (2009 Supp.)), under which the Mayor must approve the solicitation, acceptance and use of donations of funds, services and property. The Mayor has delegated his authority under D.C. Official Code § 1-329.01 (2009 Supp.) to the Director of OPGS and her or his designee.
- C. The authority delegated requires the Director of OPGS to approve donations to all District Government agencies and all independent agencies, except the

Council of the District of Columbia and those agencies specifically excluded by law. Although an agency may already have statutory authority to solicit and accept donations, the rules set forth in this memorandum must be followed to meet the requirements of D.C. Official Code § 1-329.01 (2009 Supp.).

- D. In order for a donation to be legally authorized, the following requirements must be met:
 - 1. Solicitation (if any), acceptance and use of the donation must be approved by the Director of OPGS or her/his designee;
 - 2. The donation must be used for an “authorized function or duty” of the District government and the agency receiving the donation.
 - 3. Use of the donation must be accounted for through record-keeping that is auditable and accessible for public inspection as directed by the Director of OPGS and the Office of the Chief Financial Officer.

- E. The Director of OPGS is the only official who, on behalf of the Mayor, may approve solicitation or acceptance of donations to the District government, unless that authority has been delegated specifically and directly from the Director of OPGS.

- F. Donations may come from individuals, organizations, foundations, corporations, businesses, associations, governments, and other entities and may be in the form of checks, securities, real property (land and improvements), facilities, personal property and services.

- G. There are three steps required for the legal donation of goods, services, or property to the District of Columbia.
 - 1. A District agency must submit an application to solicit donations that assist the agency to carry out an authorized duty of that office.
 - 2. The Office of the Attorney General must certify that the donation is legally sufficient.
 - 3. The donor individual or company representative must sign a statement indicating the freely-given nature of the donation.

II. APPLICATION TO SOLICIT DONATIONS

Any solicitation of donations for the District government must be approved on a form prescribed by the Director of OPGS. The form shall include a description of the effect (if any) of the donation on future budgets of the District government, a description of the purpose for which the donation is sought, and a certification that:

- A. The donation will be used by an agency or instrumentality of the District government to fulfill an authorized function or duty;
- B. The donation is directly related to, and will be expended solely for, a discrete program or purpose; and
- C. The donation is consistent with applicable laws and policies.

III. AGREEMENT TO ACCEPT DONATIONS

- A. Acceptance of all donations to benefit the District government must also be approved on a form prescribed by the Director of OPGS (which may be the same form as described above). Attached to the form shall be a written donation agreement whose contents are described here. The donation agreement must be signed by authorized representatives of both the donor and the District government. A donation agreement must accurately describe the donation. To do so, the agreement must be in writing and include the following:
 - 1. A statement of the proposed use of the donation and any conditions placed on its use by the donor;
 - 2. A statement of the authority for the agency's use of the donation; and
 - 3. A statement signed by the donor that the donation is a bona fide donation such that the donor does not expect any special treatment from the District government as a result of the donation.
- B. A donation of funds may be accepted only if it is in the form of a check or other negotiable instrument, and made payable to the order of, or endorsed to, the District of Columbia Treasurer. A donation of funds may only be accepted by OPGS and shall be accepted and forwarded immediately to the Office of the Chief Financial Officer. All monetary gifts received directly by OPGS must be deposited in an appropriate account and maintained and disbursed under the same standards of accountability and the same safeguards as monies appropriated by Congress. All non-monetary gifts must be accounted for under the same standards and procedures used to account for other similar government property using the District of Columbia's financial management system (SOAR). To be legally accepted, a donation offered to an agency by a private individual or entity must be approved by OPGS in accordance with this memorandum.

IV. REASONS TO DISAPPROVE SOLICITATION OR ACCEPTANCE OF DONATIONS

OPGS shall disapprove solicitation or acceptance of a donation if any of the following circumstances applies:

- A. It appears that the donation is being offered with the expectation of obtaining advantage or preference in dealing with the District government or any of its agencies;
- B. Acceptance would create an appearance or actual conflict of interest for the government employee to whom authority to solicit or accept donations has been delegated;
- C. The conditions placed on a donation are inconsistent with the authorized purposes, policies, or planning documents of the District government;
- D. The intended use of the donation is inconsistent with or otherwise seeks to circumvent laws, regulations or policies;
- E. The donation is not in compliance with 18 U.S.C. §209;
- F. The acceptance of the donation will be used by the donor to state or imply the endorsement by the District government of any product, service or entity; or
- G. The donation reasonably may be viewed as funding for political activities.

Donations from organizations in which any District government employee is an officer, on the board of directors (including ex-officio), or otherwise engaged in a leadership or coordinating role with the organization may be accepted only if the donation has been reviewed and approved by the Office of the Attorney General.

V. FOREIGN/INTERNATIONAL DONATIONS

Any donation offered by or on behalf of a foreign government or an organization based outside the United States shall be coordinated through the Office of the Secretary of the District of Columbia. All such donations must gain initial approval from the Office of the Secretary prior to initiating the OPGS process detailed in this memorandum, which is required, after the initial approval.

VI. HONORARY GIFTS

Gifts of an honorary, celebratory, or commemorative nature presented to the Mayor, or to the Mayor's staff in lieu of the Mayor, from foreign or domestic sources, shall be considered

donations to the District of Columbia appropriately accepted under the authority of D.C. Official Code §1-329.01 (2009 Supp.), only if the gifts can be considered to exceed the dollar values listed in this section.

All honorary gifts shall be promptly catalogued by the Executive Assistant to the Mayor, with a notation of who presented the honorary gift, the range of the estimated value, and the date on which it was presented. The valuation ranges shall be: less than \$335¹, \$335 to \$499, and \$500 or more. The requirement to report all honorary gifts applies to all employees of the District government, and shall be reported to the Mayor's Executive Assistant upon receipt.

A. Honorary Gifts from Foreign Sources:

If the gift is given from, or on behalf of, a foreign national or foreign government, and would be judged by a reasonable person to be worth \$335 or more in fair market value, the gift shall be reported to the Office of the Secretary upon receipt to be treated as a donation and handled in accordance with 5 U.S.C. §7342 by the Office of the Secretary. If the foreign gift would be judged by a reasonable person to be worth less than \$335, it shall be catalogued by the Office of the Secretary in the same manner as any other honorary gift.

B. Honorary Gifts from Domestic Sources:

If the gift is given from, or on behalf of, a citizen of the United States, and would be judged by a reasonable person to be worth \$500 or more in fair market value, the gift shall be treated as a donation and shall be handled in accordance with the donation rules set forth within this memorandum. If the domestic gift would be judged by a reasonable person to be worth less than \$500, it shall be catalogued by the Mayor's Executive Assistant as any other honorary gift.

VII. DISPLAY AND DISBURSAL

Honorary gifts and donations deemed by the Secretary to be worthy of public display shall be displayed in suitable locations in District-owned or District-leased building or in other appropriate public space. Items not on public display shall be appropriately stored at least until 30 days have elapsed since the day the item was received.

After 30 days, items deemed appropriate by the Secretary for use by charitable organizations operating in the District of Columbia may be granted to such organizations to aid in the carrying out of the charitable organization's purpose and function. The Secretary may find

¹ \$335 is the value set by the U.S. Department of State in 2009 as the reporting threshold for foreign gifts of more than minimal value. This valuation may change from time to time, in which case the threshold for reporting foreign gifts shall be appropriately adjusted by the Office of the Secretary.

that certain items of clothing, for example, may appropriately be granted to District organizations which provide clothing and other services to the homeless in the District.

Items donated pursuant to this memorandum shall not, however, be sold or auctioned by the District government, nor may any such donated item be granted, given, or sold to any employee of the District government for personal use, or used by a District government employee outside of that employee's official duties and functions.

VIII. ETHICAL CONDUCT

Failure to follow any provision contained in this memorandum may be considered, at a minimum, as evidence of an official decision outside official channels in violation of the District government's standards of conduct because failure to follow the authorized procedures takes this action outside the scope of official activity. (*See* 6-B DCMR 1803.1(a)(5).)

An employee may not use his or her official title, position, or any authority associated with public office to solicit funds for a non-District government organization (such as a nonprofit organization) or otherwise further a donation to the District of Columbia on OPGS' website fundraising effort even if the organization donates the funds to the District government. (*See* 6-B DCMR 1803.1(a) and 6-B DCMR 1804.1(d).)

An employee who solicits funds for the District government, without delegated authority, from a non-District government entity that interacts with the District government or is regulated by it, may violate the standard of conduct which prohibits a government employee from seeking, either directly or through the intercession of others, any gift, gratuity, favor, loan, entertainment, or other like thing of value from a person who singularly or in concert with another:

- A. Has, or is seeking to obtain, contractual or other business or financial relations with the District government;
- B. Conducts operations or activities regulated by the District government; or
- C. Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities. (*See* 6-B DCMR 1803.2.)

The failure of a government employee to follow District laws with respect to donations to the District government may "adversely affect the confidence of the public in the integrity of government", (*see* 6-B DCMR 1803.1(a)(6)), and may lead to a violation of either or both the District and Federal Anti-Deficiency Acts.

Under the provisions of the Hatch Act, 5 U.S.C. §7321 *et seq.*, no employee may solicit funds for a political campaign for any office, either on or off duty.

IX. AGENCY PROCEDURES

Any person or entity offering an unsolicited donation to an agency shall complete the form prescribed in section II above to support its request for approval of the donation.

To facilitate the acceptance of donations by OPGS, an agency may:

- A. Prepare informational materials identifying projects, programs, or objectives that are appropriate for non-District Government support;
- B. Provide such materials to potential donors and members of the public who request them;
- C. Respond to questions about how to donate; and
- D. Assist in the drafting of donation agreements.

X. RECOGNITION OF DONORS

Donors may be recognized for their donations through letters of acceptance and appreciation, press releases, certificates and other items that commemorate the donation.

Recognition of corporate donations must not give the impression of advertising, or commercialization. No product names or logos should be used. Examples of acceptable recognition of donations include letters of appreciation, press releases, public events, and certificates. At the discretion of OPGS' Director, a short, discrete, unobtrusive donor credit line may be used as recognition, but no logos may be used.

XI. RESCISSION

This memorandum rescinds and replaces Mayor's Memoranda 2002-1 and 2007-1.