



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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MEMORANDUM

OPA Ethics Opinion 2023-01


Date: November 6, 2023

FOR PUBLIC RELEASE PURSUANT TO 1 CMC § 8561(j)

FROM: Joseph Przyuski, Legal Counsel
CNMI Office of the Public Auditor

Signature:  Date: 11/6/2023

REVIEWED BY: Dora I. Deleon Guerrero, Temporary Public Auditor
CNMI Office of the Public Auditor

Signature:  Date: 11/17/2023

Subject: Government Ethics Code Advisory Opinion

In March of 2023, the Public Auditor received an inquiry about the propriety of a fundraiser to generate monetary donations for a public event.

OPA construed the inquiry as a request for an Ethics Opinion under 1 CMC § 8561 (j) and offered an advisory opinion with respect to the Commonwealth Government Ethics Code Act (Ethics Code). The opinion, and this summary version of the same, are confined to analyzing the inquiry under the Ethics Code only as OPA is not authorized to offer general opinions regarding the legality of activities under other sections of the CNMI Code. OPA is required to make such opinions available to the public, while redacting the identity of the requesting party and that of others involved under 1 CMC § 8561 (j) of the Ethics Code.

OPA's opinion under that mandate is based on the following provided or assumed general facts:

- 1) The solicitation of donations will be made in person by members of the organizing government entity;
- 2) The purpose of the donations is strictly for the benefit of an event that is put on for the public's benefit, is not in any way related to a political candidate or political function, serves an authorized public purpose, and is open to the public - without limitation;
- 3) The donations solicited are modest in amount; and
- 4) The government agents soliciting the donations do not directly regulate the persons from whom they are soliciting.

Based on the above facts, OPA offers the following analysis and advice. 1 CMC § 8551 of the Ethics Code generally prohibits giving non-nominal value gifts to any government agent by any member of the public whom they regulate. Similarly, the same section generally prohibits government agents from receiving or soliciting gifts from any donor over whom they regulate. The purpose of these prohibitions is to ensure that decisions of public agents are free from actual or perceived conflicts of interest.

The scenario presented above, however, is distinguishable from the prohibited gifting and soliciting in the Ethics Code for several reasons. First, the beneficiary of the gifts will not be the individual government agents, but instead the attendees of the public event, for which the gifts will be directly utilized. Second, the individual government agents soliciting and collecting the gifts do not enjoy any regulatory authority over the donors and thus none of the conflict of interest or appearance of impropriety concerns from the Ethics Code are present. Finally, OPA assumed many of the individual gift amounts will likely fall below the \$50 threshold set forth in 1 CMC § 8551 and thus not of concern under the Ethics Code.

The gift prohibitions in the Ethics Code seek to not only prevent actual or perceived conflicts of interest, but also to ensure any gifts received by a Commonwealth agent are accounted for and are used for a public purpose. 1 CMC § 8551 (h) allows a Commonwealth agent to accept a gift on behalf of the Commonwealth provided the person accepting the gift promptly reports receipt of the gift the Public Auditor and the Department of Finance, who shall then add the gift to the inventory of Commonwealth property.

While OPA does not suggest the funds collected on behalf of the event should be added to the general fund, OPA does recommend any soliciting agency utilize adequate safeguards to ensure the donations received are properly accounted for, that all such funds are channeled to their intended purpose, and to report the total amounts of the fundraising efforts to OPA and to the Department of Finance. If any agency desires information on suggested safeguards or accounting practices, please contact OPA prior to any such event.