

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

FORMAL OPINION 2017-001

TO: Department and Division Heads

FROM: Michael P. May, City Attorney

DATE: July 19, 2017

RE: City Employee Travel Reimbursement by Third Parties

Our office regularly receives inquiries from Department and Division Heads and from other employees about reimbursement of travel expenses by third parties. The question is whether, in their official capacity, employees may accept funds from third-party organizations to cover their travel-related costs to attend conferences and other events. Because this is a recurring issue, our office is issuing a formal opinion addressing the ability of public officials and city employees to accept these funds under Madison General Ordinances.¹

Question Presented:

Does the City allow public officials and city employees, in connection with their official duties, to accept funds from third parties for travel-related expenses to attend conferences and other events?

Short Answer:

Yes, the City allows public officials and city employees, in connection with their official duties, to accept funds from third parties as long as the official or employee (1) files the appropriate forms with the City Clerk and the Finance Director and (2) reports the funds to the Finance Director within ten (10) days of the occurrence. However, if the funds exceed the City's normal travel reimbursement policies, the official or employee must pay to either the City or the third party the amount that exceeds those policies.

¹ Catherine Wiese, a summer law intern in the Office of the City Attorney, assisted in the preparation of this Opinion.

Discussion:

A. Public officials and city employees may accept travel-related funds from third parties.

Sec. 3.35, MGO, entitled Code of Ethics, states the policies with which each public official and city employee must comply to ensure his or her independence, impartiality, integrity, and responsiveness to the public. Pursuant to this ordinance, employees, elected officials and members of city committees are generally barred from accepting transportation or meals from third parties.

Sec. 3.35(5)(g), MGO, provides as follows:

Receipt of anything of value. No incumbent may receive and retain any transportation, meals, entertainment, fee, food, beverage, or reimbursement therefore, nor any honoraria, service fee or contract payment or anything of value *except* in accord with Sec. 3.35(6). (Italics added).

The Code defines “incumbent” to include elected officials, employees, and members of any City board, commission or committee. Sec. 3.35(3), MGO. “[A]nything of value” is defined very broadly in Sec. 3.35(2)(a), MGO, but excludes from the definition “money or items that are permitted and reported under Sec. 3.35(6)...”

Thus, to answer the question presented, we need to examine the exceptions set out in Sec. 3.35(6), MGO.

Specifically, Sec. 3.35(6) discusses the policies and procedures incumbents must follow when accepting funds from entities other than the City. The rules are slightly different for elected officials, employees and members of city bodies. The relevant part of MGO, Sec. 3.35 (6)(e) provides that city employees may not receive money or other form of payment, except for commemorative items, for activities performed in connection with their roles as city employees but:

Employees may accept and retain from persons or entities other than the City the cost or reimbursement of actual and reasonable expenses related to such activities, whether or not such activities arise from their City roles or positions.²

Sec. 3.35(6)(h) further explains:

Whenever an incumbent receives anything of value permitted by this Subsection (6) from or has any fee or expense waived, prepaid or reduced by a person or entity other than the City in connection with her or his official duties, she or he

² Madison, Wis., General Ordinances § 3.35(6)(e) (2017).

shall, within ten (10) days of the occurrence file a report with the City Clerk and the Finance Director on forms provided by the Clerk.³

Finally, Sec. 3.35(6)(i) states:

If a third party, other than the City, is authorized to pay for any expenses, including food, travel or lodging, incurred by any incumbent under this subsection, such payments shall be reported to the Finance Director within ten (10) days of the occurrence. The incumbent shall pay to the City or the third party the amount that such reported value exceeds the City's normal travel reimbursement policies.⁴

Therefore, incumbents may accept travel-related funds from third parties. Public officials and city employees may accept costs or reimbursement for actual or reasonable expenses for activities whether or not they arise from their position with the City. If an official or employee accepts funds in connection with his or her official duties, then they must file forms with the City Clerk and the Finance Director within ten (10) days of the payment. The forms that must be filed are provided by the City Clerk; a copy of the form is attached to this opinion. Receipts should be attached to the form.

Further, the official or employee must report the payment to the Finance Director within ten (10) days of the payment. If the payment exceeds the City's normal travel reimbursement policies, then the employee must reimburse the third party or the City for the amount that exceeds the policies.

There is a policy reason behind these rules: Because the official or employee could have attended the conference using City funds, there is no financial benefit to the employee when the conference and travel costs are paid by a third party. There is a benefit to the City coffers, but the employee is in the same position: the employee did not personally pay for the trip. This rationale explains why the employee may not accept more than the standard City reimbursement.

While an argument could be made that the third party has helped to curry favor with the employee, the City's Code of Ethics allows such reimbursement when there is no financial benefit to the official or employee.⁵

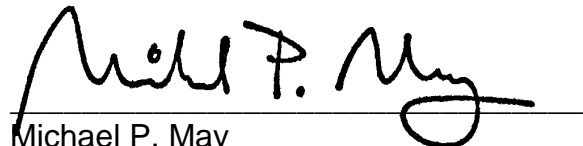
³ Madison, Wis., General Ordinances § 3.35(6)(h) (2017).

⁴ Madison, Wis., General Ordinances § 3.35(6)(i) (2017).

⁵ This opinion is consistent with several issued by the State Ethics Board. See OEB 92-7 and OEB 92-9 (1992) and OEB 93-8 (1993),

Conclusion:

Pursuant to MGO, Sec. 3.35(6), public officials and city employees may, in their official capacities, accept travel-related funds from third parties to attend conferences and other events as long as they: (1) file the appropriate forms with the City Clerk and Finance Director and (2) report the payment to the Financial Director within ten (10) days of the occurrence. If the funds exceed the City's normal travel reimbursement policies, then the official or employee must reimburse either the third party for the amount that exceeds those policies.


Michael P. May
City Attorney

SYNOPSIS: Review of the ability of public officials and city employees, in their official capacity, to accept reimbursement of travel costs from third parties

Report on Receipt of Honoraria, Fees or Expenses

Pursuant to Section 3.35 of the Madison General Ordinances,
the undersigned report the receipt of the following:

Name:	
Department:	
Item Received:	
Value of Item:	
Event for which Received:	
Sponsor of Event:	
Date of Event:	
Signature:	
Name:	
Department:	
Item Received:	
Value of Item:	
Event for which Received:	
Sponsor of Event:	
Date of Event:	
Signature:	