Tuesday, January 19, 2021

Mark I. Baum, AIA.
Mark I. Baum Architect, LLC
Chestnut Street
New Orleans, Louisiana 70115

Re: Louisiana Board of Ethics
Docket No. 2020-901

Dear Mr. Baum:

The Louisiana Board of Ethics ("Board"), at its February 5, 2021 meeting, considered your request for an advisory opinion as to whether the Louisiana Code of Governmental Ethics ("Code") would prohibit you from making a charitable contribution to a not-for-profit entity in the name a public employee who is employed by an agency with which you do business.

FACTS PROVIDED

You are a design professional who provides Architectural Consulting services through your company, Mark I. Baum, LLC. You are an architect, licensed under the laws of the State of Louisiana. You have inquired as to whether the Code would prohibit your business making a charitable contribution to a not-for-profit entity in the name a public employee who is employed by an agency with which you do business. The charitable contribution would be made as holiday gesture.

LAW

La. R.S. 42:1102(22)(A) defines a "thing of economic value" as money or any other thing having economic value with various exceptions concerning: promotional items having no substantial resale value; pharmaceutical samples, medical devices, medical foods, and infant formulas in compliance with the Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq*., provided to a physician, health care professional, or appropriate public employee for the administration or dispensation to a patient at no cost to the patient; food, drink, or refreshments consumed by a public servant, including reasonable transportation and entertainment incidental thereto, while the personal guest of some person, etc.

DISCLAIMER
This is a draft opinion and it is NOT an opinion of the Louisiana Board of Ethics.
No party may rely on the facts or conclusions. The analysis and conclusions herein are provided for discussion purposes only, and are subject to change or revision at the meeting of the Board of Ethics at which the matter is considered.

La. R.S. 42:1111(A) prohibits a public employee from receiving anything of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of his office or position.

La. R.S. 42:1115(A)(1) prohibits a public servant from soliciting or accepting, directly or indirectly, any thing of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person has or is seeking to have a contractual, business or financial relationship with the public servant's agency.

CONCLUSION

The Board concluded, and instructed me to inform you, that based on the facts presented, the Code will not prohibit you and/or your business from making a charitable contribution in the name of a public employee who is employed by an agency within which you and/or your business has a contractual or business relationship. The charitable donation made on behalf of a public employee is not a "thing of economic value," as contemplated in La. R.S. 42:1111(A) and La. R.S. 42:1115. The charitable donation would only result in the public employee getting credit for the donation. As the party who made a donation in the name of another, you or your business would be the only party able to claim a deduction from your taxable income as a result of the donation. The donation is not money or a thing of monetary value received by the public servant. Accordingly, there would be no violation of La. R.S. 42:1111(A) and La. R.S. 42:1115.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Code of Governmental Ethics. The Board issues no opinion as to past conduct or as to laws other than the Code of Governmental Ethics, the Campaign Finance Disclosure Act, the Lobbyist Disclosure Act, and conflict of interest provisions in the gaming laws. If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

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Sincerely,
LOUISIANA BOARD OF ETHICS

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LaToya D. Jordan
For the Board