

TOWN OF PERRYVILLE

ETHICS COMMISSION

June 1, 2023

Advisory Opinion 2023-01

Introduction

A new entertainment venue (“venue”) is preparing to open in the Town of Perryville. In preparation for its Grand Opening to the public, and to allow the venue’s staff to “master their hospitality skills,” the venue has offered various elected and appointed Town officials the opportunity to participate in a one-night “test stay” at the venue. The Ethics Commission has been requested to issue an advisory opinion to answer the following question: “If an official or employee accepts the venue’s offer of a “test stay,” will that official or employee run afoul of the Town’s Ethics Ordinance.” The Commission met on May 31 to consider and discuss this request. For the reasons that follow, and based upon the facts provided, we conclude that the answer to this question would likely be “yes.”

Facts Provided

A new entertainment venue is preparing to open in Perryville. In order to enhance its operations and customer experience, the venue has offered Town elected officials and certain appointed officials the opportunity to participate in a one-night overnight “test stay” at the venue. This same opportunity has been offered to other individuals in the community. This “test stay” consists of a one-night complimentary room and access, without charge, to some of the venue’s facilities. Estimates of the value of the one-night free room, on a promotional basis, range from \$150 to \$200 per night, with retail room rate estimated to be significantly greater. Food, beverages, and access to the venue’s other facilities would be made available for purchase and use by the participant during the test stay at the participant’s cost and expense. Each guest will be requested to complete a survey at the end of the “test stay.”

The venue has had an ongoing relationship with the Town government and its officials and employees for licenses, permits, and other discretionary and

ministerial approvals during the venue's development process. It is reasonable to believe that these interactions will continue. Some of these interactions involved requests for discretionary relief from various Town ordinances and regulations.

Discussion

The Town's Ethics Ordinance found in Chapter 8 of the Town Code is designed to preserve the public's confidence that Town officials and employees are exercising independent judgment, and avoiding the appearance of impropriety, in the conduct of the Town's business and affairs.

All Town of Perryville elected officials and employees are subject to the conflict of interest restrictions contained in Section 8-4 of the Town of Perryville Code.

Section 8-4(H) regulates the solicitation and acceptance of gifts by Town officials and employees. The Commission believes that the "test stay" and its complimentary free room night and use of some of the venue's facilities without charge is a "gift" within the intent of the Ethics Ordinance.

Sections 8-4(H)(3)(i) and (iii) prohibit the acceptance of gifts from a person "that the official or employee knows or has the reason to know:

(i) Is doing business with or seeking to do business with the town office, department, agency, board or commission with which the official or employee is affiliated; [or]

(iii) Is engaged in an activity regulated or controlled by the office, department, agency, board or commission with which the official or employee is affiliated[.]"

Because the venue continues to interact with the Town government and its officials and employees as the venue continues with its development process and, thereafter, during its operations, we believe that a acceptance of the "test stay" is likely to violate one or both of these prohibitions.

We further observe that Subsection 8-4(H)(5) contains eight exceptions to the Subsection (H)(3) prohibitions against accepting gifts. None of the (H)(5) exceptions appear to apply to the venue's offer of a "test stay." Nevertheless, we deem it significant that Subsection (H)(4) would negate these exceptions even if

one of them were to apply. Subsection (H)(4)(ii) would negate the exceptions for, among other reasons, if the gift is “[o]f significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee....” The value of the “test stay” leads us to believe that its value is significant and that the gift, in the eyes of the public, would give the appearance of impairing the impartiality and independence of judgment of the official or employee.

Advice

For the reasons set forth above, we advise that Town of Perryville officials and employees should not accept the offer of a “test stay” at the venue. An official or employee who accepts the offer runs a significant risk of violating the Town of Perryville Ethics Ordinance.

TOWN OF PERRYVILLE ETHICS COMMISSION

//s// Carl D. Roberts
Carl D. Roberts, Ed. D., Chair

//s// Diane Fox
Diane Fox, Member

//s// Michele McKay
Michele McKay, Member