MEH

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March 9, 1988

[redacted]

Case Number 87118.A

Dear [redacted]

The Board of Ethics has reviewed the Health Maintenance Organization (HMO) enrollment program for City personnel referred to in your letter of December 11, 1987. In this program, various HMOs are offering $50 savings bonds to City officials and employees who enroll in their health care plans. We conclude that the Ethics Ordinance does not prohibit City employees and officials from accepting the savings bonds offered by the HMOs as enrollment incentives.

Sections 26.2-4(b) and (c) of the Ethics Ordinance prohibit City officials and employees from accepting gifts in exchange for political favors and from accepting anything of value from persons whose business with the City might be affected by that official's or employee's governmental decisions. Under these provisions, the savings bond offer can be analyzed in two ways.

First of all, the savings bonds could be categorized as a "gift" under Sections 26.2-4(b) and (c) of the Ethics Ordinance. These sections prohibit City officials and employees from accepting gifts worth $50 or more. Research conducted by the Board indicated that as of January 14, 1988, the fair market value of a $50 savings bonds with a 12-year maturity rate was approximately $25. Accordingly, under this analysis, the Board of Ethics could have found that the savings bonds in question did not fall within the category of gifts regulated by the Ethics Ordinance. The Board has chosen, however, to take the position that the savings bonds do not constitute "gifts" for purposes of the Ethics Ordinance.

A "gift" is defined in Section 26.2-1(l) as "anything given without consideration or expectation of return." Since an employee or official will receive a savings bond only upon enrolling in an HMO, the savings bond is clearly provided in exchange for consideration. Thus, the Board does not view the savings bond as a gift, but simply as one part of the package of incentives and benefits offered to a prospective client if he or she will enter into a contract with the HMO. Accordingly, the Board concludes that the savings bonds in question do not fall within the category of "gifts" regulated by Section 26.2-4(c).

Section 26.2-4(b), on the other hand, is somewhat broader in its coverage. This section states that no person shall give to a City official or employee, and none of them shall accept, anything of value based upon any mutual understanding that the benefits would influence the employee's or official's decisions concerning City business. It is the opinion of the Board that this Section of the Ordinance will not prohibit City employees from accepting the $50 savings bonds because the decision of a City employee or official to select an HMO is a "personal decision", not a "decision concerning City business".

In this particular transaction, the contractual agreement between the City and the HMOs constitutes "City business". Since individual decisions made by City personnel to join an HMO do not affect the terms of the City's contractual agreement to pay the HMOs a set premium for each enrolling employee or official, the Board concludes that the savings bonds offer may influence the "personal decisions" of City employees, but do not influence City employees' "decisions concerning City business". We therefore conclude that the Ethics Ordinance does not prohibit City officials and employees from accepting the $50 savings bonds offered as enrollment incentives by certain HMOs.

We appreciate your inquiry. Please do not hesitate to contact us if you have any questions.

Sincerely,

S. Brandzel
Chairman

cc: [redacted]

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