

Stephan W. Fogleman, Chair
Melodie Hengerer
Arnold Sampson
John McCauley
Noelle Newman



Director: J. Christoph Amberger

BALTIMORE CITY BOARD OF ETHICS

July 20, 2023

Via Electronic Mail

Maya Gilmore, Executive Director
Mayor's Office of Cable & Communications
100 N. Holliday Street, Suite 250
Baltimore, MD 21202
maya.gilmore@baltimorecity.gov

Re: United Negro College Fund, Inc. (UNCF) Charitable/Governmental Gift Solicitation Waiver

Dear Director Gilmore,

The Ethics Board ("Board") approved your amended application to solicit and accept donations in support of the United Negro College Fund, Inc. The Board's approval was contingent on the application's endorsement by the Board of Estimates, which was received on June 21, 2023.

Approval is subject to the following conditions:

- 1) *In general.* The campaign must be conducted in accordance with the standards, terms, and conditions set forth in your application and in Board Regulation 06.26.1, attached for your reference.
- 2) Of specific importance, please note that all solicitations must be directed at a broad range of potential donors, must not specially target controlled donors, and must be conducted so as to avoid any suggestion that contributors might receive special access or favored treatment from any City agency or official. See R 06.26.1.
 - a. To comply with the requirements above, the Board recommends that you use uniform solicitation material that includes a written disclaimer along the following lines: "Important: Your contribution will in no way result in special access or favored treatment from any City agency or official."
- 3) *Reports.* A Final, Cumulative Report (due within 30 days after all solicitations and receipt of all anticipated donations) must be filed with the Ethics Board on Ethics Form 627.
- 4) *Expiration.* This approval expires on the date set forth in your application, September 9, 2023. After that date, a new application will be required for any further solicitation efforts.

If you have any questions, please do not hesitate to let us know.

Sincerely,

A handwritten signature in blue ink that reads "Maura Romo".

Maura Romo
Ethics Officer, Ethics Board

Baltimore City Board of Ethics

100 N. Holliday St., Suite 635 / Baltimore, MD 21202

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PART IV. GIFTS

Authority: City Code Article 8, §§ 3-6(a), 6-26(b), 6-28, and 6-29

R 06.26.1. Official governmental or City-endorsed charitable solicitations – In general.*A. Definitions.**(1) In general.*

In this Regulation, the following terms have the meanings indicated.

(2) “Controlled donor”.

“Controlled donor” means any person described in Ethics Code § 6-26(a)(1), (2), (3), or (4).

*(3) “Fiscal sponsor”.**(i) In general.*

“Fiscal sponsor” means the person who is responsible for the custody, accounting, and distribution of donations.

(ii) Exception.

The fiscal sponsor may not be an individual employed by the sponsoring agency.

(4) “Sponsoring agency”.

“Sponsoring agency” means:

(i) the City agency conducting a solicitation under this Regulation; or

(ii) if more than one agency is involved, the City agency designated to coordinate the solicitation.

B. General standards for Ethics Board approval.

The prohibition in Ethics Code § 6-26(a) against the solicitation of gifts from controlled donors does not apply to a solicitation if:

(1) the solicitation is for the exclusive benefit of a governmental or charitable function, program, or activity;

(2) the program, function, or activity to be benefitted and the proposed solicitation campaign has been endorsed by the Board of Estimates or its designee(s);

(3) the solicitation is directed at a broad range of potential donors and does not specially target controlled donors;

- (4) the campaign is designed and conducted so as to avoid any suggestion that contributors might receive special access or favored treatment from any City agency or official;
- (5) the proposed solicitation has been approved in advance by the Ethics Board, on written request of the sponsoring agency; and
- (6) the solicitation is conducted in accordance with the terms and conditions of the Ethics Board's approval.

C. Request for approval.

- (1) The sponsoring agency must submit its written request for approval to the Ethics Board at least 45 days before any controlled donor is solicited. (The Ethics Board may waive the 45-day requirement in its discretion.)
- (2) The request must contain the following information:
 - (i) the specific governmental or charitable function, program, or activity for which the solicitation will be made;
 - (ii) the specific purposes to which all receipts will be applied;
 - (iii) when and from whom the endorsement required by subsection B(2) of this Regulation were obtained, and a description of any conditions or limitations imposed on that endorsement;
 - (iv) when, how, and by whom the solicitation will be conducted;
 - (v) the categories of persons to be solicited;
 - (vi) measures to ensure that:
 - (A) the solicitation will be directed at a broad range of potential donors and does not specially target controlled donors; and
 - (B) the campaign will avoid any suggestion that contributors might receive special access or favored treatment from any City agency or official;
 - (vii) the identity of the individual who will be responsible for the custody, accounting, and final distribution of donations;
 - (viii) the aggregate value of the donations sought; and
 - (ix) any other information that the Ethics Board requests.

D. *Report.*

- (1) The sponsoring agency must periodically report solicitation activities to the Ethics Board, as follows:
 - (i) A Final, Cumulative Report must be filed within 30 days after all solicitations have been made and anticipated donations received.
 - (ii) Interim Reports must be filed on the following schedule, depending on the aggregate value of donations sought by the campaign:
 - (A) for campaigns seeking \$50,000 or more in donations, once every 3 months;
 - (B) for campaigns seeking between \$5,000 and \$50,000, once every 6 months; and
 - (C) for campaigns seeking less than \$5,000, only the Final, Cumulative Report is required.
- (2) The report must be filed in the form that the Ethics Board requires.
- (3) The report must contain the following information:
 - (i) all changes in any of the information contained in the request to the Ethics Board or in the Board's approval;
 - (ii) the aggregate amount or value of donations received from all persons;
 - (iii) a list of all donors and the amount or value of their respective donations;
 - (iv) the identity of each controlled donor that was solicited, whether that person donated or not;
 - (v) an accounting of how all donations and other income have been expended; and
 - (vi) any other information that the Ethics Board requires.
- (4) The report must be signed as accurate by the fiscal sponsor, and the data provided in the report must be in a form consistent with generally accepted standards in the practice of accounting.

E. *Public record.*

All requests, approvals or denials, and reports filed under this Regulation are public records, available for public inspection and copying during regular office hours.

(Effective 03/01/10; Amendments to Sections C(2) and D(1), effective 01/01/15; Additions of Sections A(3) and D(4), effective 02/12/20.)

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Maya Gilmore, Executive Director
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100 N. Holliday Street, Suite 250
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Re: The Mayor's Masked Ball UNCF fundraising campaign

Dear Director Gilmore,

In your charitable/governmental gift solicitation waiver application submitted to the Ethics Board ("Board") on June 6, 2023, and the amended application submitted on June 20, 2023, and at the Board Meeting on June 14, 2023, you requested that the Board approve a waiver for the Mayor's Office to solicit funds for the United Negro College Fund, Inc., (herein, "UNCF"), an organization providing scholarships to students at Historically Black Colleges and Universities. The Board requested that you provide additional information, which you timely submitted.

In your waiver application(s), you state that you intend to raise funds in excess of \$500,000.00 for UNCF. A host committee consisting of representatives of Baltimore Area universities, medical, financial, and construction companies will solicit donations from a broad range of individuals and businesses. The campaign will culminate in a fundraising gala, promoted as the UNCF Mayor's Masked Ball, which Mayor Scott will attend as a special guest on or around September 9, 2023.

You represent that Mayor Scott will "ONLY publish social media assets acknowledging the event" and that his communications will include a statement "that donors will not receive any special treatment or favors from the City in exchange for their donations." The social "assets" would "likely be shared by other members of the administration."

The Board approves your waiver application as amended. However, the Mayor's involvement in the promotion of the campaign, and especially in the UNCF Mayor's Masked Ball, raises concerns under § 6-36 {Prestige of office}¹:

- (a) *In general.* A public servant may not intentionally use the prestige of his or her office or position for his or her own private gain or that of another.
- (b) *Constituent services.* The performance of usual and customary constituent services, without additional compensation, is not prohibited by this section.

¹ Unless otherwise indicated, citations are to the Baltimore City Public Ethics Law, contained in Article 8 of the City Code.

(Emphasis supplied.)

On August 1, 2021, the State Ethics Commission's issued a Memorandum² relating to the State's gift law provisions of the State Public Ethics Law, contained in Title 5 of the General Provisions Article in the Maryland Code. At 3, the Commission provided the following guidance:

Charitable Fundraising

Related to the restrictions on soliciting gifts is a prohibition against State employees and officials using the prestige of their offices or public positions for their private gain or that of another. This prohibition also applies to obtaining contributions for a charity. That is, **State employees and officials should not use their positions, to include the authority associated with those positions, to benefit a particular charitable cause, however worthy. This restriction would be violated if reference to one's official title, position or agency affiliation could lead a person to reasonably assume that the agency or the State endorsed the fundraising effort.**

The Law does provide for an exception to the prestige of office prohibition. The exception states that “[t]he performance of usual and customary constituent services without additional compensation, is not prohibited under subsection (a) of this section.” The “constituent services” exception,³ by its very title, applies to elected officials who have a constituency, and for purposes of this memorandum is limited in its application to elected Executive Branch officials (members of the Legislative Branch should seek guidance on the application of the exception from the Joint Committee on Legislative Ethics). Even where the exception applies to provide greater leeway to elected officials, in the area of charitable fundraising the Commission has indicated in previous advice that these officials should refrain from direct solicitation.

(Emphasis supplied.)

In agreement with the State's guidance, the Board finds that for the Mayor to promote or, as you put it, “acknowledge” the Mayor's Masked Ball via his social media channels would run afoul of the City's § 6-36 (a) Prestige of Office prohibition, which is similar to the State Public Ethics Law prohibition contained in § 5-506, Title 5, General Provisions Article, Maryland Code. The reference to Mayor's official title could lead a person to reasonably assume that the Mayor himself and, by extension the City, endorses the fundraising gala for the benefit of the charity, which under the Ethics Law would be considered “that of another” under § 6-36 (a).

This would be a *prima facie* violation of the § 6-36 (a) Prestige of Office prohibition.

The Board recognizes that UNCF's Mayor's Masked Ball is a term that is used nationwide, akin to a brand name, trademark, or trade usage name. However, the Board asks you to take appropriate measures to

² The August 1, 2021 State Ethics Commission's Memorandum is available at <https://ethics.maryland.gov/wp-content/uploads/filebase/state-employees/state-employees-memos/Gifts.pdf>.

³ The State's “constituent services” exception is the equivalent of Baltimore City Code, Art. 8, § 6-36 (b).

address the public perception and “optics” of its usage under the lens of Art. 8’s § 6-36 (a) Prestige of Office prohibition.

Such measures may include provisos in your promotional literature clarifying that “Mayor’s” Ball does not specifically reference the “Mayor of Baltimore City,” or following the example of other jurisdictions by repositioning the gala as the UNCF’s 2023 Masked Ball.

Cordially yours,



J. Christoph Amberger
Director, Ethics Board

CC: Stephan Fogleman, Ethics Board Chair
Members of the Ethics Board