CITY OF ABERDEEN

ETHICS COMMISSION

July 16, 2013

[redacted]

Re: Request for Advisory Opinion

Dear [redacted]

By letter dated July 5, 2013, you requested that the City of Aberdeen Ethics Commission ("Commission") give you an advisory opinion as to whether you would be in violation of the City of Aberdeen Ethics Ordinance if you accept an invitation from a bank in Harford County to be the Bank's guest in the Bank's Skybox at an Aberdeen IronBirds baseball game on July 11 at Ripken Stadium.

Because of the impending baseball game the Commission conducted a special meeting to consider your request on Monday morning, July 8. You attended that meeting and provided additional facts and information in response to questions from members of the Commission and the City Attorney. Due to the expedited time required for the Commission to respond, the Commission was not able to obtain any additional information from Bank representatives.

At the conclusion of the July 8 meeting the Commission orally advised you of its determinations that based upon the facts available to the Commission (i) your attendance at the IronBirds game would not violate the City's ethics ordinance, but (ii) members of the public may perceive impropriety in your attendance at the game under the circumstances described. The Commission also advised you that the oral advice would be followed by a written opinion. This letter is the Commission's written opinion.

Please note that this opinion is based exclusively upon the facts that you provided to the Commission, and one other supplementary fact that the Commission obtained from the City Manager regarding the business relationship between the Bank and the City of Aberdeen. If there are any material omissions or misstatements of fact from what has been provided to the Commission the Commission's opinion and advice may be different. Finally, the Commission assumes as true for purposes of this opinion all of the facts that have been brought to its attention. As part of the advisory opinion process the Commission does not make findings of fact or weigh or assess motives or credibility of the person who requests the opinion.

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Facts as Presented and Assumed

The following are the facts and understandings upon which the Commission bases its opinion:

1. You are a member of the City's Planning and Zoning Commission ("P&Z"). You also are a member of the City's Board of Elections.[1]

2. A bank that has a Skybox at Ripken Stadium invited you to attend the July 11 Aberdeen IronBirds baseball game as a guest of the Bank. You advised that you were asked to be a guest at the game "representing the Planning and Zoning Commission." You did not solicit or request the invitation.

3. The bank extended invitations to all members of the P&Z.

4. You estimate that the value of the Ripken Stadium outing is approximately $16 for your attendance.

5. You advised that the Bank regularly invites government officials, civic groups, non-profit groups and others to use the Skybox as guests of the Bank.

6. The Bank does not have any matters pending before P&Z and has not had any matters before P&Z during your tenure as a member. You are not aware of any potential expansion or other development activities of the Bank in Aberdeen that would require the Bank to receive approvals from, or otherwise be subject to the jurisdiction of, P&Z. If the Bank decided to build a new branch in Aberdeen it would need to obtain site plan approval from P&Z. However, you are not aware of any such plans.

7. You do not know whether the Bank makes loans to persons or development entities in connection with projects that have been, or are currently pending, before the P&Z.

8. You are not aware of any business that the Bank does with the City. The City Manager advises that the Bank is the City's primary depository for many of the City government's financial transactions.

9. You do not believe that the President of the Bank is involved with any business entities that have matters pending before the P&Z.

10. You advised that the Bank and its president are strong corporate citizens who generously support many local organizations.

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[1] Your request for this advisory opinion focuses on your membership on the P&Z, and not the Election Board. There is nothing to suggest that your participation on the Election Board has any bearing on this opinion or advice.

Applicable Law and Analysis

The City of Aberdeen's ethics ordinance ("Ordinance") is codified as Chapter 43 of the Aberdeen City Code, as enacted by Ordinance 11-O-02 and later amended by Ordinance 13-O-01.[2] Your request relates to the conflict of interest restrictions contained in § 43-3 of the Ordinance. Specifically, your request requires an analysis under § 43-3.H. that addresses "Solicitation and acceptance of gifts."

§§ 43-3.H.(1) and (2) deal with solicitation of gifts. § 43-3.H.(1) prohibits a City official or employee from soliciting any gift under any circumstances. § 43-3.H.(2) is more specific and prohibits a City official or employee from "directly solicit[ing] or facilitat[ing] the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.[3] The Commission advises you that because none of the facts presented in any way suggest that you solicited or facilitated the solicitation of the invitation from the Bank to attend the IronBirds game your attendance at the game would not violate §§ 43-3.H.(1) or (2).

§ 43-3.H.(3) prohibits a City official or employee from knowingly accepting a gift, directly or indirectly, from a person that the official or employee knows or has reason to know:

(a) Is doing business with or seeking to do business with the City office, agency, board or commission with which the official or employee is affiliated;

(b) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;

(c) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or

(d) Is a lobbyist[4] with respect to matters within the jurisdiction of the official or employee.

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[2] The amendments to the Ordinance enacted by Ordinance No. 13-O-02, and which are material to this opinion, do not appear yet in the on-line version of the City Code.

[3] A "gift" is defined in § 15-102(p) of the State Government Article for purposes of the State Ethics Law as the transfer of anything of economic value, regardless of form, without adequate and lawful consideration" subject to certain exclusions relating to regulated political contributions. The Commission believes that this is an appropriate definition to use for purposes of interpreting the Ordinance.

[4] Under § 43-6 of the Ordinance a person must register as a lobbyist with the City if the person:

In the facts presented the acceptance of the Bank's invitation to attend the IronBirds game would constitute acceptance of a gift since the attendance at the game, according to your estimation, has a value of $16 and nothing in the facts shows that you are giving any lawful consideration for the invitation or your attendance. The question then becomes whether the Bank is an entity described in paragraphs (a) through (d) above from whom you may not accept an unsolicited gift. The Commission concludes that the answer to this question is "no."

First, nothing in the facts presented suggest that the Bank has any business dealings with, or matters before, the P&Z. The Bank's financial business dealings with the City government do not mean that the Bank is doing business with the P&Z. The prohibition in (a) is tied to doing business with a particular City office, agency, board or commission with which the official or employee is affiliated and not the City generally. Second, nothing in the facts suggests that the Bank has any financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by your performance or nonperformance of your official duties as a member of the P&Z. The Commission cautions that this analysis may be different if the facts showed that the Bank is a financier of development projects that are dependent upon approvals from the P&Z. Third, the facts do not suggest that the Bank is engaged in an activity regulated or controlled by the P&Z. Finally, the facts do not suggest that the Bank is a lobbyist with respect to matters within the jurisdiction of the P&Z.

As a result of these conclusions the Committee advises you that your attendance at the IronBirds game as a guest of the Bank would not be in violation of the "gifts" restrictions of the conflict of interest provisions of the Ordinance. As noted earlier in this letter, this advice is based upon the facts as presented. If it turns out that any of the foregoing facts are not correct, or if there are other material facts that have not been presented to the Commission, our opinion may be different.

Even though the Commission has determined that your attendance at the IronBirds game would not violate the Ordinance, the Commission is very concerned about the possible public perception that may arise from the invitation to and attendance at the game by the entire P&Z. Although the invitation may be nothing more than an act of generosity by a civic minded local business, the public could perceive this as an effort by the Bank to develop a relationship or curry favor with the members of the P&Z for future matters that may be brought before the P&Z by the Bank or its clients. The commission urges you to be sensitive to the fact that perception

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(1) Personally appears before a City official or employee with the intent to influence that person in performance of the official duties of the official or employee; and

(2) In connection with the intent to influence, expends or reasonably expects to expend in a given calendar year in excess of $100 on food, entertainment or other gifts for officials or employees of the City.

of improper conduct or improper motives can undermine the confidence of the public in its government's transaction of public business.

Thank you for seeking our advice.

Sincerely,

Marian Rose de Rosset

Marian de Rosset, Chair
(on behalf of the Aberdeen Ethics Commission)