



CITY OF PHILADELPHIA

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**Philadelphia Board of Ethics**  
**Nonpublic Advice of Counsel GC-2011-506**

July 18, 2011

**Re: Post-employment Restrictions / Non-profit with City Contracts**

A former City employee requested a nonpublic advisory opinion as to what effect the ethics laws have on her planned pursuit of independent consulting work. While working for the City, the requester managed contracts between the City and certain non-profits. In this role, the requester reviewed invoices and was able to approve them pending final approval by a superior. The requester also recommended the renewal of the contracts based on an independent review.

We advised that in keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, our advice is predicated on the facts that we have been provided. We do not conduct an independent inquiry into the facts. Further, we can only issue advice as to future conduct. Accordingly, this Advice does not address anything that may have occurred in the past. Although previous opinions of this office that interpret statutes are guidance to how this office will likely interpret the same provision in the future, previous opinions do not govern the application of the law to different facts. Ethics opinions are particularly fact-specific, and any official or employee wishing to be assured that his or her conduct falls within the permissible scope of the ethics laws is well-advised to seek and rely only on an opinion issued as to his or her specific situation, prior to acting. In that regard, to the extent that this opinion states general principles, and there are particular fact situations that the requester may be

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concerned about, she was encouraged to contact us for specific advice on the application of the ethics laws to those particular facts.

While the requester may of course pursue consulting work after separating from service with the City, the Philadelphia Code (“Code”) and the State Ethics Act place certain restrictions on what she may do.

### **Two-Year Limitation on Financial Interests—City Code**

The Code prohibits City employees from having a financial interest in any of their official actions until two years after they have separated from City service. Code Section 20-607(c) states:

No . . . City officer or employee shall become financially interested, subsequent to final action, in any . . . award, contract, lease, case, claim, decision, decree or judgment made by him in his official capacity, during his term of office or employment and until two (2) years have elapsed since the expiration of service . . . of said . . . City officer or employee.

Consequently, the requester may not, for two years after separating from City service, acquire a financial interest in official decisions the requester made while working for the City. This provision prohibits the requester from, among other things, receiving compensation from a non-profit whose contract she managed for working under such contracts until two years after she separates from City service.

### **Permanent Limitation on Assistance with Particular Matters—City Code**

The Code bars former City employees from ever assisting others in certain transactions in which they participated. This is a permanent restriction. Code Section 20-603(1) states:

No person who has served for compensation as a . . . City officer or employee shall assist, at any time subsequent to his City service or employment, another person, with or without compensation, in any transaction involving the City in which he at any time participated during his City service or employment.

A “transaction involving the City” is any matter (i) which is or will be the subject of City action; (ii) to which the City is or will be a party; or (iii) in which the City has a direct proprietary interest. Code Section 20-601(4). However, “matter” means only a particular issue on which the requester’s Department made a decision, not an entire project in which

it participated. *See, e.g.*, Nonpublic Advice of Counsel GC-2011-502. The requester has “participated” in such a matter if she exercised discretion in it (and not merely, for example, responded to a routine request for information).

Therefore, the requester may never assist another person in any “transaction involving the City” as to a particular issue about which she exercised discretion while working for the City. This provision applies even if the requester is not compensated for such assistance.

For example, the requester advised that she reviewed invoices associated with the contracts she managed and approved them pending final approval by a superior. In doing so, the requester exercised discretion as to those invoices. Thus, if the requester worked for an entity whose invoices she reviewed, and a dispute arose as to a particular invoice she reviewed while working for the City, she could not assist that entity in the dispute relating to that invoice.

The requester was advised that she may wish to request further advice from the Board of Ethics should a particular situation arise that might implicate this provision.

### **One-Year Limitation on Representing Others—State Ethics Act**

The State Ethics Act, 65 Pa.C.S. § 1101 *et seq.*, prohibits former City employees from representing themselves and others in certain City matters. It appears to apply to the requester.<sup>1</sup> If it applies, the State Ethics Act prohibits the requester from “represent[ing] a person, with promised or actual compensation, on any matter before the governmental body with which [she] has been associated for one year after [she] leaves that body.” 65 Pa.C.S. § 1103(g).

Based on opinions of the State Ethics Commission, the “governmental body with which [the requester] has been associated” is likely her former Department. However, it is possible that the State Ethics Commission would interpret the term more broadly, perhaps even to be the entire City. Consequently, we advised that the requester may wish

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<sup>1</sup> The State Ethics Act applies to any “public employee,” which it defines as: “[a]ny individual employed by . . . a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with regard to: (1) contracting or procurement; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.” 65 Pa.C.S. § 1102. Given the nature of the requester’s work on City contracts, she is likely a “public employee.” However, a definitive ruling, on which the requester could rely, can only come from the State Ethics Commission.

to seek an opinion from the State Ethics Commission, which could give her a definitive ruling on which she could rely.

To represent someone is to act on their behalf “in any activity.” *See* 65 Pa.C.S. § 1102. This includes:

- (1) making personal appearances before the former governmental body;
- (2) attempting to influence the former governmental body;
- (3) submitting bid proposals, contract proposals, or invoices that are signed or contain the name of the former employee;
- (4) participating in a matter before the former governmental body by acting on behalf of a person;
- (5) lobbying the former governmental body;
- (6) being identified in any document submitted to the former governmental body, including in emails.

*See* State Ethics Commission, Advice of Counsel 09-580 at page 4. However, it does not include:

- (1) assisting in the preparation of any document submitted to the formal governmental body if the former employee’s name does not appear in the document;
- (2) counseling any person regarding that person’s appearance before his former governmental body.

*See* State Ethics Commission Advice of Counsel 09-580 at page 4.

Therefore, the State Ethics Commission would likely interpret the State Ethics Act to prohibit the requester from representing herself or another before her former Department for promised or actual compensation for one year after separating from City service. This would bar the requester from, among other things, personally contracting with her former Department for one year after separating from City service because she would “represent” herself before it by doing so (at the very least, by signing the contract). Also, if the requester was to be employed by an entity that does business with her former Department, she would be barred for one year from “representing” (as defined above) that entity to her former Department, including, for example, her name appearing in any report, proposal, contract, or invoice submitted to it, or her appearing at any meeting with officials of her former Department. On the other hand, the one-year limitation discussed in this section would not bar the requester from working for entities whose contracts she reviewed if her work for such entities was entirely internal at that entity and her

involvement was in no way revealed to her former Department, so long as none of the other provisions discussed herein would be violated.

Nevertheless, the State Ethics Commission is the ultimate arbiter of interpretations of the State Ethics Act. This Advice is not binding on the State Ethics Commission.

We advised that the requester has the option to seek a nonconfidential opinion from the Law Department as to the effect of the State Ethics Act. Such an opinion, if the requester acted on it in “good faith reliance,” would protect her from criminal penalties and civil damages under the State Ethics Act. *See* 65 Pa.C.S. § 1109(g). However, a violation of the State Ethics Act could still be found. *See* State Ethics Commission Order No. 1119, at page 11-12 (finding that the respondent “technically violated” the State Ethics Act). Further, if the requester obtained a financial gain from violating the State Ethics Act, the requester could be required to return such gain. *See* 65 Pa.C.S. § 1107(13).

### **Summary**

As to the requester’s planned pursuit of independent consulting work after separating from City service, we concluded the following:

(1) Under Code Section 20-607(c), the requester may not acquire a financial interest in any official decision that she made while working for the City for two years after her separation from City service.

(2) Under Code Section 20-607(c), the requester may not, for two years after her separation from City service, go to work for the non-profits whose contracts she managed for the City, if she is to receive compensation from the revenue derived from such contracts.

(3) Under Code Section 20-603(1), the requester may never assist another person in any “transaction involving the City” as to a particular issue about which she exercised discretion while working for the City.

(4) The State Ethics Act likely applies to the requester. Therefore, the requester is advised not to represent anyone, including herself, before the governmental body with which she was associated (likely her former Department), including by personally contracting with it or having her name appear on documents submitted to that governmental body, for one year after her separation from City service.

(5) However, this Advice is not binding on the State Ethics Commission, which has authority to interpret the State Ethics Act.

(6) The requester has the option to seek a nonconfidential opinion from the Law Department. Such an opinion could protect the requester from any applicable penalty of the State Ethics Act, although a violation could still be found.

We noted that if the requester is later concerned about any particular situation, we would be happy to consider the application of the ethics laws to those particular facts.

Since the requester requested nonpublic advice from the Board of Ethics, we will not make the original letter public, but we are making public this revised version, edited to conceal the requester's identity, as required by Code Section 20-606(1)(d)(iii).

Evan Meyer  
General Counsel

cc: Richard Glazer, Esq., Chair  
J. Shane Creamer, Jr., Esq., Executive Director