



CITY OF PHILADELPHIA

BOARD OF ETHICS
One Parkway Building
1515 Arch Street
18th Floor
Philadelphia, PA 19102
P: (215) 686 – 9450
F: (215) 686 – 9453

Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2014-502

June 4, 2014

Re: Board Member's Private Grant-Related Work That May Impact City Board

Dear City Board Member:

You have requested an advisory opinion about whether the City ethics laws permit you to conduct work for your employer to re-grant funds to a non-profit organization that may use the funds to establish a staff position that would support the City board on which you serve as an uncompensated member. As discussed below, the City ethics laws do not prohibit you from being involved in this work for your employer that may impact your City board.

I. Jurisdiction and Advisory Opinions

The Board of Ethics has jurisdiction to administer and enforce all Philadelphia Home Rule Charter ("Charter") provisions and ordinances pertaining to ethical matters. Charter §4-1100. The Charter and the Philadelphia Code ("Code") authorize the Board to render advisory opinions concerning a City officer's or employee's proposed future conduct. Charter §4-1100; Code §20-606(1)(d). Board of Ethics Regulation 4 describes the procedures related to seeking an advisory opinion and for requesting reconsideration of a General Counsel opinion. Board Regulation 4, ¶¶ 4.0, 4.24.

II. Facts Provided

You are a member of a City board. Your City board facilitates policymaking in its field that benefits Philadelphia residents. Members of your City board are not compensated for their service. You chair a subcommittee of your City board.

You are employed in a role facilitating public-private partnerships at your employer. As part of your routine work at your employer, you process grants and participate in funding decisions. Your employer received a large grant from a private foundation and must re-grant the proceeds of that grant by a certain date. Your employer has already re-granted the bulk of the grant proceeds. Although you work with grants at your employer, the paperwork involved in re-granting the funds would be signed by the chief executive or another representative of your employer.

You have provided that your employer will re-grant all or some of the remaining grant proceeds to a not-for-profit organization. In your role at your employer, you would not confer with any City agency to make this private funding decision. The non-profit organization receiving the grant may use the proceeds to fund a staff person who would then be loaned to your City board to serve as the Board Coordinator. In that case, the Board Coordinator would not be an employee of the City. The Board Coordinator has previously been an employee of the Administrative Branch of City government. Currently, the position is filled by a participant in a federal program who is sponsored by a non-profit and residing in an Administrative Branch office. Your City board has not in the past taken formal action with respect to engaging or receiving the non-profit's loan of the Board Coordinator.

Your City board's bylaws provide for an extensive role for the Board Coordinator in supporting multiple aspects of your City board's work. The Coordinator works extensively with the subcommittee that you chair.

III. Discussion

You have asked whether the City ethics laws prohibit you from taking action in your private capacity as an employee in which your City board has an interest. Conflict of interest provisions generally restrict the reverse, namely taking official action in a public capacity to further a private financial interest. City ethics restrictions do not prohibit you from taking private action that benefits your public body under circumstances such as these in which you would not be representing anyone before your City board and you would not be taking official action as a board member that benefits you or your employer. You may wish to consult with your employer about whether it has rules that address this situation.

A. Conflicts of Interest

The City Code's conflict of interest provision prohibits you from being financially interested in official action you take or your City board takes. *See* Code §20-607(a). The City Code defines a financial interest as an "interest involving money or its equivalent or an interest involving any right, power or privilege that has economic value." Code §20-601(9). Based on the facts provided, when you work on your employer's re-granting of

funds you will not be taking action as a City board member on a matter in which you or your employer has a financial interest. Rather, you will be involved in your employer's decision and action in re-granting funds to a non-profit organization that may in turn pass the benefit on to your City board in the form of a loaned worker. This would not cause you to have a conflict of interest as a City board member.

B. Representation Restriction

The City Code's representation restriction provides that as an uncompensated member of a City board you may not represent another person directly or indirectly as an agent or attorney in a particular matter related to a transaction involving the City in which you have participated as a City board member or that is pending in front of your City board. *See* Code §20-602(2). In addition, the Code's representation restriction prohibits an employee or member of a business organization that you are a member of from representing anyone in matters in which you have responsibility as a City board member unless you disclose the relationship and disqualify yourself from taking official action. *See* Code §20-602(5). According to the facts you provided, your involvement in this matter is limited to handling the re-grant for your employer, and you will not confer with any City agency in making this funding decision. Your proposed behavior does not involve you or your colleagues at your employer representing anyone as an agent in a matter in which you have participated as a City board member or representing anyone before your City board or another agency in the City. Consequently, your involvement in your employer's re-granting would not raise an issue under the Code's representation restriction.

C. Confidential Information

Note that the City Code prohibits you from disclosing confidential information concerning the property, government, or affairs of the City without proper legal authorization for the purposes of advancing your own financial interests or those of another person. Code §20-609. For example, you may not disclose confidential information you learn in your role as a City board member to your employer for purposes of furthering its or your financial interests.

IV. Conclusion

Thank you for your concern about compliance with the City's ethics restrictions and for seeking advice. Advisory opinions are fact-specific, and this Opinion is predicated on the facts you have provided as stated here. If you have questions about scenarios that vary from these facts, you should ask for specific advice on the application of the law to those particular facts. You are entitled to act in reasonable reliance on this Opinion and not be subject to penalties under the laws within the Board's jurisdiction,

unless you have omitted or misstated material facts in your request. Code §20-606(1)(d)(ii); Board Regulation 4, ¶4.12.

Since you requested a non-public opinion, the original Opinion issued to you will not be made public. As required by the City Code, this version of the Opinion, which has been redacted to conceal facts that are reasonably likely to identify you, will be made public. Please let me know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

Maya Nayak
General Counsel

cc: Michael H. Reed, Esq., Chair