



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-public¹ General Counsel Opinion No. 2015-502

April 24, 2015

Honorable Maria Quiñones Sánchez
Councilwoman, 7th District
c/o Jennifer Kates, Legislative Aide
City Hall, Room 592
Philadelphia, PA 19107

Re: Conflict of Interest Regarding Spouse's Application to Purchase City Property

Dear Councilwoman Quiñones Sánchez:

You have requested a non-public advisory opinion concerning what the City ethics laws require you to do in light of your husband's application to purchase vacant City property. As discussed below, the conflict of interest provision of the Philadelphia Code prohibits you as a member of City Council from taking official action with respect to this application in which your spouse has a financial interest, and it requires you to comply with specific public disclosure and disqualification procedures.

Notably, on December 5, 2014, based on guidance from this Office, you filed a disclosure and disqualification letter with the City's Vacant Property Review Committee, Board of Ethics, and Department of Records. In the letter, you disclosed your conflict of interest arising from your husband's application to purchase property from the City and disqualified yourself from taking any official action regarding that application. The letter satisfied the disclosure and disqualification requirements only for a conflict of interest related to matters other than legislation. This Opinion focuses on the disclosure and disqualification requirements for the legislative aspects of the vacant property acquisition process in which you could normally take official action.

¹ Although this Opinion was originally requested to be non-public, the original Opinion with references to the Opinion being non-public is being made public with the authorization of the requestor.

I. Jurisdiction

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

Your legislative aide, Jennifer Kates, provided on your behalf the facts that are stated here. Your husband, Tomas Sánchez, has applied to purchase vacant surplus property located at 2255 N. Howard Street from the City of Philadelphia. This property is located within the 7th District – the Council district you represent – and sits adjacent to a house that Mr. Sánchez owns and that you and Mr. Sánchez currently occupy. If the City transfers title to the property, Mr. Sánchez will hold title to the property individually.

Mr. Sánchez submitted his application to purchase the vacant property, an “expression of interest,” through the website phillylandworks.org. The City’s Vacant Property Review Committee (“VPRC”) is considering Mr. Sánchez’s application for transfer at the regular “fair market value” price. The VPRC is not considering Mr. Sánchez’s application for the City program that gives discounted pricing for side or rear yard transfers. Mr. Sánchez submitted a conflict of interest disclosure form to the VPRC. The VPRC heard Mr. Sánchez’s testimony at the November 18, 2014 VPRC meeting. All the votes were held until the December 9, 2014 meeting because of a lack of a quorum of VPRC members, at which time the VPRC voted to approve the transfer to Mr. Sánchez.

You and your office do not have a seat or a vote on the VPRC. The typical involvement of your office in the process for those seeking to acquire vacant and surplus property from the City that is located in your Council district includes issuing letters explaining whether or not you support the property transfer and on what conditions, and occasionally attending VPRC meetings to field questions. Typical legislative involvement of your office involves sponsoring, introducing, and voting on resolutions of City Council authorizing transfer of the property to the applicant. These resolutions are introduced by the sponsoring Councilmember one week and are placed on the following week’s “final passage” calendar. There is no public hearing conducted on the matter. Council members vote on the resolution following a public comment period. If City Council approves a resolution transferring property to a private individual, you or your office will often contact agencies, including the Redevelopment Authority, the Law Department, and the Public Property Department, to inquire about the status of pending transfers and advocate for their speedy processing.

On December 5, 2014, you filed with the VPRC, the Board of Ethics, and the Department of Records a letter disclosing your conflict of interest in the application of your husband and disqualifying yourself from taking any official action or other participation regarding his application, including filing a letter of support, appearing at any meeting of the VPRC, or otherwise facilitating the transfer of property. The letter specified that you will also not direct your staff to take any such action regarding your husband's application. In that letter, you stated that you are disqualifying yourself from introducing, advocating for, or voting on a resolution regarding your husband's application.

III. Discussion

The City ethics laws do not prohibit spouses of City officials from purchasing property from the City.² These laws do require City officials to comply with a public disclosure and disqualification process for conflicts of interest, which arise when an official can take action that impacts the financial interests of a spouse.

A. The Philadelphia Code

1. Conflicts of Interest

According to the facts provided, you have a conflict of interest under Philadelphia Code Section 20-607 arising from your husband's financial interest in an application to acquire City property. The Code conflict of interest provision prohibits a City official from taking action in an official capacity when either (a) she has a personal financial interest in the action or (b) a family member, a business of which the official is a member, or a fellow member of such business has a financial interest in the action. *See* Code § 20-607 ("Conflict of Interest"); General Counsel Opinion 2015-501 at 4 (citing Board Opinion 2012-001 at 5). The conflict provision reads in relevant part:

(a) [N]o member of Council . . . shall be financially interested in any legislation including ordinances and resolutions, award, contract, lease, case, claim, decision,

² This Opinion does not address in detail Charter Sections 10-100 and 10-102, which prohibit members of Council and other City officers and employees from soliciting, benefiting from, or being interested directly or indirectly in a contract for the purchase of property to be paid for from the City treasury (i.e., the sale of property to the City). These provisions do not prohibit City officers from purchasing property *from* the City. *See* Advice of Counsel GC-2008-521 at 3 (§10-102 concerned with funds paid out of the City Treasury, not purchases of property from the City, in which funds would be paid into the Treasury); GC-2008-522 at 3 (same); Solicitor Opinion No. 01-15 (§10-102 does not address sale of City property); Solicitor Opinion No. 97-05 (§10-102 does not concern an individual purchasing property from the City); Solicitor Opinion No. 85-27 (§10-100 is not implicated where the contract does not involve money to be paid out of the City Treasury). Additionally, in this case your husband, who is not a City officer, is applying to purchase City property.

decree or judgment made by him in his official capacity, or by any board or body of which he is a member

(b) In the event that a financial interest . . . resides in a . . . spouse . . . of the member of City Council . . . and where said member of City Council . . . has knowledge of the existence of such financial interest he or she shall comply with the provisions of Section 20-608(a)(b)(c) of this ordinance and shall thereafter disqualify himself or herself from any further official action regarding such legislation.

Code § 20-607(a),(b).

Under this provision, you have a conflict of interest: your spouse has a financial interest in a resolution you may introduce or vote on as well as other official action that you are in a position to and could in theory take regarding his application to purchase property from the City. Mr. Sánchez has a financial interest in his application to purchase City property because title to property is an interest that has economic value, and a Council resolution and subsequent agency action to transfer property to Mr. Sánchez have a potential impact on his value of assets. *See* Code § 20-601(9) (defining “financial interest” as “[a]n interest involving money or its equivalent or an interest involving any right, power or privilege that has economic value.”); Board Opinion 2012-001 at 5 (advising that a person has a financial interest in matters that have a potential impact on the person’s value of assets).

The Code requires that you disclose the conflict and disqualify yourself from any official action related to your husband’s application according to the procedures of Code Section 20-608 described below. The official action from which you are disqualifying yourself includes non-ministerial acts taken in your official capacity as a Councilmember and includes “not only final decisions, but also any preliminary discussion, review, or action.” Board Opinion 2012-001 at 6; *see also* Code § 20-601(17) (defining “official action” as an “act or omission taken by an officer or employee in his or her official capacity that requires discretion and is not ministerial in nature.”).³

2. Disclosure and Disqualification Required

Although you have a conflict of interest, the City ethics laws do not prohibit Mr. Sánchez from purchasing vacant property from the City. Rather, they require you to disclose your conflict of interest arising from his application to purchase the property and

³ The Solicitor similarly opined in Opinion No. 06-32, “Participation that the Councilman should avoid [to comply with Code Section 20-607] would include not only participating in the debate at the meeting where a final vote is taken and voting himself, but also any preliminary discussion, review, or action, whether in committee, in the full Council, or behind the scenes.”

disqualify yourself from taking any official action related to his application.⁴ Different disclosure and disqualification procedures are required depending on whether a conflict is related to legislation or another type of matter. *Compare* Code § 20-608(1)(a),(b) with Code § 20-608(1)(c).

VPRC Review and Action

The Code requires that, when a financial interest “in any award, contract, lease, case, claim, decree or judgment, other than legislation” resides in a spouse of a member of Council, she must make public the nature and extent of the interest under the letter-writing procedure specified in Section 20-608(1)(c), and disqualify herself from any further official action. Code §§ 20-607(b); 20-608(1)(c) (“[T]he person having such interest, prior to any City action thereon, shall notify, by registered or certified mail, the Commissioner, Secretary and/or Executive Director of the pertinent agency, authority, board or commission, and the Board of Ethics and the Department of Records which shall maintain a public record of such notices . . .”). You complied with this requirement when you filed a disclosure and disqualification letter with the VPRC, the Board of Ethics, and the Department of Records on December 5, 2014. You must continue to abide by that letter and not take official action related to the non-legislative aspects of the vacant property transfer process regarding Mr. Sánchez’s application, such as participating in discussions with the VPRC and its staff facilitating the proposed transfer.

Council Resolution to Transfer Property

After the VPRC votes to approve an application to purchase vacant City property in your Council district, normally you introduce a resolution in Council to transfer the property. After you introduce the resolution, it is listed on the “final passage” calendar for the following week. There is no public hearing conducted on the matter. Council members vote on the resolution following a public comment period.

The Code requires that, when a financial interest “in any legislation including ordinances and resolutions” resides in a spouse of a member of Council, that member of Council must make public the nature and extent of the financial interest under the procedures specified in Section 20-608(1)(a), and thereafter disqualify herself from any official action regarding that legislation. Code §§ 20-607(b); 20-608(1)(a). In your December 5, 2014 letter to the VPRC and the Board of Ethics, you indicated that you would not introduce, advocate for, or vote for a resolution related to Mr. Sánchez’s

⁴ The Code also prohibits City officers and employees from disclosing confidential government information. “No member of the Council . . . shall directly or indirectly disclose or make available confidential information concerning the property, government or affairs of the City without proper legal authorization, for the purpose of advancing the financial interest of himself or others.” Code § 20-609. Although you have not presented facts that implicate this provision, you should be aware of it.

application to purchase City-owned property. Although it is correct that you should not take official action regarding such a resolution, the December 5, 2014 letter did not satisfy the disclosure and disqualification procedure mandated by the Code for conflicts related to legislation.

The required disclosure and disqualification procedure for a member of Council with a conflict of interest related to legislation varies depending on when the financial interest occurs relative to the timing of a public hearing and Council action on the legislation. In your situation, no public hearing will be held on a resolution to transfer property to Mr. Sánchez and Council action is likely more than five days away. The disclosure and disqualification procedure that is most relevant to this situation is the procedure that applies if the financial interest arises after the public hearing regarding the legislation and prior to five days before such legislation is to be acted upon. This procedure requires that the member of Council make public the nature and extent of the conflict of interest and relevant financial interest by sending written notice by registered or certified mail to the Chief Clerk of Council and to all members of Council to be announced by the presiding officer of the Council at the time the legislation is called up for consideration. *See* Code § 20-608(1)(a).

In order to comply with the Code's mandated procedure, you must send a disclosure and disqualification letter by registered or certified mail to the Chief Clerk of Council and to all members of Council. You are unlikely to know in advance the timing of the introduction and vote on a resolution since you will not be involved in a resolution to transfer property to Mr. Sánchez. As such, you should send the letter as soon as possible in order to ensure that you timely disclose your conflict of interest in such a resolution and to provide sufficient notice to Council members not to engage you regarding the resolution.

In your letter, you should ask that the presiding officer of the Council at the time the resolution is called up for consideration read your disclosure and disqualification letter aloud and into the record. In your letter, you must disclose the nature and extent of the conflict of interest and your husband's financial interest in the resolution. You must also disqualify yourself from taking any official action with respect to the resolution, including introducing or voting on the resolution, participating in discussions with Council colleagues or making recommendations regarding the resolution, and any other actions in an official capacity preliminary to the vote. *See* Code §§ 20-607(b), 20-608(1). You might also indicate that you previously filed a disclosure and disqualification letter with the VPRC, Board of Ethics, and Department of Records. The Code requires that you comply with this disclosure and disqualification requirement even if you do not participate or are absent from the vote on or consideration of a resolution to transfer property to your husband. Therefore, your letter should advise that the presiding officer must read the letter even if you are absent from the meeting at which such a resolution is considered. *See* Code § 20-608(1)(a). You must abide by the disqualification described in

this letter and must also not direct your staff to take any official action regarding Mr. Sánchez's application.

Facilitation of Property Transfer

If Council votes to approve a resolution to transfer property to Mr. Sánchez, the process next involves other governmental agencies acting to transfer title to Mr. Sánchez. In your December 5, 2014 letter to the VPRC and the Board of Ethics, you disqualified yourself from taking any action regarding Mr. Sánchez's application, including facilitating the transfer of property. You must abide by the disqualification you already made, and there is no further disclosure and disqualification that is required regarding facilitation of the property transfer. You must not take any official action regarding the matter, including you, or your staff at your direction, facilitating the completion of the transfer by contacting the Redevelopment Authority, Law Department, or Public Property Department or advocating for speedy processing of the transfer. *See* Code § 20-608(1)(c).

B. The State Ethics Act

The Public Official and Employee Ethics Act ("State Ethics Act"), 65 Pa. C.S. §1101 *et seq.*, contains conflict of interest and public contracting provisions that are separate from and in addition to those imposed by City ethics laws and that might apply to your situation. 65 Pa. C.S. §§ 1102, 1103(a), (f). The Board's authority to provide advice on the State Ethics Act is limited, and guidance from the Board regarding the State Ethics Act is not binding on any person and does not provide any protection against penalties or sanctions for a violation of the Act. Board Regulation 4, ¶ 4.4. You can seek advice concerning the application of the State Ethics Act to your situation from the State Ethics Commission or the City Solicitor. An opinion from the State Ethics Commission or a non-confidential opinion from the City Solicitor provides protection from certain enforcement or penalties imposed for a violation of the Act. 65 Pa. C.S. §§ 1107(10),(11); 1109(g). For these reasons, provisions of the State Ethics Act that might be relevant to your inquiry are merely outlined below.

The State Ethics Act applies to public officials, which the Act defines in relevant part as: "[a]ny person elected by the public or elected or appointed by a governmental body or an appointed official in the executive, legislative or judicial branch of this Commonwealth or any political subdivision thereof." 65 Pa. C.S. § 1102. Under the State Ethics Act, a public official has a prohibited conflict of interest if she uses the authority of her office or any confidential information received through her holding public office for the private pecuniary interest of an immediate family member, which includes a spouse. 65 Pa. C.S. §§ 1102, 1103(a). Additionally, under the State Ethics Act, no public official or her spouse may enter into a contract valued at \$500 or more with the public official's governmental body unless the contract is awarded through an open and public process. 65 Pa. C.S. § 1103(f). The Commission has advised that purchase of property

from a political subdivision of the Commonwealth is subject to this public contracting requirement. *See* State Ethics Commission Advice of Counsel 05-544 at 4 (advising that public employee and spouse can bid on and purchase real estate from the county and county agency for which the employee works and that the State Ethics Act open and public contracting provision applies); 65 Pa. C.S. § 1102 (defining “contract” as: “[a]n agreement or arrangement for the acquisition, use or disposal by the Commonwealth or a political subdivision of consulting or other services or of supplies, materials, equipment, land or other personal or real property.”). An open and public process includes: (1) prior public notice of the employment or contracting possibility; (2) sufficient time for a reasonable and prudent competitor/applicant to be able to prepare and present an application or proposal; (3) public disclosure of all applications or proposals considered; and (4) public disclosure of the contract awarded and offered and accepted. State Ethics Commission Advice of Counsel 05-544 at 3.

IV. Conclusion

Thank you for your concern about compliance with the City ethics laws and for seeking advice. Advisory opinions are fact-specific, and this Opinion is predicated on the facts you provided as stated here. If you have questions about scenarios that vary from the facts presented here, you should ask for specific advice on the application of the ethics laws 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, this original Opinion will not be made public. As required by Code Section 20-606(1)(d)(iii), a version of this Opinion that is 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