



CITY OF PHILADELPHIA

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Philadelphia Board of Ethics Nonpublic General Counsel Opinion GC-2013-501

March 11, 2013

Re: Post-employment / Mayor's Office / Community Behavioral Health

A City employee requested a public advisory applying the post-employment rules of the City Code¹ to proposed employment changes.

The employee advised that he is currently employed by Community Behavioral Health (CBH), a City-established nonprofit 501(c)(3) corporation with which the City contracts to provide mental health and substance abuse services for Philadelphia County Medicaid recipients.

The employee advised that he is interested in a position the Mayor's Office. It is our understanding that he would pursue this only if such service does not present complications for his returning to CBH later.

As we have noted frequently in prior advisories,² there are three different ethics

¹ The employee advised that he will request the advice of the Law Department regarding the State Ethics Act.

² See, e.g., Advices of Counsel 2012-516, 2012-503, 2011-509, 2011-508, 2011-506, and 2011-502.

laws that relate to post-employment restrictions, two in the City Code and one in the State Ethics Act.

A. One-Year Limitation On Representing Others—State Ethics Act

Section 1103(g) of the State Ethics Act, 65 Pa.C.S. §1103(g), restricts “post-employment” activities as follows:

No former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body.

The employee advised that he will seek guidance from the Law Department as to the application of the State Ethics Act, and that he is not requesting advice from the Board of Ethics on this provision.

B. Permanent Limitation On Assistance With Particular Matters—City Code

Section 20-603(1) of the City Ethics Code states:

No person who has served for compensation as a member of Council, 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.

The “transactions” to which this provision applies are defined broadly in Section 20-601(4) to include matters (i) which are 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. This provision is not a one-year prohibition, like the State Ethics Act provision, but applies “at any time” after a person leaves City employ. However, it is much narrower in scope than the State Ethics Act provision, since it only applies to matters in which the employee “participated” during City employ. This has been interpreted to mean matters in which the employee exercised discretion (and not merely, for example, responded to a routine request for information).

Thus, if during the employee’s proposed service with the City, he would take official action on any particular transaction concerning which a future employer (such as

CBH) or one of its clients should contact the City at any time henceforth, he may not assist that future employer or client in the matter relating to that transaction. On the other hand, "matter" has been interpreted to mean only the particular issue or issues on which decisions were made by the City (that is, by or with the Mayor's Office) with his involvement, not every issue related to that project that may arise after he separates from City service.³

By referring to matters in which the employee "participated," the provision means official City actions that he was involved in as part of his duties, in a way that is more than merely ministerial (such as by handing a blank form to someone). In other words, the employee made a recommendation, did some research, participated in a meeting, analyzed some data, drafted a document, or the like. "Transaction" generally means any "proceeding, application, submission, request for a ruling or other determination, contract, lease, claim, case, award, decision, decree, judgment or legislation" and would include the creation of any policy, regulation, or grant of a permit or license, creation of any right or responsibility, or assessment of any fee. If it can be said that the City (or an official of the City) officially acted, that is likely a 'transaction.'

However, even if the employee participated in a transaction while he was a City employee, the rule of Code Section 20-603 only permanently prohibits him (assuming that the one-year rule and two-year rule don't apply) from assisting another person (that is, not the City) in that same transaction, which means that the specific prior transaction must still be "live" in some way. It is presumed that in most matters, CBH would be acting in coordination with the City, rather than at arms-length, and then there would likely be no issue.

C. Two Year Limitation On Financial Interests—City Code

Section 20-607(c) of the Code states:

No member of Council or other City officer or employee shall become financially interested, subsequent to final action, in any legislation including ordinances and resolutions, 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 or employment in the term of office of said member of Council or other City officer or employee.

³ It should be noted that the post-employment rules do not apply to moving from private employment to City employment, so this provision would not affect the employee's work for the City, in light of his prior work for CBH.

This prohibition shall apply so as to prevent a parent, spouse, child, brother, sister or like relative-in-law or any person, firm, partnership, corporation, business association, trustee or straw party from becoming financially interested for or on behalf of a member of City Council, City officer or employee within said two (2) year period.

In short, this provision prohibits a City employee for two years after leaving City employ from acquiring a financial interest in official decisions he made while in City employ. For example, if during the employee's proposed service with the City, he would be officially involved in awarding, renewing, amending, or administering the City contract with CBH, he could not for two years be employed by and receive any compensation from CBH, if such compensation was derived from revenue received under that City action affecting the contract.

D. Summary

In summary, based on the facts that were provided to us, the requestor was advised as to the following conclusions:

(1) The requestor has not asked to be advised as to application of the State Ethics Act.

(2) Should he accept employment with the Mayor's Office, he would then be a City employee. Therefore, upon separating from the City at the conclusion of that employment (for example, to return to CBH), the post-employment rules of the City Code would apply.

(3) Under City Code Section 20-603, after separating from the City, the requestor may never in the future assist anyone, such as a future employer or one of its clients, in a transaction involving the City on a particular issue or issues on which decisions were made by the City, with his involvement.

(4) Under City Code Section 20-607(c), he may not for two years after he leaves the employ of the City acquire a financial interest in any official decision he made while in City employ. As to working for a City contractor (like CBH), "official decision" involves matters affecting the award, significant terms, or financial details of the contract.

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, this Opinion has been predicated on the facts that were provided to the

Board of Ethics. We do not conduct an independent inquiry into the facts. Further, we can only issue advice as to future conduct. Although previous opinions of this office that interpret statutes are guidance as 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 you may be concerned about, you are encouraged to contact the Board for specific advice on the application of the ethics laws to those particular facts. For information on requesting reconsideration of an Advisory Opinion, see Regulation No. 4 at Subpart H.

Since the employee requested to receive nonpublic advice from the Board of Ethics, we are required to make public a revised version of the original letter, edited to conceal facts that are reasonably likely to identify the requestor and any other City officer or employee, as mandated by Code Section 20-606(1)(d)(iii) and Board Regulation No. 4.

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cc: J. Shane Creamer, Jr., Esq., Executive Director