



CITY OF PHILADELPHIA

BOARD OF ETHICS
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**Philadelphia Board of Ethics
Non-Public General Counsel Opinion No. 2015-504**

October 5, 2015

Re: City Board Member with Private Law Practice Involving the City

Dear City Board Member:

You have requested a non-public advisory opinion about whether the City ethics laws prohibit your service as a member of a City board (“City Board X”) where your practice as an attorney involves interactions with the City. You have also asked whether the City ethics laws restrict your ability to be employed by the Philadelphia judicial system while simultaneously serving as an uncompensated member of City Board X. For the reasons discussed below and as conveyed to you by this Office in a lengthy telephone conversation in response to your initial inquiry, the City ethics laws that apply to you as a City officer do not prohibit you from serving as a City Board X member and do not prohibit your concurrent employment with the Philadelphia judicial system.

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 Regulation 4, ¶ 4.5. 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 by Requestor

You are an attorney at a private law firm. You explained that the bulk of your practice involves the City.

The Mayor recently appointed you to serve as a volunteer, uncompensated board member of City Board X. City Board X consists of various members appointed by the Mayor. City Board X's duties include assessing the City's progress in implementing certain recommendations and monitoring the effects of the implemented recommendations. City Board X recommends implementation strategies to assist the City and works closely with the City to develop policies and procedures to implement the recommendations. It is your understanding that you were selected to be a City Board X member based upon your lengthy legal experience involving the City.

Because the majority of your private law practice involves the City, you were concerned about your appointment to City Board X. You informed us that you raised this point with various members of the Mayor's staff and they indicated that your private practice involving the City posed no issues. Rather, as you explained to us, your experience and perspective in this regard was the reason for your selection. You stated that you had similar conversations with other City officials who did not believe there were any ethical issues or problems with your volunteer City Board X service.

In addition to your private practice, you informed us that you are also employed by the Philadelphia judicial system. You reviewed the legal provisions creating City Board X and the Pennsylvania Supreme Court's Code of Conduct for Employees of the Unified Judicial System and discussed the City Board X appointment with your immediate supervisor and other leadership at the Philadelphia judicial system. You informed us that none of these individuals perceived any conflict or other bar to your volunteer service on City Board X.

III. Questions Presented & Brief Answers

1. Do City ethics laws prohibit a member of City Board X from being employed by the Philadelphia judicial system?

No. City ethics laws do not prohibit a member of City Board X from being employed by the Philadelphia judicial system.

2. Are City ethics laws violated if a City Board X member's private law practice involves the City?

No. Service on City Board X in conjunction with a private law practice that involves the City does not violate City ethics laws. Indeed, someone with significant experience involving the City may represent important interests of the citizens and communities served by the City that are valuable for City Board X to have among its membership.

IV. Discussion

City ethics laws do not prohibit your service as a member of City Board X. City ethics laws do not prohibit City officers, including City board members, from maintaining employment and other financial interests outside City government, provided that (1) private work is not performed using City facilities or resources (including equipment, materials, and staff time), and (2) outside employment, sources of income, and financial interests are disclosed as required on annual financial disclosure statements.¹ Board Opinion 2012-001 at 1; *see also* Code § 20-610. City officers and employees who maintain outside employment and other financial interests must avoid conflicts of interest and must abide by other City ethics restrictions, including those described below. *See* Board Opinion 2012-001 at 1.

A. Work as a Judicial Employee

City ethics laws do not prohibit your simultaneous service as an employee of the Philadelphia judicial system and as a member of City Board X. Charter Section 10-102 prohibits any governmental officer or employee whose salary is paid out of the City Treasury from soliciting or being interested in certain City contracts that are paid for by City Treasury funds. Charter §10-102 (“City Officers and Employees Not to Engage in Certain Activities”). This restriction does not apply to you as a City board member because you do not earn a salary for your uncompensated, volunteer service on City Board X. *See* Board Regulation 6, ¶ 6.1; General Counsel Opinion 2015-501 at 5. Although the paycheck you receive as a Philadelphia judicial employee may be issued from the City treasury, there is no potential violation under Charter Section 10-102 under the facts provided.

Note that court employees are not considered City officers or employees such that the City Ethics Code at Chapter 20-600 applies to them. *See* Solicitor Opinion issued to Board General Counsel Meyer, Nov. 3, 2008. In like vein, the State Ethics Commission does not have jurisdiction over judicial employees. *See Billotte*, State Ethics Commission Opinion 00-005 (discussing *L.J.S. v. State Ethics Comm’n*, 744 A.2d 798, 801-02 (Pa. Commw. 2000)). You should, however, consider the applicability of the Pennsylvania Rules of Professional Conduct. To that end, you have stated that you are seeking an opinion from the Pennsylvania Bar Association regarding any potential conflicts or other issues resulting from your employment with the Philadelphia judicial system and your service on City Board X.

¹ As a member of City Board X, you must file an annual statement of financial interests for the preceding calendar year by May 1 of each year you hold office as well as the year after leaving office. *See* Code § 20-610(1). Additionally, City Board X members, like all City board and commission members, must participate in annual ethics training conducted by the Board of Ethics. *See* Code § 20-606(1)(b)(iii). Annual ethics training covers restrictions not raised by your advice request or addressed in this Opinion, such as restrictions relating to gifts, gratuities, and political activity.

B. Conflict of Interest Restriction

The Code's conflict of interest restriction prohibits a City official from having a conflict of interest with respect to official action taken by that City official or by a body of which he or she is a member. *See* Code § 20-607; Board Opinion 2012-001 at 5. A City official has a conflict of interest if the City official has a personal financial interest² in official action he or she may take, including if the City official were in a position to take official action in a matter that financially affected a client the City official has as an attorney in his or her private legal practice. *See* Code § 20-607(a); Board Opinion 2012-001 at 5-6. A City official also has a conflict of interest if certain family members or a member of a for-profit organization of which the City official is a member has a financial interest in official action he or she may take. *See* Code § 20-607(b). For example, you would have a conflict of interest in a decision by City Board X to list or recommend your firm in a City Board X publication as a law firm to which citizens can turn because you and your firm would have a financial interest in such a referral source to the firm's law practice.

In the event of a conflict of interest, you are required to file a public letter disclosing the conflict and disqualifying yourself from official action regarding the related matter by following specific procedures outlined in Code Section 20-608. This letter must be sent by registered or certified mail to the Department of Records, the Executive Director and/or Chair of City Board X, and the General Counsel of the Board of Ethics. Code § 20-608(1)(c). A City official with a conflict of interest is disqualified not only from participating in final decisions but also from participating in any preliminary discussion, review, or action on a matter in which the official has a conflict. *See* Board Opinion 2012-001 at 6.

Both your private law practice and the work of City Board X involve the City. A general overlap between the subject of your private law practice and the subject of your City board service does not give rise to the type of particularized financial interest that creates a conflict of interest. *See* Board Opinion 2009-003 at 4-5 (discussing Solicitors' opinions advising that Councilmembers who held liquor licenses were not prohibited from voting on proposed liquor tax ordinance because a conflict of interest does not arise if a personal financial interest is not direct, immediate and particular, as distinct from the interests that might be shared by a larger group). Indeed, City boards and commissions at times require members who represent certain stakeholder viewpoints, including those of practitioners in the very field in which a board is involved.³ In fact, it is your understanding that your experience as an attorney whose practice

² A financial interest is an interest in which a potential monetary gain or loss is at stake, such as a potential impact on a person's income, compensation, value of assets, wealth, employment prospects, business prospects, or financial relationship with another person. *See* Board Opinion 2012-001 at 5; Code § 20-601(9) (defining "financial interest" as an "interest involving money or its equivalent or an interest involving any right, power or privilege that has economic value"). The Board has opined that a financial interest may also arise from an on-going, present financial relationship and that it is possible for a financial interest to be too remote in some cases to give rise to a conflict of interest. Board Opinion 2012-001 at 5; Board Opinion 2009-003 at 4-5.

³ *See, e.g.*, Code § 14-1003(1)(b) (providing that Philadelphia Historical Commission must include an architect, a historian, an architectural historian, a real estate developer, a representative of a

involves the City is one of the reasons you were appointed to City Board X, and your expertise may be valuable in assisting City Board X with fulfilling its duties. In particular, your viewpoint and expertise may represent important interests of the citizens and communities served by the City.

C. Representation Restriction

As a City Board X member, you are an uncompensated City officer. As such, the Code representation restriction would prohibit you from representing another person directly or indirectly as agent or attorney in a transaction involving the City⁴ in relation to a particular matter (a) in which you have at any time previously participated through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or (b) that is pending while you serve on City Board X. *See* Code § 20-602(1), (2). A broader version of this restriction applies to compensated and full-time City officers and employees, barring them from such representation in transactions involving the City more generally. *See* Code § 20-602(1); Board Opinion 2012-001 at 2-3. Thus, compensated and full-time employees of the City would *not* be allowed to file suit against the City as part of a private law practice. *See* Code § 20-602(1); General Counsel Opinion 2008-505 at 2-3. The representation restriction also requires that no member or employee of a business entity organized for profit of which you are a member shall represent any person directly or indirectly as agent or attorney in any matter in which you as a City Board X member are responsible for the decision, approval, disapproval or otherwise determining the matter, unless you publicly disclose the fact and disqualify yourself from responsibility in the matter. Code § 20-602(5).

Given City Board X's duties, it is unlikely that agent or attorney representations in transactions involving the City will occur before City Board X. However, if an attorney with your law firm represents a client in any matter in which you have responsibility for the decision or determination as a City Board X member, then this restriction would require you to make a public disclosure and disqualify yourself from participating in the matter. Similar to the conflict of interest context, disqualification involves filing a letter that discloses that a member of your firm will be engaging in a representation before City Board X, and therefore, you are disqualifying yourself from taking any official action or having any responsibility as a board member in the matter. Code § 20-602(5) (providing for public disclosure and disqualification as

Community Development Corporation, and a representative of a community organization); Code § 13-101(3)(c) (requiring Water Rate Board members to have minimum of five years professional experience in public or business administration, finance, utilities, or engineering and water resources management and requiring one member to have experience as a consumer advocate in utility rate cases and one member to be a commercial and/or industrial ratepayer with experience related to storm water management and rates).

⁴ Transactions involving the City include a “proceeding, application, submission, request for a ruling, or other determination, contract, lease, claim, case, award, decision, decree, judgment or legislation including ordinances and resolutions” that you have reason to believe may be subject to City action, involve the City as a party, or include a direct proprietary interest of the City. Code § 20-601(27).

set forth in Code § 20-608). You would be required to send this letter by registered or certified mail to the Board of Ethics, the Department of Records, and the Executive Director and/or Chair of City Board X. Code § 20-608(1)(c).

D. Confidential Information Restriction

Code Section 20-609 prohibits you from directly or indirectly disclosing or making available confidential information concerning the property, government, or affairs of the City without proper legal authorization for the purpose of advancing your own financial interest or that of another person. Code § 20-609. For instance, you would not be allowed to disclose or utilize confidential City information that you learn as a City Board X member for the purpose of furthering pending or future cases that your firm undertakes. This restriction encompasses disclosure of confidential information to other partners or any staff in your law practice. You have indicated your awareness of this limitation and have indicated that you do not intend to disclose or utilize any confidential information received in the course of your service on City Board X to advance your private law practice.

E. Post-Service Restriction

As an uncompensated City Board X member, you are subject to one post-service restriction under the City Code after your service on City Board X concludes. Code Section 20-607(c) 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.

This prohibition shall apply so as to prevent a parent, spouse, Life Partner, 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 you as a City officer from acquiring a financial interest in any official action you took while serving on City Board X for two years after your tenure on City Board X ends. Suppose, for example, that you participate in City Board X's determination that additional training is necessary to fulfill the board's mandate and in its decision to hire an outside firm to conduct such training. For two years after you leave City Board X, you would be prohibited from acquiring a financial interest or having money flow to you as a result of City Board X hiring your firm to conduct this training.

F. State Ethics Act

The State Ethics Act, 65 Pa. C.S. §§ 1101 *et seq.*, applies to a “public official,” which is defined as any person elected by the public or elected or appointed by a governmental body or an appointed official in the executive, legislative or judicial branch. 65 Pa. C.S. § 1102. Note, however, that the Act does not apply to members of advisory boards that have no authority to expend public funds, other than reimbursement for personal expense, or to otherwise exercise the power of the State or City. *Id.*; *see also* 51 Pa. Code § 11.1 (definition of “public official” and criteria to assess if a board is advisory).

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 you 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 penalties imposed for violations of the Act. 65 Pa. C.S. §§ 1107(10)-(11), 1109(g).

The State Ethics Act contains a conflict of interest prohibition, financial disclosure requirement, and post-service and other restrictions that are separate from and in addition to those imposed by City ethics laws. 65 Pa. C.S. §§ 1103(a), 1104, 1105. More specifically, a public official has a prohibited conflict of interest under the State Ethics Act if he or she uses the authority of his or her office or confidential information received through holding public employment for the private pecuniary interest of himself or herself, a family member, or a business with which the employee or a member of the employee’s immediate family is associated. 65 Pa. C.S. §§ 1102, 1103(a). The State Ethics Act also requires a public official to file an annual statement of financial interests for the preceding year. 65 Pa. C.S. §§ 1104, 1105.

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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 have provided. 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. Requestors of advisory opinions are entitled to act in reasonable reliance on opinions issued to them and not be subject to penalties under the laws within the Board’s jurisdiction, unless they have omitted or misstated material facts in their requests. Code § 20-606(1)(d)(ii); Board Regulation 4, ¶ 4.12.

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

BY THE PHILADELPHIA BOARD OF ETHICS

Maya Nayak
General Counsel

cc: Michael H. Reed, Esq., Chair