



CITY OF PHILADELPHIA

BOARD OF ETHICS  
One Parkway Building  
1515 Arch Street  
18<sup>th</sup> Floor  
Philadelphia, PA 19102  
(215) 686 – 9450  
FAX 686 – 9453

**Philadelphia Board of Ethics  
Non-Public General Counsel Opinion No. 2017-504**

June 6, 2017

**Re: Post-City Employment with Entity that Interacts with Former City Department**

Dear Former City Employee:

You have requested a non-public advisory opinion regarding the application of post-employment restrictions to your proposed employment in a leadership position at a local, private entity that provides Philadelphia residents with services pursuant to a City contract. Based on the facts provided and as previously conveyed to you by this Office in a telephone conversation, your proposed employment with this entity would not present an issue under the post-employment restrictions.

**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 an advisory opinion issued by the Board’s General Counsel. Board Reg. 4 ¶¶ 4.0, 4.24.

FOR PUBLIC RELEASE

## **II. Facts Provided by Requestor**

Advisory opinions are fact-specific, and this Opinion is predicated on the facts you provided. You provided us with background information in an in-person conversation and in subsequent telephone calls regarding your previous work as a City employee and the intersections of your prior work with your prospective work. The detailed facts on which this Opinion is based are memorialized in various email correspondence between you and this Office.

You are a former City of Philadelphia employee who held various positions in your former City Department.

Among many other job duties, your work at your former City Department included managing and providing fiscal oversight for a City project that in Year X changed the method of City-related service delivery and your former City Department's payment structure regarding these services. Under the new model that you helped implement, one type of local service provider ("Type A Provider") delivers the bulk of services, with another type of local service provider ("Type B Provider") also providing certain related services.

In implementing this change to the payment structure, you, other City employees, and Type A Providers worked on determining and setting new rates to be paid by your former City Department for various services provided by Type A Providers and Type B Providers. Under the new payment structure, the rates consist of: (1) a maintenance payment flowing from your former City Department through local service providers to citizens receiving the services; and (2) administrative payments to be paid from your former City Department to Type A Providers and to Type B Providers. The rate changes that were implemented in Year X standardized the rates for various levels of services and impacted Type A Providers and Type B Providers differently. For Type A Providers, a consequence of the rate changes was to standardize payment amounts from your former City Department to Type A Providers, reflecting the cost of Type A Provider administrative services due to the increase in Type A Provider responsibilities under the new model. For Type B Providers, a consequence of the rate changes was to uniformly reduce payment amounts from your former City Department to reflect the reduction in Type B Provider responsibilities that would be shifted to Type A Providers under the new model. These rate changes by your former City Department were implemented via contracts between your former City Department and each entity providing services. The rate changes applied in a uniform manner to all Type A Providers and to all Type B Providers. You estimate that the number of Type B Providers at the time was between 30 and 100. As far as you know, although new contracts have been conformed since Year X, the rates that you assisted your former City Department in setting for Type A Providers and for Type B Providers have not changed since being implemented in Year X.

Similarly, in Year X, you were also involved in an increase in the payment rate of your former City Department to a certain category of recipients of services (“Category C Recipients”), and this increase applied regardless of the level of services provided by a Type B Provider. All additional funds from this rate increase for Category C Recipients were designated to go directly to these recipients of services and not to the administrative fees of Type B Providers or Type A Providers. The rate change flowed through and was processed by Type B Providers. Current contracts between your former City Department and Type B Providers still reflect the increased rate to Category C Recipients that you assisted in setting in Year X.

More than one year ago, your City employment ended. You are currently interested in pursuing employment in a leadership position with a specific Type B Provider (“New Employer”) associated with a nonprofit organization (“Nonprofit Entity”). The Nonprofit Entity includes but is not limited to: (1) New Employer, which is a Type B Provider; and (2) a specific Type A Provider (“Related Type A Provider”). Your employment start date with New Employer would be sometime after May 1, 2017. You would not be employed by Related Type A Provider, but you would be employed by the Nonprofit Entity under New Employer. New Employer and Related Type A Provider each have separate contracts with your former City Department.

At your suggestion and to supplement the information you provided, the Board’s General Counsel Staff researched contracts on the City’s Automatic Contract Information System (“ACIS”) between your former City Department and New Employer and between your former City Department and Related Type A Provider. You were not listed as a contact or approver on any contracts between your former City Department and New Employer or between your former City Department and Related Type A Provider. The 2016 contracts between your former City Department and New Employer and between your former City Department and Related Type A Provider were conformed and finalized in 2016 many months after your work and employment with your former City Department had already ended. You did not participate in discussions, negotiations, or drafting of the 2016 contracts between your former City Department and New Employer or between your former City Department and Related Type A Provider.

### **III. Discussion**

Post-employment restrictions govern the conduct of former City officers and employees who have left City employment or service. The post-employment restrictions limit you from engaging in certain activities with respect to your former work as a City employee. Based on the detailed facts you have provided, your proposed employment with New Employer does not present an issue under these restrictions.

**A. Two-Year Restriction on Acquiring a Financial Interest in Official Action**

The Code prohibits a City employee from becoming financially interested, subsequent to final action, in any award, contract, lease, case, claim, decision, decree or judgment taken in the employee's official capacity during the employee's tenure with the City and for two years following separation from the City. *See* Code § 20-607(c). This provision prohibits you for two years after leaving City employment from receiving compensation derived from official action<sup>1</sup> you took as a City employee. *See* Board Opinion 2016-002 at 8. This restriction also prohibits any individual or entity from becoming financially interested on your behalf in official action you took as a City employee. *See* Code § 20-607(c).

Based on the facts you have provided, your proposed employment in a leadership position with New Employer does not raise an issue under the Code's two-year post-employment restriction on becoming financially interested in official action you took while employed by the City. 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). A financial interest may arise from an on-going, present financial relationship. Board Opinion 2012-001 at 5; *see also* Board Opinion 2009-003 at 3-4. Notably, the Board has opined that a financial interest may 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 (discussing Solicitors' opinions advising City Council members that a conflict of interest does not arise if a personal financial interest in a Council bill is not direct, immediate and particular).

Here, your proposed employment with New Employer would not cause you to acquire a prohibited financial interest in your prior City work. In Year X, as a City employee, you helped implement a new service delivery model and helped standardize the rates of your former City Department that applied to all Type B Providers, including New Employer. These rate changes were implemented via contracts between your former City Department and Type B Providers and, as far as you know, are still in effect today.

One of these rate changes uniformly reduced payment amounts to all Type B Providers, reflecting the reduction in their responsibilities that were shifted to Type A Providers under the new service delivery model. The impact of this rate change on New

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<sup>1</sup> Code Section 20-601(17) defines "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."

Employer was the same as the impact on all other Type B Providers, which you estimated numbered 30 or more. Any financial interest you may acquire in this rate change by virtue of becoming an employee of New Employer years later would be too attenuated to cause an issue under the Code's two-year post-employment restriction on becoming financially interested in official action you took while employed by the City. *See* Board Opinion 2009-003 at 4-5 (advising that some financial interests are clearly too remote to trigger conflict of interest provision); General Counsel Opinion 2015-501 at 4, n.2 (explaining conflict of interest provision was not triggered by possible nominal benefit that is not particularized and that is shared by a large class of similarly-situated persons).

Another of the rate changes in which you were involved was a rate increase for Category C Recipients. This rate change was processed by Type B Providers for the benefit of these recipients. Type B Providers did not have a financial interest in the rate change. Rather, Type B Providers served as a processing conduit for the rate change, and all additional funds from the rate increase were designated solely for these specific recipients of services, namely Category C Recipients.

Furthermore, you would not acquire a prohibited financial interest in employment with New Employer even though your former City Department has a current contract with New Employer because you did not take official action as a City employee with respect to the contract that is currently in effect.

#### **B. Restriction on Assistance in Transactions Involving the City in Which a Former City Employee Participated**

The Code prohibits a former City employee, at any time after separating from the City, from assisting another person, whether or not for compensation, in any transaction involving the City in which the employee participated during City employment. *See* Code § 20-603. Transactions involving the City<sup>2</sup> include applications, contracts, proceedings, decisions, and other particular matters that 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). This post-employment restriction on assistance does not prohibit you from performing work

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<sup>2</sup> Code Section 20-601(27) defines "transactions involving the City" as:

Any proceeding, application, submission, request for a ruling, or other determination, contract, lease, claim, case, award, decision, decree, judgment or legislation including ordinances and resolutions or other particular matter which the City officer or employee in question believes, or has reason to believe (a) is or will be the subject of City action; or (b) is one to which the City is or will be a party; or (c) is one in which the City has a direct proprietary interest. This shall not include routine applications or requests for routine information or other matters which are of a ministerial nature and do not require the exercise of discretion on the part of any City officer or employee.

for New Employer on the general subject matters of your former City work, including the types of services provided by Type A Providers and Type B Providers. Rather, this restriction prohibits you from assisting any person,<sup>3</sup> including New Employer, in a transaction involving the City if you participated in that same transaction while you were a City employee.

Here, based on the facts provided, it does not appear that you will be assisting New Employer with any transactions involving the City in which you participated as a City employee and that are still ongoing. For example, New Employer does not appear to have any applications to your former City Department that you worked on during your City employment and that are yet to be determined. Furthermore, although a City contract is a transaction involving the City, you did not participate or take official action as a City employee on the contract that is currently in effect between your former City Department and New Employer. Further, please note that this post-employment restriction would not bar you in the future from working on behalf of New Employer in the setting of new rates related to your former City Department.

### **C. The State Ethics Act**

The Public Official and Employee Ethics Act (“State Ethics Act”), 65 Pa. C.S. §§ 1101 *et seq.*, contains restrictions that are separate from and in addition to those imposed by the City ethics laws. 65 Pa. C.S. §§ 1102, 1103(a), 1105. The State Ethics Act likely applies to you given your job duties during City employment. *See* 65 Pa. C.S. § 1102 (defining “public officials” and “public employees” who are subject to State Ethics Act). The State Ethics Act contains a post-employment restriction that prohibits a former public official or public employee from representing any individual or organization for promised or actual compensation on any matter before the governmental body with which the official or employee has been associated for one year after leaving that body. 65 Pa. C.S. § 1103(g). In your circumstance, it appears that this post-employment restriction would no longer apply as your proposed employment with New Employer would begin more than one year after your employment with the City ended.

The Philadelphia Home Rule Charter grants the Board jurisdiction to render advisory opinions regarding the State Ethics Act. *See* Charter § 4-1100. 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 Reg. 4 ¶ 4.4. You can seek advice concerning the application of the State Ethics Act to your

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<sup>3</sup> Code Section 20-601(20) defines “person” as: “A business, individual, corporation, non-profit, union, association, firm, partnership, committee, political committee, club, or other organization or group of persons.”

situation from the State Ethics Commission or the City Law Department, but note that the State Ethics Commission is the administrative agency that enforces the State Ethics Act and advisory opinions issued by the State Ethics Commission provide the greatest protection, including complete protection from Commission enforcement. *See* 65 Pa. C.S. §§ 1107(10)-(11), 1109(g); *see also* State Ethics Comm'n Order No. 1620, Oct. 8, 2013 at 6.

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Thank you for your concern about compliance with the post-employment restrictions and for seeking advice. If you have questions about scenarios that vary from the facts presented in this Opinion, you should seek guidance on the application of the post-employment restrictions to those particular facts. For example, if you have questions once you begin working at New Employer or if you have questions about other employment opportunities, you can request guidance from us about those situations. 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 Reg. 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 me know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

Maya Nayak  
General Counsel

cc: Michael H. Reed, Esq., Chair