



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Nonpublic Advice of Counsel GC-2010-507

June 1, 2010

Re: Potential Conflict / City Employee / Application for Grant Program

A City employee requested nonpublic advice concerning any issues under the Public Integrity Laws, arising out of his position as a Word Processing Specialist for a City department, in view of his application for a grant from a program that is funded with City funds through a quasi-public nonprofit corporation (the nonprofit).

The requestor advised that in his work for the City, he has no connection with the grant program.

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, this advice is predicated on the facts that have been provided to us. We do not conduct an independent inquiry into the facts. Further, we can only issue advice as to future conduct. Although previous opinions of the Board of Ethics that interpret statutes are guidance to how this Board 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, we encouraged the requestor that to the extent that this opinion states general principles, and there are particular fact situations that he may be concerned about, he should contact the Board of Ethics for specific advice on the application of the ethics laws to those particular facts.

There is no general requirement that City officers or employees avoid all other financial interests while serving the City, provided that outside work is not performed on the City's time or using City materials or equipment, and conflicts of interest are avoided. In that regard, the Philadelphia Home Rule Charter, the Philadelphia Code, and the Commonwealth's Ethics Act specify certain conduct which is prohibited for a City officer or employee. In addition, this advisory separately explains disclosure and disqualification requirements. The requestor was advised that the facts presented do not raise any issues under the ethics laws related to any current matters, provided that he complies with the disclosure requirements stated herein.

Home Rule Charter

Section 10-102 of the Charter prohibits certain compensated City officers and employees from benefiting from, or having a direct or indirect interest in, certain City contracts including those for "the supplying of services to be paid for out of the City Treasury," even if they had no official connection with the contract. Although there is some contractual relationship between the City and the nonprofit that manages the grant program, the requestor was advised that this is not a matter where the requestor has a direct or indirect interest in a contract for the supplying of services to the City. Accordingly, there is no issue under this Charter provision.

Philadelphia Code Representation Provision

The Philadelphia Ethics Code imposes certain restrictions on City officers or employees representing others. Code Section 20-602(1) would prohibit a City employee from engaging in outside employment that involved representing another person, directly or indirectly, as that person's agent or attorney in any transaction involving the City. However, subsection (4) of this Section provides that subsection (1) does not apply if the employee is acting on his own behalf, provided that he has no official responsibility in the matter. Since we were advised that the requestor

has no official connection with grant program, there is no issue under Code Section 20-602 created by the requestor's having applied for the grant.

Conflict of Interest Provision—Philadelphia Code

The Philadelphia Ethics Code prohibits City officers and employees from having conflicts of interest that arise from either having a personal financial interest in their official decisions. Code Section 20-607(a) provides:

(a) Unless there is public disclosure and disqualification as provided for in Section 20-608 hereof, no member of Council, or other City officer or employee shall be financially interested in any legislation including ordinances and resolutions, award, contract, lease, case, claim, decision, decree or judgment made by him in his official capacity . . .

This provision does not prohibit the requestor from receiving a grant of City funds; it only prohibits him from taking official action in his City job that affects that grant. Accordingly, the requestor was advised that he would be required to publicly disclose his interest and disqualify himself from such official action, as provided in Code §20-608.¹ Participation that he should avoid would include not only final decisions, but also any preliminary discussion, review, or action.

¹ Section 20-608(1)(c) of the Philadelphia Code spells out the precise procedure for the disclosure required: The employee should write a letter, which should contain the following elements:

1. That the purpose of the letter is to publicly disclose a potential conflict of interest;
2. His public position (job title and City office) and description of duties relevant to the conflict, if not obvious;
3. His private position or financial interest (applicant for grant under the program) that presents the conflict;
4. A statement of how his public duties may intersect with his private interest (if not obvious from 2 & 3 above); and
5. His intention to disqualify himself from any official action in matters affecting the private interest (should indicate that such disqualification precedes any official action being taken in any such matter).

The letter should be sent by certified mail to the following: (1) the requestor's appointing authority; (2) the Ethics Board, c/o Evan Meyer, General Counsel, Packard Building, 1441 Sansom Street, 2nd Floor, Philadelphia, PA 19102; and (3) the Department of Records, Room 156, City Hall, Philadelphia, PA 19107. The letter should indicate on its face that copies are being sent to all three of the above addressees.

State Ethics Act

The State Ethics Act, 65 Pa.C.S. §1101 *et seq.*, applies to some City employees, although it is questionable whether it would apply to a Word Processing Specialist.² Section 1103(a) provides:

(a) Conflict of interest. No public official or public employee shall engage in conduct that constitutes a conflict of interest.

Section 1103(a) would restrict the requestor's activities as a public employee relative to the use of authority of office to obtain a private pecuniary benefit for himself, and would require disclosure and disqualification, as set out in City Code Section 20-608(1)(c), prior to any City action being taken, as described in footnote 1 above. *See also* 65 Pa.C.S.A. §1103(j). In other words, the same disclosure would suffice for both the City Code and State Act conflict provisions. Since the State Act adds no restrictions to what is already required under the City Code, we need not resolve the question of whether the Act applies to the requestor, as a Word Processing Specialist.

Nevertheless, the State Ethics Commission is the ultimate arbiter of interpretations of the Act, including whether the Act applies to the requestor. Please note that the Act provides that: "A public official of a political subdivision who acts in good faith reliance on a written, nonconfidential opinion of the solicitor of the political subdivision . . . shall not be subject to the penalties provided for in [certain provisions of the Act]." 65 Pa.C.S. §1109(g). *See* Charter §4-1100 (giving Law Department concurrent jurisdiction with the Board regarding ethics matters under State law). Since the Board of Ethics is not "the solicitor" of the City, requestors have the option to obtain an opinion from the Law Department as to the application of the State Ethics Act. Any such request, to receive the protection,

² The Act applies only if the individual is a "public employee," which is defined in the Act to include: "Any individual employed by . . . a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with respect to (1) contracting or procurement; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person." 65 Pa.C.S. §1102. However, if the requestor desires a more detailed analysis as to whether the Act appears to apply to the requestor in general as an employee of the City, he should provide us with a job description. (As noted below, a definitive ruling, on which the requestor could rely, should come from the State Ethics Commission.)

could not be confidential, and will only protect the subject from the criminal penalties in subsections 1109(a) and (b) and from treble damages under subsection 1109(c) of the Act. (A violation of the Ethics Act can still be found, and restitution can still be ordered.)

Conclusion

Based on the facts supplied to us, and provided that the requestor complies with the requirements of this opinion, including that he publicly disclose any conflicts as provided in Code §20-608(1) and disqualify himself from acting as an City employee in any matter that affects the grant program, the requestor was advised that the ethics laws do not prohibit his application for, or receipt of, a grant from the grant program.

The requestor was advised that if he has any additional facts to provide, we will be happy to consider if they change any of the conclusions in this opinion. Since the requestor asked for nonpublic advice from the Board of Ethics, we will not make the original letter public, but we are making public this revised version, edited to conceal the requestor's identity as required by Code Section 20-606(1)(d)(iii).

Evan Meyer
General Counsel

cc: Richard Glazer, Esq., Chair
J. Shane Creamer, Jr., Esq., Executive Director