

CITY OF PHILADELPHIA

BOARD OF ETHICS
PACKARD BUILDING
1441 Sansom Street
2nd Floor
Philadelphia, PA 19102-3026
(215) 686 – 9450
FAX 686 – 9453

Evan Meyer
General Counsel

**Philadelphia Board of Ethics
Advice of Counsel**

April 22, 2008

Bridget Collins-Greenwald
Administrative Services Director
Department of Licenses and Inspections
Municipal Services Building
1401 John F. Kennedy Boulevard ~ 11th Floor
Philadelphia, PA 19102

Re: Claire Gatzmer--Post-Employment Restrictions

Dear Ms. Collins-Greenwald:

You have requested, on behalf of the Department of Licenses and Inspections (L & I), a nonconfidential advisory as to the effect of post-employment restrictions of the ethics laws on Claire Gatzmer, who retired from the Department effective June 2, 2007. You advise that the Mayor recently appointed Ms. Gatzmer to a position on the Board of License and Inspection Review. You ask to be advised as to the effect of the ethics laws on her service in this new position. As to the facts, you advised the following:

Claire Gatzmer served as the Boards Administrator from 2005 until she retired on June 2, 2007. Ms. Gatzmer made no decisions on behalf of L&I in her capacity as Boards Administrator. Her position normally entailed preparing cases for appeal, notifying applicants of hearing schedules and results, and providing documentation to attorneys for appeals to Common Pleas Court. The sitting Board members made all

decisions with no influence by Ms. Gatzmer. Before 2005, Ms. Gatzmer served as the Zoning Administrator. Most zoning appeals go to the ZBA, not the LIRB. We also do not have any record of cases being appealed back as far as 2005. In the rare and unforeseen circumstance that a zoning case Ms. Gatzmer was involved in 2005 were to appear before the LIRB, Ms. Gatzmer would have to recuse herself from the case.

You have not provided a copy of any job description for Ms. Gatzmer, so I will base my advice on your description of her two City positions.

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, my advice is predicated on the facts that I have been provided. I wish to point out that, although previous opinions of this Board, the City Solicitor's Office, and the State Ethics Commission that interpret statutes are guidance 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. 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 of Ethics for specific advice on the application of the ethics laws to those particular facts.

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

A. A Threshold Question on What Law Applies

The State Ethics Act applies only if, during her City employment, in any of her positions, Ms. Gatzmer was a "public employee." "Public employee" is defined in the Act to include: "Any individual employed by the Commonwealth or 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. I conclude that Claire Gatzmer's duties involved at least

State Ethics Act. Nevertheless, a definitive answer could only come from the State Ethics Commission. See the paragraph beginning: "It is important to note . . ." on page 4 below, regarding the ultimate authority of the Commission.

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 key words in that provision are defined in Section 1102 of the Act, 65 Pa.C.S. §1102. "Represent" is defined as follows:

To act on behalf of any other person in any activity which includes, but is not limited to, the following: personal appearances, negotiations, lobbying and submitting bid or contract proposals which are signed by or contain the name of a former public official or public employee.

"Governmental body with which a public official or employee is or has been associated" is defined as follows:

The governmental body within State government or a political subdivision by which the public official or employee is or has been employed or to which the public official or employee is or has been appointed or elected and subdivisions and offices within that governmental body.

Based on opinions of the State Ethics Commission, I believe that Ms. Gatzmer's "governmental body" would be the entire City of Philadelphia. Accordingly, she may not for one year after the date she separated from City employment (last day on the payroll), or until June 2, 2008, represent anyone—herself, any firm that employs her, or any of its clients—before the City of Philadelphia.

More particularly, Section 1103(g) would prohibit Ms. Gatzmer until June 2, 2008 from representing any person before the City. The meaning of

"represent" has been the subject of lengthy analysis in several opinions of the State Ethics Commission. It means that the former employee may not: (1) make personal appearances before the City; (2) attempt to influence the City; (3) submit bid or contract proposals, or invoices, that are signed by, or even contain the name of, the former employee; (4) participate, by acting on behalf of a person, in a matter before the City; (5) lobby the City; or (6) be identified on any document submitted to the City. This would include telephone calls, e-mails, and attendance at meetings.

"Represent" does not include, and the former employee may permissibly do, the following: (1) assist in the preparation of any document submitted to the City if the employee's name does not appear in the document; (2) counsel any person regarding that person's appearance before the City, so long as that activity is not revealed to the City; or (3) make general informational inquiries to the City to obtain information that is available to the general public, so long as it is not done in a way to influence the City or make known to the City that the former employee represents his new employer. We have advised others that that last phrase, "make known to the City," is important. In other words, Section 1103(g) would not prohibit a former City employee from working for a company that had a City contract, so long as her work for them was entirely internal at the company and her involvement in the project was in no way revealed to the City.

In applying these principles to the question of Claire Gatzmer's service on the License and Inspection Review Board, it is my conclusion that Section 1103(g) of the Act does not restrict such service. All of the examples of what constitutes "representation" above involve the submission of documents or appearances "to the City." In the case of the City appearing as a party before the License and Inspection Review Board, nothing is being submitted "to the City." Although the City may be provided with any copy of a final decision by the Board, that would not be a "submission." Nevertheless, I have been unable to find any ruling by the State Ethics Commission on a similar factual situation.

It is important to note that the State Ethics Commission has final administrative jurisdiction over interpretation of the State Ethics Act. Thus, you may wish to request the advice of the Commission to obtain a definitive ruling on any particular fact situation or on whether the Act applies to Ms. Gatzmer. Also, 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, 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.)

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 her service with the Department of Licenses & Inspections, Ms. Gatzmer took official action on any particular transaction concerning which a future employer should contact the City at any time henceforth, she may not assist that future employer in the matter relating to that transaction. On the other hand, I interpret “matter” to mean only the particular issue or issues on which decisions were made by L & I with her involvement, not every issue related to that project that may arise after Ms. Gatzmer separated from City service.

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.

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 she made while in City employ. Thus, if Ms. Gatzmer had, for example, been officially involved in awarding, renewing, amending, or administering the City's contract with a consulting firm, she could not for two years be employed by and receive any compensation from that consulting firm, if such compensation was derived from revenue received under that action by L & I. However, that should not be an issue in service on the Board.

Summary

In summary, I reach the following conclusions:

(1) Under the State Ethics Act, Ms. Gatzmer may not for one year after she separated from the employ of the City (or until June 2, 2008) represent anyone, including herself and any future employer (or any client of herself or of any future employer), before the City. Please note the broad definition of "represent," which includes having her name appear on a bid, contract proposal, engineering report, invoice, or other official document submitted to her former governmental body, the City of Philadelphia. This is not limited to any particular department or office of the City.

(2) Notwithstanding the above conclusions, I do not interpret the State Ethics Act to define as "representation" any participation Ms. Gatzmer may have in administrative adjudications of the Board of License and Review, as a member of that Board. Accordingly, the one year post-employment restriction of the Act would not apply to Ms. Gatzmer, in my view, and she may begin serving as a member of the

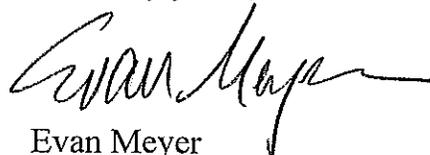
LIRB immediately. I note, however, that the State Ethics Commission is the ultimate authority on such matters.

(3) Under the City Ethics Code, Ms. Gatzmer 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 Department of L & I with her involvement.

(4) Under the City Ethics Code, Ms. Gatzmer may not for two years after she left the employ of the City acquire a financial interest in any official decision she made while in City employ.

Subject to the above restrictions, Ms. Gatzmer may serve as a member of the Board of License and Inspection Review. Please feel free to request further advice from the Board of Ethics, or the State Ethics Commission, if you have additional facts to provide. Please also note the option of requesting advice of the City Solicitor (as to the State Act only), as discussed on page 5 above.

Sincerely yours,



Evan Meyer
General Counsel

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