



CITY OF PHILADELPHIA

BOARD OF ETHICS
One Parkway Building
1515 Arch Street
18th Floor
Philadelphia, PA 19102
(215) 686 – 9450 (t)
(215) 686 – 9453 (f)

Philadelphia Board of Ethics General Counsel Opinion No. 2020-505

June 23, 2020

Sent via email

Hon. Allan Domb
City Hall, Room 316
Philadelphia, PA 19107
allan.domb@phila.gov

Re: Application of Ethics Code Conflict of Interest Restriction to Official Action on Legislation Affecting Parking Tax and Fire Suppression System Workers

Dear Councilmember Domb:

You have asked whether the City's ethics rules would preclude you from taking official action on legislation related to (1) the City's parking tax (Bill No. 200288), and (2) certification and training requirements for fire suppression system workers (Bill No. 200365).

As discussed in more detail below, you are advised that:

- (1) The City's conflict of interests restriction requires you to disqualify yourself from any official action on legislation related to the City's parking tax (Bill No. 200288); and
- (2) The City's conflict of interests restriction does not preclude you from taking official action on legislation related to fire suppression system workers (Bill No. 200365).

I. Jurisdiction

Philadelphia Home Rule Charter Section 4-1100 grants the Board of Ethics jurisdiction to administer and enforce all Charter provisions and ordinances pertaining to ethical matters. Charter Section 4-1100 and Philadelphia Code Section 20-606 authorize the Board to render advisory opinions explaining the application of laws under the Board's jurisdiction concerning a City officer's or employee's proposed future conduct. Board Regulation No. 4 describes the procedures related to advisory opinions, including for requesting reconsideration or appeal of an advisory opinion issued by the General Counsel.

Home Rule Charter Section 4-1100 also gives the Board "concurrent authority" with the Law Department to advise City officials on the application of State law. Our advice on State law, however, does not provide protection from possible enforcement by the State Ethics Commission. For guidance on the State Ethics Act that would provide such protection, you should contact either the State Ethics Commission or the Law Department.

II. Background

Parking Tax Legislation

City Council is currently considering a bill (No. 200288) that would increase the tax paid by people who use parking facilities in the City. You have previously informed the Board that you have a direct or indirect ownership interest in six parking facilities in the City. The precise nature and size of your ownership interest varies from facility to facility. The Board addressed a similar question from you in Board Opinion No. 2019-002 and found that the City's parking facility business is concentrated in a small number of owners and operators: 149 licensed lots and garages operate in the City and fifteen operators control approximately 80% of them.

Fire Suppression System Workers Legislation

Based on information provided to me by your staff, it is my understanding that the City's Fire Code requires that all commercial buildings and all residential buildings with three or more dwellings have sprinkler systems. The Code further requires that these sprinkler systems be inspected annually. City Council is considering a bill (No. 200365) that would change the certification requirements for the workers who conduct those annual inspections.

Based on information you provided, you own, directly or indirectly, three apartment buildings, 301 condominium units at 21 street addresses, and approximately 48 other mixed use or commercial properties.

III. Relevant Law and Discussion

Section 20-607 of the Philadelphia Ethics Code prohibits a City officer from taking official action when either (a) they have a personal financial interest in that action or (b) their family member, a business of which they are a member, or their business partner has a financial interest in that action. A person has a financial interest in matters that have a potential impact on the person's income, compensation, value of assets, wealth, employment prospects, or business prospects. *See* Board Opinion 2012-001; Board Opinion 2009-003.

In Board Opinion No. 2019-002, however, the Board held that the Ethics Code permits a Councilmember to vote on legislation of general application, even if it affects the Councilmember's financial interest. Board Opinion No. 2019-002 at 4. The Board further held that legislation is of general application if it affects a Councilmember's financial interest in the same manner as the general public or a substantial segment thereof. *Id.* Legislation is not of general application if it has a substantially disproportionate impact on a Councilmember's financial interest (or the financial interests of their family member, business, or business partner) in comparison to the general public or a substantial segment thereof. *Id.*

Applying this rule to the specific facts you present in your inquiry, I conclude as follows:

Parking Tax Legislation

As the Board did in Board Opinion No. 2019-002, based on the facts described above, I assume that Bill No. 200288 would have a financial impact on you. Moreover, because the City's parking facility business is concentrated in a small number of owners and operators, the segment of the population that would be affected by the legislation in the same manner as you is not substantial.

Accordingly, I conclude that Bill No. 200288 is not legislation of general application and the City's conflict of interest restriction prohibits you from taking official action on this legislation. As such, you should follow the disclosure and disqualification procedures set forth at City Code Section 20-608 and recuse yourself from any action related to this Bill.

Fire Suppression System Workers Legislation

For the purposes of this opinion and based on the facts described above, I will assume that this legislation would have a financial impact on you. Having made that assumption, however, in my opinion you can still take action on this legislation because your financial interest is affected in the same manner as that of a substantial segment of the population: property owners who are required to maintain fire suppression systems in their buildings, which is all commercial buildings and all residential buildings with three or more dwellings in the City. In other words, tens of thousands of buildings. Moreover, while you own quite a few properties, your share of properties that would be affected by the legislation is not so extensive that the legislation would have a substantially disproportionate impact on your financial interests.

IV. The State Ethics Act

The State Ethics Act imposes restrictions on public officials regarding conflicts of interest that are in addition to, and in some cases different from, those imposed on you by City law. *See* 65 Pa. C. S. §1101, *et seq.* The definition of “conflict of interest” at Section 1102 of the Pennsylvania State Ethics Act, however, excludes any action “which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.” Since this is a broader exception than what we have adopted for the City’s conflict of interest restriction, we expect that if City law permits you to vote on a matter, State law will as well. That said, for definitive guidance on the State Ethics Act, you should contact either the State Ethics Commission or the Law Department. *See* 65 Pa. C. S. §1109(g).

V. Conclusion

Thank you for your concern about compliance with the City’s Ethics Code and for seeking advice. Advisory opinions are fact-specific, and this Opinion is predicated on the facts you have provided. 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 Reg. 4 ¶ 4.12.

Since you requested a public opinion, this Opinion will be made public, including by posting on the Board's website. Please let me know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

/s/ Michael Cooke

Michael J. Cooke, Esq.
General Counsel

cc: Michael H. Reed, Esq., Chair
J. Shane Creamer, Esq., Executive Director