



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2021-503

April 22, 2021

Re: Application of City and State Post-Employment Rules

Dear Attorney:

You have requested a non-public advisory opinion on behalf of a client regarding the extent to which the post-employment restrictions in the City's Ethics Code and the State Ethics Act will apply to your client if they work for a non-profit organization after leaving City service.

As discussed in more detail below:

- a. For one year after leaving City service, your client may not represent a third-party (including the non-profit) for pay in any matters involving their former governmental body. If your client's work for the non-profit is unpaid, then this restriction will not limit their interactions with the City on behalf of the organization.
- b. For two years after leaving City service, your client may not become financially interested in any official action they took while working for the City. Because your client was involved in the creation of the non-profit, the organization may not pay your client for the first two years after they leave City service.
- c. After leaving City service, your client may not at any time assist another person, with or without compensation, in any transaction involving the City in which they participated while working for the City.

I. Jurisdiction

The Board of Ethics has jurisdiction to administer and enforce all Philadelphia Home Rule Charter and City Code provisions pertaining to ethical matters, including the post-employment rules found in the City's Ethics Code (Philadelphia Code Chapter 20-600). Home Rule Charter Section 4-1100 and Code Chapter 20-600 authorize the Board to render advisory opinions 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

Your client is a City employee who directs a City program (the "City Program"). This City Program provides a wide range of services. In order to provide these services, the City Program collaborates closely with a non-profit organization that your Client helped establish.

The non-profit supports its work with a variety of funding sources including donations from individuals and corporations, grants from foundations, and City contracts. At present, the non-profit holds contracts administered by various City departments. In most cases, your client does not directly supervise the implementation of these contracts, but they do participate in meetings and briefings with the relevant City departments about the services provided pursuant to the contracts.

The extent to which your client directly participates in other work of the City Program varies from project to project. With some projects your client has participated in initial planning about the scope of the projects. For other projects, your client may participate in general discussions related to the projects' progress but is not involved in their initiation or implementation. In some cases, after a project has been completed, your client will work with evaluators or funders to monitor impact and outcomes. Your client regularly meets with elected officials and other high-level City officers to discuss current and future projects of the City Program. Your client has been directly involved in the annual budget process for the City Program, including for upcoming Fiscal Year 2022.

Your client is scheduled to leave City service in the near future. After leaving City service, your client wishes to continue working to ensure the success of the City Program's programs. While you have explained that your client is willing to work without compensation for at least the first two years after leaving City service if doing so will ensure compliance with the applicable ethics rules, my understanding is that they and the non-profit have not discussed whether they would be compensated after that time.¹ You have further explained that your client's work for the non-profit after they leave the City will not include involvement in day-to-day operations but will instead be focused on fundraising and serving as the public face of the organization.

III. Relevant Law and Discussion

After your client leaves City service, they will be subject to post-employment restrictions under both the State Ethics Act (65 Pa. C.S. § 1101, *et seq.*) and the City's Ethics Code (Philadelphia Code Chapter 20-600).

A. State Ethics Act - One Year Restriction

Section 1103(g) of the State Ethics Act, prohibits a former public employee such as your client from being paid to represent someone before their "former governmental body." My expectation is that the State Ethics Commission would find your client's entire City department to be their "former governmental body," not just the City Program they direct. That said, you have explained that for the duration of their first year after leaving City service, your client will not be paid for their work for the non-profit. As such, Section 1103(g) of the State Ethics Act will not restrict your client's interactions with the City, whether with their specific department or any other City department.

Please note, however, that my advice on the State Ethics Act does not provide protection from possible enforcement by the State Ethics Commission. For definitive guidance on this question, you should contact either the Law Department or the State Ethics Commission. My understanding is that you have spoken with the Chief Counsel for the State Ethics Commission and the advice he gave you is the same as what is described above.

¹ Home Rule Charter §10-102 prohibits a current City employee from applying for a position that would be funded by a City contract. See [Board Opinion 2019-003](#). Because my understanding is that your client and the non-profit are not currently discussing a paid position that your client would hold with the organization, this Opinion does not address the application of Charter §10-102.

B. Philadelphia Code Section 20-607(3) - Two Year Restriction

Philadelphia Code Section 20-607(3) prohibits a City officer or employee from becoming financially interested in any official action taken “during [their] term of office or employment and until two (2) years have elapsed” after leaving City service. The Code defines official action as “an act or omission taken by an officer or employee in their official capacity that requires discretion and is not ministerial in nature.” Code § 20-601(17). Because your client was directly involved, as part of their work for the City, in the formation of the non-profit, if they were to accept a paid position from the organization within two years after leaving City service they would impermissibly acquire a financial interest in an official action they had taken. You have explained, however, that for at least two years after leaving City service, your client would not be paid for their work for the non-profit. As such, Code Section 20-607(3) will not prohibit your client from providing their services to the organization.

C. Philadelphia Code Section 20-603(1) - Permanent Restriction

Philadelphia Code Section 20-603(1) permanently bans a former City officer or employee from assisting “another person, with or without compensation, in any transaction involving the City in which [the officer or employee] at any time participated during their City service or employment.” As defined in the City Code, a transaction involving the City is anything that (a) may be subject to City action, (b) involves the City as a party, or (c) involves a direct proprietary interest of the City such as contracts, leases, judgments, and legislation. Code § 20-601(27). Code Section 20-601(27) also states that the term does not “include routine applications or requests for routine information or other matters that are of a ministerial nature and do not require the exercise of discretion on the part of any City officer or employee.”

For the purposes of this Opinion, I must consider two key questions: (1) what level of involvement in a particular matter by your client while working for the City would constitute “participation” in that matter, and (2) after your client leaves City service, what level of involvement in a matter would constitute their “assisting” the non-profit with regard to that matter?

Although the Board has not opined on what level of involvement in a particular matter will constitute “participation” such that Code Section 20-603 would prohibit a former City employee from assisting another person with that matter, prior General Counsel Opinions have addressed the question. For example, in 2012, the General Counsel advised that “participated” means “official actions that [the former employee was] involved in as part of [their] duties, in a way that [was] more than ministerial...[they] made a recommendation, did some research, participated in a meeting, analyzed some data, drafted a document or the like.” [General Counsel Opinion 2012-516](#), pg. 4. The General Counsel also advised that he interpreted the term “matter” as used in the definition of transaction involving the City to mean “only the particular issue or issues on which decisions were made by the City with the requestor’s involvement, not every issue related to that project that may arise after [the employee] separated from City service.” *Id.*

In 2017, the General Counsel issued Opinion 2017-504 to a former City employee who had gone to work for an organization that held contracts with their former City department. She advised the former City employee that Section 20-603 would not prohibit them from assisting their new employer with regard to current contracts between the City and the new employer because those specific contracts were not in place at the time the former employee was working for the City department. *See* [General Counsel Opinion 2017-504](#), pg. 6.

Based on the terms of Section 20-603 and these prior interpretations, in my opinion, your client may not assist the non-profit with any current contract with the City held by the organization or with any specific project with regard to which your client has taken discretionary actions. Your client may, however, assist the non-profit with new contracts it enters into after they leave City service, including renewals of (but not amendments to) existing contracts. Your client may also assist the organization with any existing project in which they did not participate or in any project begun after leaving City service. Similarly, while your client should not assist the non-profit with matters related to the City’s Fiscal Year 2022 budget, they may provide such assistance with regard to subsequent City budgets.

As to what will constitute “assisting” with one of these matters after they leave City service, my opinion is that your client’s role would need to entail some act of discretion specific to the matter in question. For example, general conversations about a project would not constitute “assisting” the non-profit with the matter for the purposes of Section 20-603. On the other hand, offering a recommendation about which City officers an employee of the non-profit should talk to about a project or drafting a proposed scope of work for a project would. If your client’s fundraising or promotional work for the non-profit merely refers to or has an incidental effect on a matter they participated in prior to leaving City service, that would not, in my opinion, constitute “assisting” the organization with the matter, for the purposes of Section 20-603.

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

BY THE PHILADELPHIA BOARD OF ETHICS

/s/ Michael Cooke

Michael J. Cooke
General Counsel

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