



CITY OF PHILADELPHIA

BOARD OF ETHICS
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**Philadelphia Board of Ethics
Non-Public¹ Board Opinion No. 2019-002**

July 2, 2019

Hon. Allan Domb
City Hall, Room 316
Philadelphia, PA 19107

**Re: Application of Ethics Code Conflict of Interest Restriction to
Official Action on Legislation Affecting Parking Facility Regulation and
Real Estate Tax Abatement Program**

Dear Council Member Domb:

You have asked whether the City's ethics rules would preclude you from taking official action on legislation related to (1) regulation of parking facilities in the City and (2) the City's real estate tax abatement program.

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

- (1) The City's conflict of interest restriction requires you to disqualify yourself from any official action related to legislation regulating parking facilities that is similar to the legislation recently passed by City Council; and
- (2) The City's conflict of interest restriction does not preclude you from taking official action related to legislation affecting the City's real estate tax abatement program.

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 seeking an advisory opinion and for requesting reconsideration of an advisory opinion issued by the Board. The Board may address past conduct in an advisory opinion to provide guidance about corrective action or future action that represents part of a continuing course of conduct that began prior to the advice request.

¹ The requestor originally requested a non-public Opinion, but subsequently authorized publication of this unredacted Opinion.

II. Facts

Parking Lot Legislation

City Council recently passed, and the Mayor signed, two bills (Nos. 190315 & 190316) altering the regulation of parking facilities by the City. The stated goal of these bills was to increase protections for both parking industry workers and parking customers. You initially asked us for advice on this issue while consideration of the bills was pending. At our suggestion, you recused yourself from voting on the proposed legislation. Although the legislation has subsequently gone into effect, you have asked that we nonetheless provide you with guidance in case similar legislation comes before City Council in the future.

You have informed us 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. For the purposes of this Opinion, you have asked us to assume that the proposed legislation would have a financial impact on you by raising operating costs of the businesses in which you hold interests and therefore reducing profits.

According to testimony before the Committee on Labor and Civil Service given by David Perri, Commissioner of the Department of Licenses & Inspections, 149 licensed lots and garages operate in the City. Robert Zuritsky, CEO of Parkway Corporation and President of the Philadelphia Parking Association, testified before the Committee that his association represents fifteen operators that employ some 2,200 people. Flyers circulated by the Association claim that these fifteen operators control approximately 80% of the Philadelphia parking industry.

Tax Abatement Legislation

City Code Chapter 19-1300 provides for real estate tax abatements on certain real properties located in the City for a period of ten years (the “Abatement Program”). The stated purpose of the Abatement Program is to encourage development and rehabilitation of real properties in the City. Under the Abatement Program, tax abatements apply only to the value of improvements to the property, not to the value of the land. The majority of currently abated real properties are residential – condos, single family residences, and apartments or hotels – and are heavily concentrated in Center City and a few adjacent neighborhoods. According to an analysis by the City Controller, 6% of neighborhoods account for 59% of properties that benefit from the Abatement Program.

While numerous options to adjust the current Abatement Program have been proposed and analyzed over the years, three separate bills (Nos. 190012, 190013, & 190134) are currently pending before City Council. All three bills are before City Council’s Committee on Finance, but a hearing has not been set for any of them. Each bill proposes reducing the value of the abatement, but by different amounts and methods. The Law Department has advised that the earliest any of the bills could become effective would be July 1, 2020 and that any legislation passed by City Council could only apply to applications submitted after such legislation became effective.

According to the City's Office of Property Assessment, approximately 580,000 registered properties exist in the City, approximately 67,000 of which are located in Center City or adjacent neighborhoods. Each year approximately 1,430 properties are granted abatements, with an estimated total of 14,300 properties actively abated at any one time. These numbers have remained fairly consistent over the history of the Abatement Program.

Based on information you provided us, it appears that you currently own, directly or indirectly, nine apartment buildings, 325 condominium units at 29 street addresses, and approximately 45 other mixed use or commercial properties. Nearly all of your properties are located in Center City or adjacent neighborhoods. You have obtained abatements for some of your properties in the past and currently have pending applications for abatement of three properties. You think it is possible that you might apply for future abatements, but only for a small number of your current properties. For the purposes of this Opinion, we assume that a change to the property tax Abatement Program could have a material potential impact on your financial interests or the financial interests of one or more of your businesses.

III. Relevant Law

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

The Board has previously held, however, that in some cases a financial interest may be too remote to give rise to a conflict of interest under Code Section 20-607. *See* Board Opinion 2009-003. Moreover, the City Solicitor has interpreted Code Section 20-607 to permit a Council Member to vote on a matter that affects a financial interest held by the Member where such interest is "not direct, immediate, and particular, as distinct from the interests that might be shared by a larger group." City Solicitor Opinion No. 88-12 (Permitting Council Member to vote on liquor-by-the-drink tax even though he owned a bar); *see also*, City Solicitor Opinion No. 89-5 (Permitting Council Member to vote on liquor-by-the-drink tax even though her husband was employed by a beer distributor). The Board has noted this prior interpretation by the Solicitor but, to date, has not adopted it. *See* Board Opinion 2009-003.

City Council's Committee on Rules held extensive hearings before adopting the conflict of interest provisions now found at Sections 20-607 and 608 of the Philadelphia Code. The transcripts from these hearings indicate that City Council did not intend for Sections 20-607 and 608 to preclude Council Members from voting on legislation of "general application" such as the City's wage, net profits, or real estate taxes. It was feared that such a prohibition would either paralyze City Council by preventing too many members from voting, or – in the absence of an option to disclose and disqualify – unduly discourage citizens from becoming City officials or employees. As a proponent of the proposed restrictions acknowledged, all legislation impacts Council Members to some degree because they live – as required by the Charter – in the City.

IV. Discussion

General Principles

Based on the legislative history and prior interpretations discussed above, we interpret the City's conflict of interest provisions to allow a Council Member to vote on legislation of general application even if such legislation will affect the Member's financial interest (or the financial interests of his or her family member, business, or business partner). We further find that legislation is of general application if it affects the Council Member's financial interest in the same manner as those of the general public or a substantial segment thereof. Legislation is not of general application if it has a substantially disproportionate impact on the Council Member's financial interest (or the financial interests of his or her family member, business, or business partner) in comparison to the general public or a substantial segment thereof.²

Applying the general principles stated above to the specific facts you present in your inquiry, we conclude as follows:

Parking Facility Legislation

While legislation regulating parking facilities has a theoretical impact on anyone who pays to park his or her car, the real financial impact of the legislation is on those who own parking facilities and those who work for them. As demonstrated by the facts set forth above, the City's parking facility business is concentrated in a small number of owners and operators. Thus, the segment of the population that would be affected by the legislation in the same manner as you is not substantial.

Accordingly, we conclude that the legislation in question is not of general application and the City's conflict of interest restriction prohibits you from taking official action on legislation similar to that recently passed by City Council regarding the regulation of parking facilities. Should such legislation come up again, you should follow the disclosure and disqualification procedures set forth at City Code Section 20-608.

² We note that the Pennsylvania State Ethics Act includes a similar, but broader, exception to its conflict of interest restrictions, allowing a public official to take action on a matter "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." 4 Pa. C. S. § 1102. The State Ethics Act explicitly permits municipalities to adopt local ethics rules that are more restrictive than the State law. *See* 4 Pa. C. S. § 1111.

Tax Abatement Legislation

It is difficult, and beyond the scope of this Opinion, to determine the actual financial impact of the City's property tax abatement program. It is similarly difficult to identify a specific number of properties or individuals affected by the Abatement Program. That said, based on the data discussed above, the Board can say with confidence that the Abatement Program has had a financial impact on thousands of properties and individuals and, as modified by any of the three pending bills, would continue to do so.

As such, we find that the proposed legislation would affect either the general public or a substantial segment thereof. We further find that while you have an ownership interest in over 450 properties, because of the scope of the Abatement Program, none of the three pending bills would have a substantially disproportionate impact on your financial interests. Accordingly, even though you would be financially affected by the proposed changes to the Abatement Program, because the legislation in question is of general application, the City's conflict of interest restriction does not prohibit you from taking official action on any of these three bills.

V. 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.³ *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 City Solicitor. *See* 65 Pa. C. S. §1109(g).

* * * * *

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.

³ Philadelphia Home Rule Charter Section 4-1100 gives the Board "concurrent authority" with the Law Department to advise City officials on matters of State law. However, our advice is limited as is it does not provide protection from possible enforcement by the State Ethics Commission.

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 is being made public.⁴ Please let Board Staff know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

Michael H. Reed, Esq., Chair
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