



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public Board Opinion No. 2021-001

February 17, 2021

**Re: Application of Ethics Rules to Employee Accepting Employment
from a Person Who Had a Contract with their City Department**

Dear Requestor,

You have requested a non-public opinion as to whether the ethics rules would permit you to accept an offer of part-time, non-City employment from an individual who was a vendor for your City department through a contract you helped approve as part of your City duties in 2020.

As described in detail below, you are advised that the City's ethics rules do not prohibit you from accepting the offer of employment but, if you take the position, you may not take any official action that would affect the company, nor may you represent the company in transactions with the City. In addition, you must ensure that your compensation from the company is not derived from any money paid to it by 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 City's Ethics Code (Philadelphia Code Chapter 20-600) and the Home Rule Charter's restrictions on interests in a City contract (Charter § 10-102). Home Rule Charter Section 4-1100 and Code Chapter 20-600 authorize the Board to render advisory opinions concerning a City officer'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.

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. Guidance on the State Ethics Act that would provide such protection must come from either the Law Department or the State Ethics Commission.

II. Background

You currently work as a manager in a City department (“your City Department”). As part of your responsibilities, you work with other City departments as well as community partners to improve your City Department’s understanding of underlying issues and help guide the department’s decisions on policy, contracts, and budgeting.

In February of 2020, your City Department awarded a contract to a third-party, private company (the “Private Contractor”). You led the review team that awarded the contract to the Private Contractor. A specific individual, whose name is redacted for purposes of this opinion, was listed as a subcontractor in the proposal (the “Individual Subcontractor”) and ultimately provided various services to your City Department up until June of 2020.

The Individual Subcontractor is the co-founder of a consulting firm (the “Subcontractor’s Consulting Firm”) that works with organizations across the country. The Individual Subcontractor has relationships with the City and currently serves on various City commissions. You do not anticipate that the Subcontractor’s Consulting Firm will provide any services to the Department in the future.

You were acquainted with the Individual Subcontractor prior to 2020 through your mutual participation in professional conferences and activities. In December of 2020, the Individual Subcontractor contacted you to offer you the opportunity to work as a consultant with the Subcontractor’s Consulting Firm.

III. Conflicts of Interest Restrictions

The City’s conflict of interest rules are found at Philadelphia Code Section 20-607 and have three components:

- Section 20-607(1) prohibits a City employee from taking official action on any matter that would affect their personal financial interest;
- Section 20-607(2) prohibits a City employee from taking official action on any matter that would affect the financial interest of a family member or someone who is a member of a for-profit business of which the employee is also a member; and
- Section 20-607(3) prohibits a City employee from acquiring a financial interest in a matter they had previously taken official action on.¹

¹ Code §§20-607(1), (2), (3) formerly known as §§20-607 (a), (b), (c).

A “financial interest” is “an interest involving money or its equivalent or an interest involving any right, power or privilege that has economic value.” Code §20-601(9). A person has a financial interest in matters that have a potential impact on their income, compensation, value of assets, wealth, employment prospects, or business prospects. A financial interest may arise from an ongoing, present financial relationship. *See* Board Ops. 2019-002; 2012-001.

20-607(3)

Because you participated in the award of a contract in February of 2020 that included the Individual Subcontractor as a subcontractor, we must consider whether you would impermissibly acquire a financial interest in your previous official action if you now accept employment from the Subcontractor’s Consulting Firm.

Section 20-607(3) applies both during an employee’s term of employment and for two years after separating from City service.² To date, we have not formally advised on the application of 20-607(3) to a current City employee. In Board Opinion 2016-002, we considered this provision in the post-employment context and found that within two years of separation from City service, a former officer may not be paid with funds from a contract they approved while working for the City nor may they do any work on that contract. *See id.* at pg. 8. We further held that “[m]erely working for [an] organization in a manner that would be unconnected to the acquisition of a financial interest in the contract award would not be prohibited.” *Id.*

For the purposes of the question before us today, the holding in Opinion 2016-002 can be restated as follows: a current City employee may not accept an offer of employment if it is connected to prior official action taken by that employee. By “connected” we mean that the specific official action cannot be a substantial basis for the offer of employment. The mere existence of a prior official action is not sufficient to preclude a subsequent offer of employment.

Based on the facts you have provided, we find that your prior official action was not a substantial basis for the offer of employment made to you by the Subcontractor’s Consulting Firm because: the employment offer was made approximately ten months after the contract award and six months after the services under the subcontract were provided; you were acquainted with the Individual Subcontractor prior to the contract award; the possibility of your employment was never raised during the contracting process or while the Individual Subcontractor was providing services to your department; and you would not be paid from any funds derived from the City contract.

² “No...City officer or employee shall become financially interested, subsequent to final action, in any ...award, contract...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 ...of said ...City officer or employee.”

20-607(1) & (2)

If you accept employment with the Subcontractor's Consulting Firm, you will have a conflict of interest with regard to this firm, the Individual Subcontractor and their business partners, as well as any of the firm's clients with whom you work. If a matter arises in which you would be able to take official action that would affect any of those persons, you must file a disclosure and disqualification letter and disqualify yourself from that matter. You can find a form disclosure and disqualification letter on our website at <http://bit.ly/DnDFormLetter>.

State Ethics Act

In addition to the restrictions imposed by the City's conflict of interest rules described above, our understanding of the State Ethics Act is that if you accept employment with the Subcontractor's Consulting Firm, you must recuse yourself from any official action that would financially benefit any client of the firm regardless of your interaction with that person. *See* State Ethics Commission Opinion No. 92-010 (Kannebecker); Advice of Counsel No. 10-561 (Hay); Advice of Counsel No. 12-526 (Say); Advice of Counsel No. 09-546 (Lamb). 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).³

IV. Representation Restriction

City Code Section 20-602(1)(a) prohibits City officers and employees from representing others as an agent or attorney, whether paid or unpaid, in transactions involving the City. Transactions involving the City include applications, decisions, and contracts in which the City takes action, is a party, or has a proprietary interest. Code § 20-601(27). Accordingly, you may not represent the Subcontractor's Consulting Firm or any of its clients in any transaction involving the City, whether that transaction involves your City Department or any other City agency.

V. Interest in City Contracts Restriction

Section 10-102 of the Home Rule Charter provides that a City employee shall not be financially interested in any City contract. As a result, if you work for the Subcontractor's Consulting Firm, you may not be paid with any funds that the firm has received from the City or may receive from the City in the future.

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.

VI. Mayor's Executive Order

Aside from the rules discussed above, it is our understanding that you are subject to the [Mayor's Executive Order](#) on outside employment. Among other things, this executive order requires you to obtain approval for outside employment. For more information, please contact your HR manager or the [Office of the Chief Integrity Office](#).

VII. 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 is being made public. If you have any questions, please contact General Counsel staff.

BY THE PHILADELPHIA BOARD OF ETHICS

/s/ Michael H. Reed

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