



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public Board Opinion No. 2021-002

March 17, 2021

Re: Application of Ethics Rules to City Employee whose Spouse is Seeking City Contracts

Dear Requestor,

You have requested a non-public opinion as to whether the ethics rules would permit your spouse to bid on and enter into contracts with the City.

As described in detail below, you are advised that the City's ethics rules do not prohibit your spouse from bidding on or entering into contracts with the City as long as you personally do not have a financial interest or role in the business. If, however, you are ever able to take official action with regard to a contract involving your spouse, you would have a conflict of interest and would need to follow the disclosure and disqualification procedures discussed below.

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 Section 10-102](#)). [Home Rule Charter Section 4-1100](#) and Philadelphia 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 on the application of the [State Ethics Act](#). Our advice on the State Ethics Act, 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 are a City employee. As part of your job duties, you handle purchases of service supplies and equipment; you also supervise several individuals within your unit.

Your spouse owns a services and supplies-related business. Your spouse is interested in responding to Requests for Proposals (“RFPs”) and bidding on contracts with various City departments to provide products and services. At this point, your spouse has not responded to any RFPs. You stated that you are not an owner in the business nor do you have any involvement in the affairs of the business. You also shared that your spouse would not bid on any contracts with your department.

III. Interest in Certain Contracts

Home Rule Charter Section 10-102 prohibits City employees from having a direct or indirect interest in a contract with the City. The relevant language reads:

...any City employee... paid out of the City Treasury shall not benefit from and shall not be interested directly or indirectly in any contract for the purchase of property of any kind nor shall they be interested directly or indirectly in any contract for the erection of any structure or the supplying of any services to be paid for out of the City Treasury; nor shall they solicit any contract in which they may have any such direct or indirect interest.

Id. The purpose of the rule is to preclude City employees from personally profiting or being interested in City contracts. *See* Charter § 10-102, Annotation; *see also Golden Motors v. Southern Motors*, 9 Phila. Co. Rptr. 212 (1983) (Section 10-102 bars contract for company that is partially owned by a City employee), *aff’d* [90 Pa. Cmmw. Ct. 137 \(1985\)](#).

We have examined this Charter provision in detail in prior advisory opinions. For example, in [Board Opinion 2019-003](#), we held that Charter Section 10-102 prohibits a City employee from applying for a position that is funded by a City contract. In [Board Opinion 2014-001](#), we held that the Charter prohibits a City employee from leasing property to the City. In [General Counsel Opinion 2015-502](#), the Board’s General Counsel advised that the Charter does not prohibit a City officer’s spouse from purchasing property from the City.

We have not, however, explicitly addressed whether this provision would prohibit the spouse of a City employee from seeking a City contract to provide services to the City. Prior to the creation of the current Board, the City Solicitor addressed this question in several published opinions. For example, in Opinion No. 02-03, the Solicitor advised that:

Unlike some other ethics provisions, [Section 10-102] applies only to the official himself, not to any relatives... this provision would not apply to a contract between the City and an employees [sic] spouse or the business of a spouse if the employee had no interest in the business.

In Opinion No. 90-19, the Solicitor advised that:

[A] City employee does not have an interest in, the financial interest of a spouse for purposes of Section 10-102. In certain circumstances a City employee may be found to have such a prohibited interest in a spouse's business, but only if the employee takes some active part in the operations or financing of the business.

We find the Solicitor's Opinions cited above to be well reasoned and see no basis to reach a different conclusion. Accordingly, we hold that Charter Section 10-102 does not prohibit the spouse of a City employee from seeking or entering into a service contract with the City so long as the City employee does not personally have a financial interest or management role in the business. By personal financial interest, we mean the City employee is either a co-owner, partner, or investor in the business. The fact that the City employee and spouse have a joint checking account into which the spouse would deposit monies from a City contract is not sufficient to create a financial interest on behalf of the City employee, for the purposes of Charter Section 10-102. As such, because you personally do not have a financial interest in the business and you do no work for the business, your spouse may respond to an RFP proffered by the City and may enter into contracts with the City to provide services.

We note that under the State Ethics Act, no public official or their spouse may enter into a contract valued at \$500 or more with the public official's governmental body unless the contract is awarded through an open and public process. *See* [65 Pa. C.S. § 1103\(f\)](#). It is our understanding that the City's RFP process meets these requirements, but for definitive guidance, you should contact either the Law Department or the State Ethics Commission.

IV. Conflicts of Interest

[Philadelphia Code Section 20-607](#) prohibits a City employee from taking official action on any matter in which either the employee, a close family member, a for-profit business of which the employee is a member, or a fellow member of such business has a financial interest. 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. *See, e.g.*, Board Opinion 2019-002 at 3.

If a conflict arises under Section 20-607, [Code Section 20-608](#) requires the City employee to submit a disclosure and disqualification letter prior to any City action on the matter. You can find a sample disclosure and disqualification letter on our website at <http://bit.ly/DnDFormLetter>.

The State Ethics Act, [65 Pa.C.S. §1101](#), et seq., prohibits a public employee from taking official action that would have a private pecuniary benefit for: (1) the employee; (2) the employee's immediate family; or (3) a business, whether for-profit or not-for-profit, with which the employee or a member of their immediate family is associated. Based on your managerial role, we presume that you are a public employee as defined by the State Ethics Act.

As such, under both City and State law, you may not take official action regarding your spouse's company or any City contract for which your spouse has applied. If the opportunity to take such action arises, for example, if your spouse were to apply for a contract with your office, you must file a disclosure and disqualification letter as described above.

V. Confidentiality

[Philadelphia Code Section 20-609](#) prohibits City officers and employees from disclosing confidential information for the financial benefit of themselves or another person. This means, for example, you cannot share confidential information related to procurement with your spouse or anyone else involved in their business.

VI. 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\(1\)\(d\)\(.2\)](#); 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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