

CITY OF PHILADELPHIA

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Evan Meyer  
General Counsel

**GC-2008-510**

**Philadelphia Board of Ethics  
Advice of Counsel**

March 7, 2008

Rebecca Rhynhart  
Deputy Director of Finance for Debt Management  
Office of the Finance Director  
1401 JFK Boulevard - MSB  
Philadelphia, PA 19102

**Re: Request for Advice Regarding Potential Conflict**

Dear Ms. Rhynhart:

You have asked to be advised on procedures that you must take to ensure compliance with the ethics laws, because you are a deputy to the City's Finance Director, and your brother is employed by a law firm that is currently bond counsel on a City bond deal, and may seek business opportunities with the City. You advise that your brother is a non-equity partner for the law firm of Blank Rome, but that he does not do any work related to bonds.

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, my advice is predicated on the facts that I have been provided. I wish to point out that, although previous opinions of this office or the Law Department that interpret statutes are guidance to how this office will likely interpret the same provision in the future, previous opinions do not govern the application of the law to different facts. Ethics opinions are particularly fact-specific, and any official or employee wishing to be assured that his or her conduct falls within the permissible scope of the ethics laws is well-advised to seek and rely only on an opinion issued as to his or her specific situation. In that regard, to the extent that this opinion states

general principles, and there are particular fact situations that you may be concerned about, you are encouraged to contact me for specific advice on the application of the ethics laws to those particular facts.

The issue is whether you must take any actions to avoid a conflict of interest. The Charter, the City Ethics Code, and the State Ethics Act all contain provisions that address conflicts of interest.

### **Home Rule Charter**

Section 10-102 of the Charter prohibits certain compensated City officers and employees from benefiting from, or having a direct or indirect interest in, certain City contracts, even if they had no official connection with the contract.

However, unlike some other ethics provisions, this one applies only to the employee herself, not to any relatives. It would not apply to a contract between the City and an employee's sibling or the business of a sibling (if the employee herself had no interest in the business). Therefore, to the extent that your brother could be said to have an interest in any City contract, Charter §10-102 does not apply.

### **Philadelphia Code**

The Philadelphia Ethics Code prohibits City officers and employees from having conflicts of interest that arise from either having a personal financial interest or from being a member of a business or other entity that has any member with a financial interest in the official decisions of that City officer or employee. Code Section 20-607(a) applies to any personal interest that you might have. That provision is not relevant here, as you have not advised that you have a personal financial interest in Blank Rome.

As to the interest through another person or entity, Code Section 20-607(b) provides:

(b) In the event that a financial interest in any legislation (including ordinances and resolutions) award, contract, lease, case, claim, decision, decree or judgment, resides in a parent, spouse, child, brother, sister, or like relative-in-law of the member of City Council, other City officer or employee; or in a member of a partnership, firm, corporation or other

business organization or professional association organized for profit of which said member of City Council, City officer or employee is a member and where said member of City Council, City officer or employee has knowledge of the existence of such financial interest he or she shall comply with the provisions of Section 20-608(a) (b) (c) of this ordinance and shall thereafter disqualify himself or herself from any further official action regarding such legislation (including ordinances and resolutions) award, contract, lease, case, claim, decision, decree or judgment.

Since your brother is a non-equity partner of Blank Rome, you may not take official action in a matter affecting Blank Rome in which your brother has a direct financial interest. It cannot be assumed that every matter that affects the finances of Blank Rome also affects the financial interests of any particular employee.<sup>1</sup> Accordingly, Code subsection 20-607(b) would require your disclosure and disqualification from any City decision that would have a financial impact on Blank Rome only where the financial impact specifically extends to your brother. However, the State Ethics Act is not so narrow<sup>2</sup>. Even if the provision did not apply, you might be well advised to disqualify yourself, in the interests of avoiding an appearance of impropriety.

I note for the sake of completeness that Section 20-609 of the Code provides that no City employee “shall directly or indirectly disclose or make available confidential information concerning the property, government or affairs of the City without proper legal authorization, for the purpose of advancing the financial interest of himself or others.”

### **Method of Disclosure**

Section 20-608(1) of the Philadelphia Code spells out the precise procedure for any disclosure required: you should write a letter, which should contain the following elements:

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<sup>1</sup> It is my understanding that a “non-equity partner” is a salaried employee of the firm and does not share in the firm’s profits as a partner does.

<sup>2</sup> The Act’s definition of “conflict of interest” includes acting for the private pecuniary benefit of the official or a business with which he or a member of his immediate family is associated.

1. That the purpose of the letter is to publicly disclose a potential conflict of interest;
2. Your public position (and description of duties relevant to the conflict, if not obvious);
3. The private financial interest (i.e, that of the business that employs your brother) that presents the conflict;
4. A statement of how your public duties may intersect with the private interest (if not obvious from 2 and 3 above); and
5. Your intention to disqualify yourself from any official action in matters affecting the private interest (should indicate that such disqualification precedes any official action being taken in any such matter).

The letter should be sent by certified mail to the following: (1) the Commissioner of your department, who in your case would be the Finance Director; (2) the Ethics Board, c/o Evan Meyer, General Counsel, Packard Building, 1441 Sansom Street, 2<sup>nd</sup> Floor, Philadelphia, PA 19102; and (3) the Department of Records, Room 156, City Hall, Philadelphia, PA 19107. The letter should indicate on its face that copies are being sent to all three of the above addressees.

### **State Ethics Act**

The State Ethics Act, 65 Pa.C.S. §1101 et seq., likely applies to you, assuming that your job duties meet the definition of “public employee” under the Act. Application of the State Ethics Act is uniquely the purview of the State Ethics Commission, which is charged with interpreting the Act. Accordingly, this Advice of Counsel does not address application of the Act.

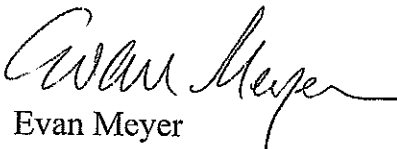
Please note that the Act provides that: “A public official of a political subdivision who acts in good faith reliance on a written, nonconfidential opinion of the solicitor of the political subdivision . . . shall not be subject to the penalties provided for in [the Act].” 65 Pa.C.S. §1109(g). Presumably, it is this provision that is the reason for the concurrent jurisdiction of the Law Department, at the option of the employee, as provided for in Charter §4-1100 as to matters involving State law. Since the Board of Ethics is not “the solicitor” of the City, you may, if you wish, also obtain an opinion from the Law Department as to the application of the State Ethics Act. Any such request, to receive the protection, could not be confidential. Alternately, of course, you may request advice directly from the State Ethics Commission. Information may be obtained from the Commission’s web site at [www.ethics.state.pa.us](http://www.ethics.state.pa.us).

**Conclusion**

I conclude, and you are advised, that you should, as soon as possible, file a disclosure letter as outlined under "Method of Disclosure" above, disclosing your brother's financial interest in the firm of Blank Rome, and announcing your intent to disqualify yourself from taking official action in any City matter affecting that firm.<sup>3</sup>

Both the Philadelphia Ethics Code and the State Ethics Act make clear that prohibited conflicts of interest are those based on a private pecuniary benefit of official action. Based on the facts you have provided, and provided that you comply with the requirements of this opinion, including that you publicly disclose any conflicts as provided in Code §20-608(1) and disqualify yourself from official action that would affect the financial interests of either your brother or his employer, Blank Rome, I advise you that you do not have a prohibited conflict of interest arising out of your service as Deputy Director of Finance for the City, as a result of your brother being an employee of a law firm that is bond counsel on a City bond deal and that may seek other City business.

Sincerely yours,

  
Evan Meyer  
General Counsel

cc: Richard Glazer, Esq., Chair  
J. Shane Creamer, Jr., Esq., Executive Director

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<sup>3</sup> This requirement applies so long as your brother is employed by the firm, and is irrespective of whether your brother works on City matters or has a personal financial interest in City matters.