



CITY OF PHILADELPHIA

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**General Counsel**

## **Philadelphia Board of Ethics Nonpublic Advice of Counsel GC-2011-515**

February 9, 2012

### **Re: Outside Employment / Representation**

A requestor advised in December that he had accepted employment as a full-time employee in the office of an elected official and would begin his new job early in January, 2012. The requestor sought nonpublic advice as to how the Public Integrity Laws might restrict him in outside employment representing clients in adjudicative proceedings involving a City agency represented by the Law Department.

There is no general requirement that City officers or employees avoid all other financial interests while serving the City, provided that outside work is not performed on the City's time or using City materials or equipment, and conflicts of interest are avoided. In that regard, the Philadelphia Home Rule Charter, the Philadelphia Code, and the Commonwealth's Ethics Act specify certain conduct which is prohibited for a City officer or employee.

### **Philadelphia Code Representation Provision**

The Philadelphia Ethics Code imposes certain restrictions on City officers or employees representing others. Code Section 20-602(1) would prohibit a City officer or employee from engaging in outside employment (even if unpaid) that involved representing another person, directly or indirectly, as that person's agent or attorney in any transaction involving the City. The full provision is as follows:

(1) (a) No member of the Council nor other City officer or employee shall assist another person by representing him directly or indirectly as his agent or attorney, whether or not for compensation, in any transaction involving the City. This Section shall not apply to any assistance rendered by any member of Council or other City officer or employee in the course of or incident to his official duties, or to any person who holds any City office or position who is not compensated for his service by the City. Subject to Section 20-602(4).

The term “transaction involving the City” is defined in Code Section 20-601(4) as follows:

(4) Transactions Involving the City. Any proceeding, application, submission, request for a ruling, or other determination, contract, lease, claim, case, award, decision, decree, judgment or legislation including ordinances and resolutions or other particular matter which the member of City Council, City officer or employee in question believes, or has reason to believe (a) is or will be the subject of City action; or (b) is one to which the City is or will be a party; or (c) is one in which the City has a direct proprietary interest. This shall not include routine applications or requests for routine information or other matters which are of a ministerial nature and do not require the exercise of discretion on the part of any member of City Council, City officer or employee.

The term “represent,” in the context of Code Section 20-602, is narrow, since the provision is qualified by the phrase, “as agent or attorney.” *See* Formal Opinion 2010-002 at 2; Advice of Counsel GC-2010-517 at 6.

Applying this provision to the request at hand, the requestor was advised that it was clear that he would be representing another person as agent or attorney in a “proceeding, application, submission, request for a ruling, or other determination, . . . case, award, decision, decree, [or] judgment.” Moreover, such proceedings are actions in which the City is a party (since we were advised that the City Solicitor's office represents a City agency in these matters). Nor is the matter a routine application or a matter of a ministerial nature, so that exception does not apply. Neither does the exception for assistance rendered “in the course of or incident to [the requestor's] official duties” apply, since it cannot be said that it would be part of the requestor's duties as an employee of the City to engage in the outside representation. Thus, we advised the requestor that all the

elements of “transaction involving the City” are met, as is the element of “representing another person as agent or attorney,” and none of the exceptions apply.

Unlike Code Section 20-602(5)(representation by another member of the requestor’s firm) or Code Section 20-607 (conflicts of interest), the above provision is an absolute prohibition; it cannot be avoided by disclosure and disqualification.

Accordingly, the requestor was advised that Code Section 20-602 would prohibit him, as an employee of the City, from the outside representation.

### **Other Provisions**

In view of the above conclusion, there is no need to address the other provisions of the Code, Charter, and State Ethics Act that may apply.

### **Conclusion**

The requestor, recently hired as staff to a City elected official, sought nonpublic advice as to how the Public Integrity Laws might restrict him in outside employment representing clients in adjudicative proceedings involving a City agency represented by the Law Department.

Based on the facts that were provided, the requestor advised as to the following:

1. As a City employee, Code Section 20-602 applies to the requestor.
2. Under Code Section 20-602(1), the requestor may not personally represent any person as agent or attorney in any transaction involving the City, whether or not his particular office is acting in the matter.
3. The adjudicatory proceedings in which the requestor represents clients are each a “transaction involving the City,” since the City is a party.
4. None of the exceptions under Code Section 20-602 apply to the facts that were provided to us.
5. Accordingly, the requestor was advised that Code Section 20-602 would prohibit him, as an employee of the City, from representing clients in the subject proceedings.

The requestor was advised that, although previous opinions of this office 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 should seek and rely only on an opinion issued as to his or her specific situation, prior to acting. In that regard, to the extent that this opinion states general principles, and there are particular fact situations that the requestor may be concerned about, the requestor was encouraged to contact us for specific advice on the application of the ethics laws to those particular facts.

Since the requestor requested nonpublic advice from the Board of Ethics, we will not make the original letter public, but we will be required to make public this revised version, edited to conceal the requestor's identity, as required by Code Section 20-606(1)(d)(iii).

Evan Meyer  
General Counsel

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