



CITY OF PHILADELPHIA

BOARD OF ETHICS  
PACKARD BUILDING  
1441 Sansom Street  
2nd Floor  
Philadelphia, PA 19102-3026  
(215) 686 – 9450  
FAX 686 – 9453

**Evan Meyer**  
**General Counsel**

## **Philadelphia Board of Ethics Nonpublic Advice of Counsel GC-2012-503**

April 18, 2012

### **Re: Seeking New Employment / Conflicts / Post-employment**

A requestor with prior service both for a nonprofit and the City requested a nonpublic advisory regarding any restrictions that may be placed on him by the ethics laws in seeking future employment and in engaging in such employment in the period after he separates from the City.<sup>1</sup>

The requestor advised that he is not a City employee but that his position in a City department is “funded by [the department] through [a nonprofit].” Based on the facts provided, it was our understanding that the requestor was considered to be an employee of the nonprofit, providing services to the City, pursuant to a contract between the nonprofit and the City, and not a City employee. This distinction does not affect the discussion below of any current conflict of interest, but it may affect the discussion of post-employment restrictions.

---

<sup>1</sup> The employee’s actual phrase was “seeking employment within one year of separation.” However, we were advised that the employee had already begun seeking one future position, and the various post-employment laws govern periods beyond one year after separation, as will be discussed herein. Accordingly, this Advice will address a broader period than the first year after separation.

We were advised that the requestor was interested in seeking a particular position, and that he wished to be advised on any restrictions on seeking or holding such a position, but also wished to be advised as to the restrictions on seeking employment with other entities that may or may not have contractual relationships with the City.

This inquiry presents two questions, depending on the requestor's status:

- (1) Whether his present activities as a current employee, in pursuing this employment opportunity, represent a conflict of interest; and
- (2) Whether, if he is offered and accepts a position with a prospective employer, there are any restrictions on his future employment after separation from the City, under the post-employment provisions of the ethics laws.

As provided by the City Code, our advisories may address only potential future conduct. Accordingly, this advisory will not address any past behavior. The same general issues presented by this request were addressed at length in Confidential Opinion No. 2007-001 (November 5, 2007) and Advice of Counsel Nos. GC-2010-515, GC-2008-514, GC-2008-513, and GC-2008-520, which may be found on our website at [www.phila.gov/ethicsboard](http://www.phila.gov/ethicsboard), under "Advisory Opinions and Publications."

### **I. Conflict of Interest in Pursuing Future Employment**

Although the prior advisories cited above analyze whether a public employee would have a conflict of interest in taking official action affecting the financial interests of a potential future employer, the requestor provided no facts to indicate that his City department takes action affecting the interests of the entity with which he was seeking a position. Moreover, the requestor's planned date to leave his current position preceded the date of issuance of this Advice, so any "conflict of interest" analysis is immaterial. Accordingly, the requestor was advised only on the post-employment rules.

### **II. Post-Employment Restrictions**

The second general issue is how the post-employment rules would apply to the requestor after he separates from the City, if he were to accept employment with a business entity, either for-profit or nonprofit. There are three different ethics laws that relate to post-employment restrictions, two in the City Code and one in the State Ethics

Act.

**A. One-Year Limitation On Representing Others—State Ethics Act**

Section 1103(g) of the State Ethics Act, 65 Pa.C.S. §1103(g), restricts “post-employment” activities as follows:

No former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body.

The key words in that provision are defined in Section 1102 of the Act, 65 Pa.C.S. §1102. “Represent” is defined as follows:

To act on behalf of any other person in any activity which includes, but is not limited to, the following: personal appearances, negotiations, lobbying and submitting bid or contract proposals which are signed by or contain the name of a former public official or public employee.

“Governmental body with which a public official or employee is or has been associated” is defined as follows:

The governmental body within State government or a political subdivision by which the public official or employee is or has been employed or to which the public official or employee is or has been appointed or elected and subdivisions and offices within that governmental body.

Based on opinions of the State Ethics Commission, the requestor was advised that it is unclear whether his “governmental body” would be his City department or the entire City government, and whether it might also include the nonprofit for which he worked under contract with the City. The requestor was advised that he may not for one year after the date he separates from City employment (last day on the payroll) represent anyone—himself, any firm that employs him, or any of its clients—before his “former governmental body.” Please note the broad definition of “represent,” which includes having one’s name appear on a bid or contract proposal submitted to the former governmental body or otherwise making known to that body one’s work for the contractor.

For specific guidance on the State Ethics Act, the requestor was advised to seek

either a confidential or a non-confidential advisory opinion issued by the State Ethics Commission, which would provide a complete defense in any enforcement proceeding initiated by the Commission and is evidence of good faith conduct in any other civil or criminal proceeding, provided the requestor disclosed truthfully all the material facts and acted in reliance on the Advice. *See* 65 Pa.C.S. §1107 (10), (11). The State Act would also provide protection from certain penalties if the requestor seeks and relies on non-confidential advice from the City Solicitor. *See* 65 Pa.C.S. §1109(g).

A request for advice from the State Ethics Commission should be directed to:

State Ethics Commission  
Attention: Legal Division  
Room 309 Finance Building  
P.O. Box 11470  
Harrisburg, Pa 17108-1470

#### **B. Permanent Limitation On Assistance With Particular Matters—City Code**

Section 20-603(1) of the City Ethics Code states:

No person who has served for compensation as a member of Council, City officer or employee shall assist, at any time subsequent to his City service or employment, another person, with or without compensation, in any transaction involving the City in which he at any time participated during his City service or employment.

The “transactions” to which this provision applies are defined broadly in Section 20-601(4) to include matters (i) which are or will be the subject of City action; (ii) to which the City is or will be a party; or (iii) in which the City has a direct proprietary interest. This provision is not a one-year prohibition, like the State Ethics Act provision, but applies “at any time” after a person leaves City employ. However, it is much narrower in scope than the State Ethics Act provision, since it only applies to matters in which the employee “participated” during City employ. This has been interpreted to mean matters in which the employee exercised discretion (and not merely, for example, responded to a routine request for information). Thus, the requestor was advised that, if during his service with or for the City, he took official action on any particular transaction concerning which a future employer should contact the City at any time henceforth, he may not assist that future employer in the matter relating to that transaction. On the other hand, “matter” is interpreted to mean only the particular issue or issues on which decisions were made by the City with the requestor’s involvement, not every issue related

to that project that may arise after he separate from City service. Again, this is not limited to contracts.

### **C. Two Year Limitation On Financial Interests—City Code**

Section 20-607(c) of the Code states:

No member of Council or other City officer or employee shall become financially interested, subsequent to final action, in any legislation including ordinances and resolutions, award, contract, lease, case, claim, 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 in the term of office of said member of Council or other City officer or employee.

This prohibition shall apply so as to prevent a parent, spouse, child, brother, sister or like relative-in-law or any person, firm, partnership, corporation, business association, trustee or straw party from becoming financially interested for or on behalf of a member of City Council, City officer or employee within said two (2) year period.

In short, this provision prohibits a City employee for two years after leaving City employ from acquiring a financial interest in official decisions he made while in City employ. Thus, if the requestor had, for example, been officially involved in awarding, renewing, amending, or administering a City contract with an outside entity, he could not for two years be employed by and receive any compensation from that entity, if such compensation was derived from revenue received under that City action affecting the contract.

### **III. Summary**

In summary, based on the facts provided, the requestor was advised as to the following conclusions: (1) As he will separate before receiving this advisory, there is no need to address the application of the conflict of interest rules to his governmental employment.

(2) The State Ethics Act likely applies to the requestor, based on his job title. Under the Act, he would be prohibited for one year after he left applicable employment (as interpreted by the State Ethics Commission) from representing anyone, including

himself and any future employer (or any client of himself or any future employer), before his former governmental employer. Please note the broad definition of “represent,” which includes having one’s name appear on a bid, contract proposal, engineering report, invoice, or other official document submitted to that person’s former governmental body.

(4) Please note that this Advice is not binding on the State Ethics Commission, which has authority to interpret the State Ethics Act. For any questions regarding the advice herein as to the State Ethics Act, the requestor is advised to contact the State Ethics Commission.

(5) Under the City Code, the requestor may never in the future assist anyone, such as a future employer or one of its clients, in a transaction involving the City on a particular issue or issues on which decisions were made by the City with his involvement.

(6) Under the City Code, he may not for two years after he left the employ of the City acquire a financial interest in any official decision he made while in City employ.

The requestor was advised to request further advice from the Board of Ethics, or the State Ethics Commission, if he has additional facts to provide. Please also note the option of requesting advice of the City Solicitor (as to the State Act only), as discussed on page 4 above.

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, this Advice is predicated on the facts that have been provided. We do not conduct an independent inquiry into the facts. Further, we can only issue advice as to future conduct. Accordingly, this Advice does not address anything that may have occurred in the past. The requestor was advised that, although previous opinions of this office 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, prior to acting. In that regard, to the extent that this Advice states general principles, and there are particular fact situations that the requestor may be concerned about, he 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

Nonpublic Advice of Counsel GC-2012-503

April 18, 2012

Page 7 of 7

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