



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2020-504

June 16, 2020

Re: Conflict of Interest Rules and Membership on City Board

Dear Requestor:

You have requested a non-public advisory opinion regarding the extent to which City and State Ethics rules would restrict your activities as a member of a City board. As discussed in more detail below, City and State law prohibit you from taking official action that would affect your personal financial interest or the financial interest of your employer. A conflict of interest would not arise, however, unless you are actually able to take such official action.

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 conflict of interest rules found in the City’s Ethics Code (Philadelphia Code Chapter 20-600). 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.

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 are a member of a City board that selects nominees for the Mayor to consider. You are also the paid executive director of a local non-profit organization that intends to apply for a contract with the same City entity to which you nominate candidates for selection.

III. Relevant Law and Discussion

As a member of a City board that exercises significant powers of government, you are subject to both City and State ethics rules. *See* Code §§ 20-601(4), (18).

a. City Conflicts of Interest Rule

Philadelphia Code Section 20-607 prohibits you from taking action in an official capacity when either (a) you (or a close family member) have a personal financial interest in that action; or (b) a for-profit business of which you are a member or a fellow member of such business has a financial interest in that action. The Board has advised that 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, pg. 3. If such a conflict of interests arises, Code Section 20-608 requires you to submit a letter disclosing the conflict and disqualifying yourself from any official action related to it.

Because your employer is a non-profit organization, a conflict of interest will not arise for you under Code Section 20-607 merely because an action of yours would affect the organization's financial interests. Rather, your action would have to affect your personal financial interest, that is, your compensation by your employer or its ability to employ you. That said, given that you are the executive director of the organization, for the purposes of this Opinion, I will assume that any action by you related to a potential contract for your employer would affect your personal financial interest and would therefore give rise to a conflict.

As such, if any action by you in your capacity as a member of the City board would affect the consideration of your employer's contract application, you would have a conflict and you would need to disclose the conflict in writing and disqualify yourself from any action related to it, as required by Code Section 20-608. In my opinion, however, it is unlikely that such a conflict would actually arise for you. The only action your board takes is to consider and forward to the Mayor potential nominees. Your board has no role in the day to day operations of the entity for which you offer nominees. It is possible that if an individual you vote to nominate is subsequently appointed, they may have a role in the contract for which your employer intends to apply. In my opinion, however, the relationship between your action and the nominee's subsequent action is too attenuated to give rise to a conflict. *See* Board Opinion 2012-001, pg. 5 ("However, in some cases, a financial interest may be too remote to give rise to a conflict of interest under Code § 20-607."); General Counsel Opinion 2017-504, pg. 5 ("Any financial interest you may acquire... would be too attenuated to cause an issue under the Code's...restriction on becoming financially interested in official action you took while employed by the City."). That said, you should not raise or discuss the contract application with anyone in the course of your work on behalf of the City.

b. State Conflicts of Interest Rule

The State Ethics Act, 65 Pa.C.S. §1101, *et seq.*, prohibits you from taking official action that would have a private pecuniary benefit for: (1) you; (2) your immediate family; or (3) a business, whether for-profit or not-for-profit, with which you or a member of your immediate family is associated. This means that, as with the City rule as described above, you must recuse yourself from any official action that would affect the City entity's consideration of the response by your employer to the RFQ.

I can only provide general guidance on the State Ethics Act. Either the Law Department or the State Ethics Commission can provide definitive, protective advice to you on the application of the Act. At your request, I have discussed your situation with the Law Department. They advise that they do not see any conflict of interest for you under the State Ethics Act. If you would like a formal opinion from them, I can put you in touch with the appropriate person.

IV. 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. Please let me know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

s/Michael Cooke

Michael J. Cooke, Esq.
General Counsel

cc: Michael H. Reed, Esq., Chair
J. Shane Creamer, Esq., Executive Director