



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2020-506

July 10, 2020

Sent via email

Re: Application of Post-Employment Rules to Work with Future Employer

Dear Requestor:

You have requested a non-public advisory opinion regarding the extent to which City and State Ethics rules will apply to you after you separate from City service in the near future.

As discussed in more detail below:

- a. For one year after leaving City service, you may not represent a third-party (including a future employer) for pay in any matters involving the department in the executive branch you currently work for.
- b. For two years after leaving City service, you may not become financially interested in any official action you took while working for the City.
- c. After leaving City service, you may not, at any time, assist another person, with or without compensation, in any transaction involving the City in which you participated while working for the City.

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 post-employment 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 or employee's proposed future conduct. Board Regulation No. 4 describes the procedures related to advisory opinions, including for requesting reconsideration or appeal of an advisory opinion issued by the General Counsel.

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. For guidance on the State Ethics Act that would provide such protection, you should contact either the State Ethics Commission or the Law Department.

II. Background

You are an employee in a department of the executive branch. Your work has entailed dealing and interacting with various City departments and entities along with their employees. In your current role, you have not approved, administered, or issued any grants or contracts.

Once you leave City employment, your work for your new employer will entail interacting with various people and entities throughout the region. You anticipate this may include the City itself, City employees, and City-based entities and residents.

III. Relevant Law and Discussion

When you leave City employment, you will be subject to post-employment restrictions under the State Ethics Act and the City's Ethics Code.

A. One Year Prohibition - State Ethics Act

Under Section 1103(g) of the State Ethics Act, former public employees are prohibited from being paid to represent someone before their "former governmental body." There are two primary aspects of the law that are key to this discussion: (1) whether you are a public employee and (2) if so, what is your former governmental body?

Public Employee

The Act defines public employee as "any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a non-ministerial nature with regard to: (1) contracting or procurement;

(2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.” 65 Pa. C.S. § 1102. This includes many, but not all, individuals employed by the City. Based on the information you have provided, I believe you meet this definition of a public employee.

Former Governmental Body

You work in a department of the executive branch. The State Ethics Commission has opined that ones’ governmental body is not limited to the particular department or subdivision where they had influence or control, but encompasses the entire body by which they were employed. *See* Advice of Counsel No. 90-006. In your case, the department in its entirety will be your former governmental body. As a result, you will be restricted from representing anyone before the department in your new role for one year after leaving City service.

Under the State Ethics Act, representation includes, but is not limited to, personal appearances, negotiations, lobbying and submitting bid or contract proposals which would be signed by you or contain your name. Importantly, this restriction also extends to participation in phone calls. For example, if your work with your future employer involved fostering relationships or interactions with a private entity and the department you currently work for, you could neither attend an in-person meeting nor participate via phone. You could, however, delegate this responsibility to a colleague or an individual you manage.

Please keep in mind, however, our advice on State law does not provide protection from possible enforcement by the State Ethics Commission. For definitive guidance on this question, you should contact either the Law Department or the State Ethics Commission. If you would like to do so, I can provide you with the appropriate contact information.

B. Two Year Prohibition – City Ethics Code

Philadelphia Code Section 20-607(c) prohibits a City officer or employee from becoming “financially interested” in official action taken “during [their] term of office or employment and until two (2) years have elapsed” since leaving City service. The Code defines official action as “an act or omission taken by an officer or employee in his or her official capacity that requires discretion and is not ministerial in nature.” Code § 20-601(17). For example, if you were involved in coordinating a partnership with the City and an organization and as a result of your efforts, the organization was awarded a contract, for two years after leaving City service you could not receive any payment out

of that contract. Based on the information you provided and the nature of the work you plan to engage in, we do not anticipate that this will be an issue.

C. Permanent Prohibition – City Ethics Code

Philadelphia Code Section 20-603(1) permanently bans a former City officer or employee from assisting “another person, with or without compensation, in any transaction involving the City in which [the officer or employee] at any time participated during their City service or employment.” This rule would prohibit you from providing assistance to any third-party (including your future employer) regarding any transactions with which you were personally involved while working for the City.

As defined in the City Code, a transaction involving the City is anything that (a) may be subject to City action, (b) involve the City as a party, or (c) involve a direct proprietary interest of the City such as contracts, leases, judgments, and legislation. Code § 20-601(27). For example, after leaving City service, you could not draft testimony or talking points for an employer to present at a hearing on specific matters you worked on while you were a City employee.

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