



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2020-507

August 10, 2020

Re: Application of Ethics Rules to City Employee who will be a Member of Board of Local Chapter of a Non-Profit

Dear Requestor:

You have requested a non-public advisory opinion regarding the extent to which City and State Ethics rules will limit your activities as a City employee when you commence your term as a board member for the local chapter of a non-profit.

As discussed in more detail below:

- a. You may not take official action that would financially benefit the non-profit.
- b. You may not represent the non-profit in any transaction involving the City.
- c. You may not use any confidential information obtained via your job for the benefit of the non-profit.
- d. You must disclose your board membership on your annual Statement of Financial Interest.

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 conflicts of interest, representation, and confidentiality rules found in the City's Ethics Code (Philadelphia Code Chapter 20-600). Charter Section 4-1100 and Code Chapter 20-600 authorize the Board to render advisory opinions concerning a City officer 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 work as a policy analyst for a City commission. Your primary responsibilities include reviewing current practices, customs and directives of City entities and making recommendations regarding various policy issues. You also research and analyze policy trends across the country to determine if they could be implemented in Philadelphia. On occasion, you have participated in interviews with members of the community regarding the practices of various City entities. You have also assisted your supervisor in assessing evidence to determine if such City entities have violated various City policies. You do not award contracts nor do you have any control over financial matters in your office.

You recently applied for and were offered a seat on the board of a non-profit. This position, which will begin later in 2020, is unpaid. The non-profit is a national organization and does not receive government funding. The organization has various local chapters, which help effectuate its mission through organizing public events and other activities.

Your work for the City intersects with the non-profit on occasion. For example, you are involved in ongoing discussions regarding certain policy issues. The City has requested that the local chapter of the non-profit participate in these discussions.

III. Relevant Law and Discussion

As discussed in more detail below, City and State ethics rules do not prohibit you from serving on the non-profit, but they do restrict your actions to some degree.

A. Conflicts of Interest

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. If such a conflict of interest arises, Code Section 20-608 requires you to submit a letter disclosing the conflict and disqualifying yourself from any official action related to it.

Given that you will be an unpaid board member and that the local chapter of the non-profit is a not-for-profit entity, the City's conflicts of interest rule should not present any issues for you.

The State Ethics Act, however, applies to you as a "public employee"¹ and 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. *See* 65 Pa.C.S. §1101, *et seq.* As a result, because of your board membership, you may not take any official action that would financially benefit the local chapter of the non-profit. Official action includes discussing, conferring with others, voting, or advocating for a particular result. *See* Opinion of the Commission No. 07-521.

Please keep in mind, 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.

B. Representation

Philadelphia Code Section 20-602 prohibits a City employee from representing another person, whether paid or unpaid, in a transaction involving the City, even if it does not involve your agency. For example, this means that you could not appear before City Council on behalf of the non-profit to testify about proposed legislation.

¹ The State Ethics Act only applies to "public employees" and "public officials" as defined by the Act. *See* 65 Pa. C.S. § 1102. Based on your job title and the information you provided, we presume that you are a "public employee" subject to the Act.

C. Confidential Information

Philadelphia Code Section 20-609 prohibits City employees from using confidential information concerning the property, government, or affairs of the City for the purpose of advancing the financial interest of themselves or others. Since your City work sometimes overlaps with the work of the non-profit, you should be mindful of this restriction.

D. Financial Disclosure

As a public employee, the State Ethics Act requires you to file an annual Statement of Financial Interests. When you file next year, you will need to disclose your board membership with the local chapter of the non-profit. For more information, please visit the [financial disclosure page](#) on our website.

IV. Conclusion

Thank you for your concern about compliance with the ethics rules 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. *See* 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