



## CITY OF PHILADELPHIA

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### **Philadelphia Board of Ethics General Counsel Opinion No. 2020-508**

August 14, 2020

*Sent via e-mail*

Leonard Reuter  
Senior Attorney  
City of Philadelphia Law Department  
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***Re: Application of Conflicts of Interest Rules to Commission Member  
When Former Client Appears before Commission***

Dear Mr. Reuter,

On behalf of the Philadelphia Historical Commission, you asked whether the City's ethics rules would prohibit Commission member Emily T. Cooperman from taking official action on matters related to the proposed demolition of St. Laurentius Roman Catholic Church. As discussed in more detail below, in my opinion, Ms. Cooperman does not have a conflict of interest under City or State law that would preclude her from participating in Commission action on the St. Laurentius matter.

#### **I. Jurisdiction**

The Board of Ethics has jurisdiction to administer and enforce all Philadelphia Home Rule Charter provisions and ordinances pertaining to ethical matters. The Charter and the Philadelphia Code authorize the Board to render advisory opinions concerning a City officer's or employee'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. My 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**

Ms. Cooperman is an architectural historian who began serving as a member of the Commission in June 2016. Ms. Cooperman also serves on the Commission’s Designation Committee.

Prior to joining the Commission or serving on the Designation Committee, Ms. Cooperman was retained by John Wisniewski to provide a letter of technical support for the proposed designation of St. Laurentius as a historic building. Mr. Wisniewski is involved with a group called “Save St. Laurentius” that has advocated for the church’s historic designation and has actively opposed its demolition. Ms. Cooperman submitted her letter to the Designation Committee on June 8, 2015. At that time, Ms. Cooperman was a principal in ARCH Preservation Consulting and submitted her letter on ARCH letterhead. She appeared at a Designation Committee meeting on June 9, 2015 and at a Historical Commission meeting on July 10, 2015 to offer testimony in support of the proposed designation of St. Laurentius as a historic building.

In addition to providing this paid consulting service to Mr. Wisniewski, Ms. Cooperman provided a letter in support of Save St. Laurentius’ application for a Pennsylvania Historical and Museum Commission on a pro bono basis in November 2015. Ms. Cooperman has not had any relationship with Mr. Wisniewski or Save St. Laurentius since that time.

The current owner of St. Laurentius has applied for a permit to demolish the church building. Because the property is designated as historic, the permit must be approved by the Commission. Mr. Wisniewski spoke on behalf of Save St. Laurentius in opposition to the demolition permit at a recent Commission meeting. The property owner expressed concern about Ms. Cooperman’s participation in the demolition permit deliberations and voting because of her involvement with the designation proceedings.

Ms. Cooperman has not been associated with ARCH since November 2017. She currently works for PS&S Integrated Design and Engineering. Neither Ms. Cooperman nor her employer have a financial relationship with Mr. Wisniewski or Save St. Laurentius. Ms. Cooperman is not a member of any business or organization involved in the demolition application review process.

### III. Relevant Law and Discussion

#### a. Conflicts of Interest

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

City Code Section 20-607 prohibits a City officer from taking action in an official capacity when either (a) the officer (or a close family member) has a personal financial interest in that action; or (b) a for-profit business of which the officer is 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 at 3. If such a conflict of interests arises, Section 20-608 requires a City officer to submit a letter disclosing the conflict and disqualifying themselves from any official action related to it.

The State Ethics Act, 65 Pa.C.S. §1101, et seq., prohibits a public official from taking official action that would have a private pecuniary benefit for: (1) the official; (2) the official's immediate family; or (3) a business, whether for-profit or not-for-profit, with which the official or a member of their immediate family is associated.

Because there is currently no relationship between Ms. Cooperman and either Mr. Wisniewski or Save St. Laurentius, there is no conflict of interest under either the City or State rules. Ms. Cooperman was involved in two specific transactions relating to the historical designation and marking of St. Laurentius approximately five years ago. Since that time, she has had no relationship with Mr. Wisniewski or Save St. Laurentius. Her only role in the current dispute – which involves demolition, not historical designation – is that of Commission member. She does not stand to benefit financially nor does she have a relationship to any business or nonprofit that will be financially impacted by the Commission's decision to approve or deny the demolition permit application.

Both the City and State rules are framed in terms of current memberships, associations, or financial interests. They do not apply to past employment or former clients. Particularly as to personal pecuniary interests and business relationships, this distinction is at the crux of how these rules function – they force officials to choose between their personal interests and the opportunity to take official action that would impact those interests. While recusal is one option, divestment of the conflicting interest is another way to resolve a potential conflict. *See, e.g.*, State Ethics Comm'n Advice of Counsel 17-532 (Wian) (May 15, 2017) (conflict avoided by resigning from and divesting ownership interest in company who had contract with hiring authority). Thus, a prior client or employment relationship – particularly one long since lapsed – does not give rise to a conflict of interest under either City or State law.

As noted above, my advice regarding the application of State law does not provide legal protection. If you would like formal advice on the State conflicts of interest provision, I can assist you in obtaining such advice from the Law Department or the State Ethics Commission.

**b. Other ethics considerations**

While Ms. Cooperman does not have a conflict of interest with respect to the St. Laurentius demolition permit application, there are other ethics rules that she (and all Commission members) should keep in mind as they conduct this and other proceedings. There is nothing to suggest either of these provisions were violated – these are simply reminders of additional ethics rules.

Under City Code Section 20-609, City officers and employees are prohibited from disclosing confidential information to the financial benefit of themselves or another. This means, for example, that Ms. Cooperman cannot share confidential information available as a result of her role in considering the St. Laurentius demolition permit application to financially benefit herself, her clients, or any other person or organization.

City Code Section 20-605 prohibits ex parte communication with the Commission. For example, neither Mr. Wisniewski nor the property owner may have a private conversation with Ms. Cooperman (or any other Commission member) regarding the substance of the application process. Anyone wishing to discuss the substance of the permit application with Commission members or staff must provide all affected parties with the opportunity to be present for that discussion.

**IV. Conclusion**

Thank you for your concern about compliance with the City ethics laws and for seeking advice. Advisory opinions are fact-specific, and this Opinion is predicated on the facts you have provided as stated here. 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.

Since you requested a public opinion, this Opinion will be made public, including by posting on the Board's website. Please let me know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

*/s/ Michael J. Cooke*

Michael J. Cooke  
General Counsel

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