



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-public General Counsel Opinion No. 2020-510

October 8, 2020

Re: Post-Employment Restrictions of City Ethics Code and State Ethics Act

Dear Requestor:

You have requested an advisory opinion regarding the extent to which City and State Ethics rules will apply to you after you separate from City service in October of 2020.

As discussed in more detail below:

- a. For one year after leaving City service, you may not represent your new employer on any matters involving the City department you currently work for. You may, however, continue to serve as a member of the three entities related to the City (discussed further below) that you currently volunteer for, so long as you do so only in your personal capacity. You may also represent your new employer in matters involving any other governmental bodies that are not part of your City department so long as no members of your City department participate in those matters.
- b. 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. This includes not just assistance provided to your new employer but also to the three entities that you currently volunteer for.
- c. For two years after leaving City service, you may not become financially interested in any official action you took 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.

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 a City employee. You have various job duties and responsibilities related to this City position. In addition to these duties and responsibilities, you serve as a member of three City-related entities: 1) a governmental authority; 2) an informal working group that includes City officials; and 3) a private entity that receives City funding and has some City appointed members of its board. While all three of these entities are related to the City and involve intersections with City government, none of them are officially part of the City. You are not currently, nor would you be in the future, compensated for your work with any of these entities.

You will shortly be leaving City service to join a private company. Your work for this private company will entail management and budget consulting, in large part for state and local governments. In your time working for the City, you did not ever approve or work on any grants or contracts involving this private company.

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. State Ethics Act - One Year Prohibition

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.” When you leave City service, your former governmental body will be your City department, not the City as a whole. As such, for one year after leaving City service, you may not represent anyone for pay, including your new employer, on any matter involving your former governmental body.¹ You will, however, be permitted to represent your new employer in transactions involving other governmental bodies of the City. Keep in mind, however, that you could not represent your new employer on a matter before one of these other governmental bodies, if a member of your City department is also participating in the matter.

I do not believe that the State Ethics Act would prohibit you from continuing to serve as a member of the three entities you currently volunteer for even if members of your City department also participate in those activities, so long as you serve on those entities in your personal capacity and not as part of your job for your new private employer.

As noted above, our advice on State law does not provide protection from possible enforcement by the State Ethics Commission. At your request, however, I have consulted with Lewis Rosman at the Law Department and he agrees with my description of the application of the State Ethics Act to your situation.

B. City Ethics Code - Two Year Prohibition

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.” *See* Code § 20-601(17). For example, if you were involved in awarding a contract to a vendor, you could not, for two years after leaving City service, receive any payment out of that contract. Based on the information you provided and the nature of the work you plan to engage in, I do not anticipate that this restriction will limit your work for the new private employer or your participation in the three entities.

¹ Under the State Ethics Act, representation includes, but is not limited to, personal appearances, participation in telephone calls, negotiations, lobbying, and submission of any bid, contract proposals, or invoice signed by you or containing your name.

C. City Ethics Code - Permanent Prohibition

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.”² This rule prohibits you from providing assistance to anyone on any transactions with which you were personally involved while working for the City, regardless of whether that person compensates you for your efforts.

You do not anticipate your new employer engaging in any transactions with your City department. You should also take care, however, not to provide any assistance to the three entities on any matter you worked on while you were a City employee, even though you are not compensated for your work for those entities.

D. City Ethics Code and State Ethics Act – Conflicts of Interest

Under both City and State law, you have a conflict of interest with regard to your future employer. As such, during your remaining time with the City, you may not take official action on any matter that would affect your new, private employer. If the opportunity does arise for you to take official action that would affect this new employer, you must file a disclosure and disqualification letter as provided by City Code Section 20-608. You can find a form disclosure and disqualification letter on our website at <http://bit.ly/DnDFormLetter>.

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.

² A transaction involving the City is “anything that may be subject to City action, involve the City as a party, or involve a direct proprietary interest of the City such as contracts, leases, judgments, and legislation.” *See* Code § 20-601(27).

BY THE PHILADELPHIA BOARD OF ETHICS

s/Michael Cooke

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General Counsel

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