



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2020-512

December 31, 2020

Re: Application of ethics rules to former City employee considering contracted legal work for City entities

Dear Requestor,

You have asked whether, as a former City attorney, the ethics rules restrict you from entering into a contract to provide legal advice and representation to certain City entities. This arrangement would be through a subcontract with a private attorney who has a Professional Services Agreement with the City. Based on the information you provided, you may enter into a contract to provide these legal services to these City entities, as described below.

I. Background

You retired in 2020 from your position at the City's Law Department. You have been offered an opportunity to provide legal services to certain City entities via a subcontract with a private attorney engaged by the Law Department. Both the existing Professional Services Agreement and the proposed subcontract are approved by the Law Department.

The Law Department provides advice and representation to City departments, agencies, and boards and commissions. The Law Department also represents City departments in matters before other City entities, including the entities you would represent via the proposed contract.

Your primary duties as a City attorney were managing and supervising other attorneys in your unit. In addition, you handled higher-profile cases, counselled upper-level managers, and assisted higher ranking officials. You helped organize and direct a City-wide task force that brought together senior staff from various governmental entities. You also represented City departments in matters that came before the entities you would represent via the proposed contract.

During your time with the City, you did not provide advice or representation to any of the entities you would represent via the proposed contract. You were not involved in selecting the contracted attorney or negotiating or approving the Professional Services Agreement under which you would be subcontracted.

II. Relevant Law and Discussion

The Board of Ethics is charged with administering and enforcing all Philadelphia Home Rule Charter provisions and ordinances pertaining to ethical matters, including the post-employment restrictions found in the City Code. 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 the State Ethics Commission.

A. State Post-Employment Restriction

Section 1103(g) of the State Ethics Act prohibits former public employees from being paid to represent someone before their former governmental body for one year after separating from public employment. It is my understanding that, for the purposes of this restriction, your former governmental body is the Law Department. Typically, the Act would prohibit a former City employee from accepting contract work from their former governmental body within the first year of separation from service.¹ As noted in General Counsel Opinion 2019-505, however, the Pennsylvania Supreme Court has significantly limited this restriction as it is applied to attorneys whose work constitutes the practice of law. *See Shaulis v. State Ethics Comm'n*, 574 Pa. 680 (2003) (finding that State Constitution preempts Section 1103(g) of the State Ethics Act as applied to lawyers). The State Ethics Commission has advised that Section 1103(g) of the State Ethics Act does not apply to a former public official who is a lawyer when that former official's activity constitutes the practice of law. *See, e.g.,* Advice of Counsel 17-551 (Aug. 4, 2017) (Pritzker); *see also* Advice of Counsel 12-500 (Jan. 5, 2012) (former solicitor for political subdivision may contract with their successor to provide legal services to same entity).

As such, it seems that Section 1103(g) of the State Ethics Act would not preclude you from providing legal services under a Professional Services Agreement with your former City department. Please keep in mind, however, that my advice on State law 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 the State Ethics Commission.

¹ Note that the post-employment restrictions apply based on the date you separated from service, not the date you stopped working.

B. City Post-Employment Restrictions

i. Code Section 20-607(c)

Section 20-607(c) of the Ethics Code prohibits a City officer or employee from becoming “financially interested” in official action taken “during his [or her] term of office or employment and until two (2) years have elapsed” since leaving City service. For example, if as part of your City duties you approved or negotiated the contract for the attorney for whom you would be a subcontractor, you could not, for two years after leaving City service, receive any payment as a result of that contract.

Based on the information you provided, you were not involved in selecting the attorney for whom you will be a subcontractor or negotiating the terms of that contract. Further, while you had some involvement in developing compliance and enforcement programs as part of your work on the task force discussed above, those programs are not the basis for these City entities retaining legal counsel. As a result, Section 20-607(c) would not prohibit you from entering into this contract to provide legal services.

ii. Code Section 20-603

Section 20-603 of the Ethics Code 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 provision applies only to specific transactions in which you were involved.

While you worked for the City, you did not advise or represent the entities you would represent via the proposed contract, although you were involved in City transactions that came before these entities. You have said, however, that all such matters are now closed and you do not expect that a matter in which you participated would come before one of these entities. Assuming that is the case, this provision would not restrict your activity under the proposed contract.²

III. Conclusion

As explained above, based on the information you have provided, you may provide legal advice and representation to certain City entities via a subcontract with an attorney contracted by your former City Department to provide such services.

² I note that the Board has not specifically addressed whether Section 20-603 applies to a former City employee who is retained to assist the City itself, rather than a person or entity who is not part of the City. The Board could find that Section 20-603 would not apply in such a circumstance and that a former City employee would be permitted to assist the City with a transaction in which they had participated during their City employment. Because of the facts of your particular request, however, we need not consider that question at present. If it should happen that you are asked to advise on a matter in which you participated during your City tenure, you should seek further guidance from us.

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 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 J. Cooke

Michael J. Cooke, Esq.
General Counsel

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