



## CITY OF PHILADELPHIA

BOARD OF ETHICS  
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### **Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2021-501**

March 1, 2021

**Re: Application of the City’s conflict of interest rule to serving as a community advisor to an investment fund operated by private nonprofit entities**

Dear Requestor,

You have asked whether there are any ethics restrictions on your serving as a community advisor for an investment fund operated by local, nonprofit entities. As explained below, based on the information you have provided, this role would not result in a conflict of interest for you with respect to the entities operating the fund. You would, however, have a conflict of interest with regard to any business that seeks funding from the fund if either you or a family member has a financial interest in that business.

#### **I. Background**

You are a City officer. Two local, nonprofit entities (“Fund Organizers”), that frequently interact with your office, have launched, and will jointly fund and operate, an investment fund. The purpose of the Fund is to make early investments in companies that support and help Philadelphians. The Fund will not be incorporated or otherwise become an organization separate from the Fund Organizers. Potential investment opportunities will be presented to the Fund’s Investment Committee. The Committee, the members of which are volunteers, will approve (or deny) investment proposals.

You have been asked to serve as a community advisor to the Fund. In this capacity, you will meet with members of the Fund and the Fund’s Investment Committee from time to time to discuss potential Fund investments and whether such investments would be beneficial for the

Philadelphians with whom you interact with and serve via your City office. You would not be a member of the Investment Committee.

## **II. Relevant Law & 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 City's Ethics Code, which is found at Philadelphia Code Chapter 20-600. The Charter and the 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 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.

### **A. Conflicts of Interest**

#### **i. Code Section 20-607**

Philadelphia Code Section 20-607 prohibits a City officer from taking official action 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 Op. 2019-002 at 3. If such a conflict of interest 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.

#### **a. The Fund Organizers and the Fund Investment Committee**

As noted above, the Fund and its Investment Committee are not entities separate from the two Fund Organizers. I do not believe that serving as a community advisor to the Fund would make you a member of any of the entities in question. Moreover, because the Fund Organizers are not-for-profit entities, even if you volunteered as a member of the Fund's Investment Committee, such membership would not give rise to a conflict of interest under City law. As such, your participation in this endeavor would not limit your ability under City law to take official action that would affect the Fund Organizers or the Fund.

**b. Businesses seeking support from the Fund**

It appears that you would be providing your advice as part of your official role as a City officer. Recommendations you make as a community advisor to the Fund would therefore be official actions taken in your capacity as a City officer. As such, you would have a conflict of interest with regard to a business seeking support from the Fund if you or a family member would financially benefit from money flowing from the Fund to that business. For example, if your family member is an owner or employee of a business applying to the Fund, you would not be able to provide recommendations to the Fund regarding that business. In that situation, you would also need to follow the disclosure and disqualification procedures under Section 20-608.

**ii. State Conflicts of Interest Rule**

The State Ethics Act, 65 Pa.C.S. §1101, et seq., prohibits you from taking official action that would have a private pecuniary benefit for: (1) you; (2) your immediate family; or (3) a business or not-for-profit entity, with which you or a member of your immediate family is associated. For the purposes of the State Ethics Act, you would be “associated” with an entity if you or an immediate family member is “a director, officer, owner, employee or has a financial interest” in that entity. *See* 65 Pa.C.S. §1102.

I can only provide general guidance on the State Ethics Act. Either the Law Department or the State Ethics Commission can provide definitive, protective advice to you on the application of the Act. At your request, however, I have discussed your situation with the Law Department and they advise that they do not believe that serving as a community advisor to the Fund would make you “associated” with the Fund Organizers, or any other entity involved in operating the Fund as described. You would, however, have a conflict if a business (either for profit or nonprofit) with which you or a family member is associated seeks support from the Fund. If you would like a formal opinion from them, I can put you in touch with the appropriate person.

**III. 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 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