



## CITY OF PHILADELPHIA

BOARD OF ETHICS  
One Parkway Building  
1515 Arch Street  
18<sup>th</sup> Floor  
Philadelphia, PA 19102  
(215) 686 – 9450 (t)  
(215) 686 – 9453 (f)

### **Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2021-502**

March 8, 2021

***Re: Application of Ethics Rules to City Employee Seeking Post-City Employment***

Dear Requestor:

You have requested a non-public advisory opinion regarding the extent to which City and State Ethics rules apply to you while you search and apply for a new, private job and the rules that will apply after you separate from City service.

As discussed in more detail below:

- a. While a City employee, you are prohibited from taking any official action that would affect the financial interest of a prospective employer.
- b. While a City employee, you are prohibited from applying for a job that would be funded by a City contract.
- c. For one year after leaving City service, you may not represent a third-party (including your new employer) for pay in any matters involving the City department you currently work for.
- d. For two years after leaving City service, you may not become financially interested in any official action you took while working for the City.
- e. 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.

#### **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 and 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. 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**

For over a year, you have been an employee of your current City department ("your Current City Department"). Prior to joining your Current City Department, you were an employee of another City entity ("your Former City Department").

You are in the process of seeking outside employment. Specifically, you are in preliminary employment discussions with a private company (the "Prospective Employer"). To the best of your knowledge, the Prospective Employer has little or no significant business intersections with your Current City Department. You yourself have not had any interactions with the Prospective Employer via your current City position and you do not anticipate any such further interactions with them in the near future.

You have asked for general guidance on the rules and restrictions that currently apply to you (as a City employee) regarding your current job-hunting activities. Similarly, you have asked for general guidance about the post-employment rules and restrictions that would apply to you if you cease to be a City employee. As a more specific question, you have asked whether (upon leaving City employment) you can lobby your Former City Department on behalf of a future, private employer (such as the Prospective Employer).

### **III. Relevant Law and Discussion**

#### **A. Job Hunting Restrictions**

As a City employee you are subject to restrictions under both City and State law that arise from your search and application for post-City employment.

##### **1. Conflicts of Interest Restrictions – City Ethics Code and State Ethics Act**

Under both City and State law, you have a conflict of interest with regards to prospective employers where you have either applied for or have been offered future employment. *See* Board Op. 2019-003; SEC Advice of Counsel 11-514, State Ethics Comm'n (Mar. 18, 2011). For your purposes, as you have already begun preliminary employment discussions with the company, this includes the Prospective Employer.

During your remaining time with the City, you may not take official action on any matter that would affect a prospective employer. If the opportunity does arise for you to take official action that would affect a prospective 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>.

Regarding the Prospective Employer, you stated that you are not aware of any potential intersections between your Current City Department and the Prospective Employer anytime in the near future and you do not believe you have the ability to take any official action that would affect the Prospective Employer's financial interests. If that changes, however, you must file a disclosure and disqualification letter as described above.

##### **2. Interest in City Contracts Restriction – Charter Section 10-102**

Home Rule Charter Section 10-102 prohibits you from being financially interested in any City contract, even if that contract is unrelated to your City job duties. Section 10-102 also prohibits you from soliciting an interest in a City contract. As such, while you are a City employee, you are prohibited from applying for a job that would be funded by a City contract. *See* Board Op. 2019-003. Once you leave City employment, Charter Section 10-102 will no longer apply to you.

Regarding the Prospective Employer, you have stated that your potential position with the company would not be funded by a City contract or City funds. As such, Charter Section 10-102 will not preclude you from either seeking or accepting this position.

## **B. Post-Employment Restrictions**

If you leave City employment, you will be subject to post-employment restrictions of both the State Ethics Act and the City's Ethics Code, as explained below.

### **1. One Year Prohibition - State Ethics Act**

Section 1103(g) of the State Ethics Act, prohibits a former public employee from being paid to represent someone before their "former governmental body."

#### Public Employee

The Act defines public employee as "any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a non-ministerial nature with regard to: (1) contracting or procurement; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person." 65 Pa. C.S. § 1102. This includes many, but not all, individuals employed by the City.

Based on the information you have provided, I believe you are a public employee for the purposes of the State Ethics Act.

#### Former Governmental Body

You currently work for your Current City Department. The State Ethics Commission has opined that one's governmental body is not limited to the particular department or subdivision where they had influence or control, but encompasses the entire body by which they were employed. *See* Advice of Counsel No. 90-006. In your case, we believe your Current City Department in its entirety will be your former governmental body. As a result, for one year after leaving City service, you may not represent anyone, including the Prospective Employer, before your Current City Department.

Under the State Ethics Act, representation includes, but is not limited to, personal appearances, negotiations, lobbying and submitting bid or contract proposals which would be signed by you or contain your name. Importantly, this restriction also extends to participation in phone calls. Regarding the Prospective Employer, you state that you do not believe any future employment with them would entail you representing the company in front of your Current City Department.

You specifically asked whether the State Ethics Act would prohibit you from representing someone before your Former City Department, as you were previously a City employee there. Because you left your position at your Former City Department more than one year ago, I do not believe the State Ethics Act will prohibit you from being paid to represent someone before that entity. This means that, in my opinion, the State Ethics Act would not prohibit you from lobbying your Former City Department on behalf of the Prospective Employer.

Please keep in mind, however, that our advice on the State Ethics Act 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. If you would like to do so, I can provide you with the appropriate contact information.

**2. Two Year Prohibition –  
Philadelphia Code Section 20-607(3)**

Philadelphia Code Section 20-607(3) prohibits a City officer or employee from becoming financially interested in any 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.” Code § 20-601(17). For example, if you were involved in coordinating a partnership with the City and an organization and as a result of your efforts, the organization was awarded a contract, for two years after leaving City service you could not receive any payment out of that contract. Based on the information you provided, it does not appear that Code Section 20-607(3) will limit your employment prospects.

**3. Permanent Prohibition –  
Philadelphia Code Section 20-603(1)**

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.” This rule would prohibit you from providing assistance to any third-party (including the Prospective Employer) regarding any transactions with which you were personally involved while working for the City.<sup>1</sup>

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<sup>1</sup> This would include transactions related to your current City position and transactions related to your prior position at your Former City Department.

As defined in the City Code, a transaction involving the City is anything that (a) may be subject to City action, (b) involves the City as a party, or (c) involves a direct proprietary interest of the City such as contracts, leases, judgments, and legislation. Code § 20-601(27). As such, you could not assist the Prospective Employer, or any other person, with regard to specific matters on which you worked while at your Former City Department. For example, you could not draft testimony or talking points for a matter you worked on while you were a City employee.

Because, however, this rule is limited to specific transactions you worked on, it would not prohibit your from assisting the Prospective Employer (or any other third-party) on matters you never worked on as a City employee even if the subject matter of such matters was similar to the matter you did previously work on.

#### **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)(.2); 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  
General Counsel

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