



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public Board Opinion No. 2022-001

February 10, 2022

Re: Application of City Ethics Rules to Non-Profit Outside Employment of City Official

Dear Requestor:

You have requested a non-public advisory opinion on behalf of a City employee regarding the extent to which the City’s conflicts of interest rules disqualify them from official action affecting a nonprofit entity (the “Nonprofit”) for which they work part time. As discussed in greater detail below, the City Employee has a financial interest in their employment under City law. As such, they must disqualify themselves from any official action that would affect their compensation or employment by the Nonprofit or would have a significant and substantial impact on the Nonprofit.¹

I. Jurisdiction

The Board of Ethics is charged with administering and enforcing all Philadelphia Home Rule Charter and City Code provisions pertaining to ethical matters, including the conflicts of interest, representation, and confidentiality rules found in the City’s Ethics Code (Philadelphia Code Chapter 20-600). *See* Charter Section 4-1100. The Charter and the Ethics Code 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.

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. We understand that you have already received formal guidance from the Chief Counsel of the State Ethics Commission on the extent to which the City Employee’s employment with the Nonprofit will give rise to a conflict of interest under the State Ethics Act. As such, we do not address the application of State law in this Opinion.

¹ The assertions herein about the authority of the board of the Nonprofit, the corporate structure of the Nonprofit, the relationships among and between the components of the Nonprofit, and the City Employee’s employment status are based on our own research and analysis. If you believe there are material inaccuracies in the facts upon which this opinion is based, please so advise us immediately.

II. Background

The City employee is a high-ranking City official. They also work (for pay), part-time as an employee of the Nonprofit. The City employee participates in various financial functions of the City, including tax matters. The City employee is also involved in City spending decisions, is required to approve certain expenditures, and is a member of a tax policy group the membership of which is made up of individuals who work for City government, local nonprofits, and local businesses. One of the issues the working group is considering is how to increase tax revenues from tax-exempt landowners. Options under discussion include payments in lieu of taxes (“PILOTs”).

The Nonprofit is a Pennsylvania nonprofit corporation and includes components that operate with a significant degree of independence from each other. It is a large private landowner and employer in the City. Matters that may come before the City employee involving the Nonprofit could include extraordinary contracts, tax matters, and policy issues. The City employee may also be involved in City hiring decisions involving individuals associated with the Nonprofit.

III. Relevant Law and its Application

a. Conflicts of Interest

Both City and State law restrict official action where a conflict of interest exists. As noted above, you have already received formal advice from the State Ethics Commission regarding the application of the State’s conflicts of interest rule to the City employee’s position at the Nonprofit. As a result, we address only the application of the City’s conflicts of interest rules.

i. Applicable legal standards

In prior opinions, the Board has found that Philadelphia Code Section 20-607 prohibits a City employee from taking official action on any matter in which either the employee, a close family member, a for-profit business of which the employee is a member, or a fellow member of such business has a financial interest. *See* Board Op. [2021-002](#) at 3; Board Op. [2019-002](#) at 3 (citing Board Ops. [2012-001](#); [2009-003](#)). 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. Board Op. [2021-002](#) at 3 (citing Board Op. [2019-002](#) at 3). An official action is any “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\(17\)](#). When a conflict arises, a City officer or employee must disclose that conflict and disqualify themselves from any action related to it. *See* [Code §20-608](#).

An employee of a for-profit business is a “member” of that business for purposes of Section 20-607. Board Op. 2010-002 at 7. In contrast, an employee of a nonprofit organization is not a “member” of a for-profit business by virtue of such employment. *See* Code §20-601(5) (defining “business” as including various legal entities “organized for profit”). It does not follow, however, that no conflict of interest can arise from employment by a nonprofit organization.

Notably, we have previously held that a prospective employment relationship, while not making the prospective employee a “member” of a business, nonetheless creates a financial interest for that individual. *See* Board Op. 2019-003 at 3. While Board Opinion 2019-003 concerned employment with a for-profit entity, compensation and benefits associated with employment are no less of a financial interest for an individual when their source is a nonprofit organization. Accordingly, we find that a City officer or employee who is employed by a nonprofit organization has a personal financial interest in that employment.

Having so found, the essential question becomes, under what circumstances would a City officer’s or employee’s official action affect the attendant financial interest? We have not examined this specific question in prior Board opinions, but in assessing other personal financial interests of City officers and employees, we have looked for a nexus between the financial interest and the official action. For example, in Board Opinion 2012-001, we found that a City officer who was an independent contractor of a for-profit business was not a “member” of the business, but had a personal financial interest in that contractual relationship. As such, while the City officer was not prohibited from taking official action that would affect the firm generally, they were prohibited from taking official action that would affect their income from the firm. In Board Opinion 2009-003, we found that a City officer was prohibited from taking official action involving a firm in which their family member was a partner only if the financial impact of that action would affect the family member’s compensation from or employment with the firm.

Whether a City officer’s or employee’s nonprofit employment gives rise to a conflict should similarly focus on an actual or anticipated link between their official action and their employment. As a result, we hold that a City officer or employee has a conflict of interest under Code Section 20-607(1) if they are able to take official action that would affect their compensation or employment by the nonprofit, such as the nonprofit employer’s ability to pay the officer or employee, the value of the compensation or benefits provided, or the willingness to hire or retain the City officer or employee. This threshold may also be met – without the need to delve into the nonprofit’s finances or decision making – if the official action would have a significant and substantial impact on the employer.

Lastly, we have previously held, in the context of legislative action, that some actions have such a broad impact that they do not create a conflict of interest for an individual member of Philadelphia City Council. Specifically, we held that a Councilmember could vote on legislation of general application even if such legislation would affect a financial interest otherwise covered by Section 20-607. Board Op. 2019-002. We have not previously addressed whether a similar exception should apply outside the legislative context. We now hold that official action by a City officer or employee that affects their financial interest in the same manner as those of the general public or a substantial segment thereof does not create a conflict of interest so long as the impact on the individual official's financial interests is not substantially disproportionate as compared to a member of the general public or the relevant substantial segment thereof.

ii. Scope of conflicts arising from employment interest

A financial interest arising from employment in a large nonprofit organization does not automatically create a conflict as to every entity affiliated with that organization. As discussed above, a conflict of interest will only arise if the City officer's or employee's action will affect their compensation or employment by the nonprofit. Accordingly, there must be some relationship between the entity affected by the official action and the City officer or employee such that we can reasonably infer an attendant impact on the employment relationship.

While the City employee's position is with a component of the Nonprofit that is managed by a subordinate management body, all components of the Nonprofit are ultimately accountable to its board. An official action that would have a significant and substantial impact on any component of the Nonprofit could be reasonably anticipated to affect the City employee's compensation or employment status, even if those components operate separately on a day-to-day basis.²

iii. Assessing and collecting taxes

The City employee helps oversee City entities that deal with City tax matters. The routine issuance of tax bills or collection of tax payments by these City entities would not give rise to a conflict of interest for the City employee. If, however, the City Employee is called upon to, or seeks to, exercise their professional expertise and discretion with regard to a tax issue related to the Nonprofit specifically, that would be a different matter. Given that the Nonprofit is a large employer in the City, it is difficult to imagine a situation in which the amount of taxes assessed to or paid by the Nonprofit would not have a significant and substantial impact on the organization. As a result, the City employee would need to disqualify themselves from any personal participation in the assessment or collection of taxes for the Nonprofit.

² We note that whether a particular business unit within a larger organizational structure may be an "employer" for the purpose of conflicts of interest under Section 20-607(1) is fact specific. Accordingly, an organization, such as a corporate conglomerate, with a different practical or legal structure could lead to a different result.

iv. Tax disputes

Tax disputes involving the Nonprofit would generally involve the exercise of the City employee's discretion and judgment. Whether a particular dispute would have a significant and substantial impact on the Nonprofit depends on the amounts and entities involved. For example, a small-dollar discrepancy quickly addressed through negotiations may not impact the Nonprofit enough to reasonably infer that the City employee's compensation or employment could be affected. In contrast, a dispute that involves large sums of money or that leads to litigation would significantly and substantially affect the Nonprofit such that the City employee would be required to disqualify themselves from involvement in that matter.

v. Changes to tax rates and policies

The City employee's role in the taxation policy group, or other involvement in considering, developing, or implementing changes to the City's tax structure, necessarily involves the exercise of their discretion and judgment. These policies could change the Nonprofit's legal status for tax purposes or the amount they are obliged to pay the City and would tend to have a significant and substantial impact on the Nonprofit.

We stress that official action includes not just the ultimate decision, but also the deliberations, advocacy, and analysis leading up to a decision. *See* Board Op. [2021-001](#) at 6. While preliminary or exploratory discussions about revenue policy may seem innocuous, they are still an opportunity for the City employee to influence City policy or for the Nonprofit to influence the City employee's position on that matter. As such, the City employee must disqualify themselves from participation in such discussions or exchanges to the extent that the policies under consideration would affect the Nonprofit and are not matters of general application as discussed below.

A tax policy change applicable to all employers regardless of whether they are for-profit or nonprofit would, given the vast number of employers in the City, be a matter of general application and would therefore not give rise to a conflict of interest. In contrast, changes to tax rates or revenue policies specific to nonprofit landowners, or some smaller subset of nonprofits, such as higher education institutions or holders of more than a certain value in property, would affect a much smaller segment of the general population. As a result, while the Nonprofit might not be the only institution affected by such changes, the impact is not so broad as to fit this exception to the conflicts rules.

vi. Property assessments

Given that the Nonprofit is a large landowner in the City, assessments of the value of their properties could theoretically have an outsize impact. While the Nonprofit is exempt from property taxes, the property assessment is a key benchmark for evaluating how much revenue the City loses because of this exemption. It is also likely the starting point for calculating or negotiating PILOTs, which are commonly based on a percentage of what the Nonprofit would owe in property taxes if it were not exempt. Considering this key role in quantifying the Nonprofit's exemption, property assessments for land and structures owned by the Nonprofit would have a significant and substantial impact on the Nonprofit's financial interests. As such, the City employee must disqualify themselves from any personal involvement in the assessment of properties or land owned by the Nonprofit.

vii. Approving specific contracts

Under City law, contracts that meet certain size thresholds and other criteria require the City employee's approval and, therefore, would, by the specific nature of such contracts, have a significant and substantial impact on the contractor. Approval of such contracts cannot reasonably be considered ministerial. As a result, the City employee would need to disqualify themselves from review or approval of extraordinary contracts with the Nonprofit or any of its components.

viii. Hiring

The City employee's involvement in hiring individuals associated with the Nonprofit to City positions seems unlikely to affect their employment at the Nonprofit. Whether or not they are a paid employee, the City employee may choose to favor these individuals based on their familiarity with the Nonprofit. Absent a financial incentive from the Nonprofit, selecting (or not selecting) individuals associated with the Nonprofit would not affect the City employee's financial interests. Rather, the financial interest affected would be that of the candidates themselves. As a result, the City employee would not need to disqualify themselves from hiring decisions involving candidates associated with the Nonprofit.

b. Representation

Philadelphia Code [Section 20-602\(1\)\(a\)](#) prohibits a City employee from assisting another person by representing them "directly or indirectly as [an] agent or attorney, whether or not for compensation, in any transaction involving the City." While it would not be typical for the City employee to represent the Nonprofit in transactions involving the City, such representation would be prohibited.

c. Confidential Information

Philadelphia Code [Section 20-609](#) prohibits City officers and employees from disclosing confidential information for the financial benefit of themselves or another person. Thus, the City employee cannot share confidential information with Nonprofit officials for their or the Nonprofit's financial benefit.

d. Financial Disclosure

Code Section 20-610(1)(b) requires the City employee to file an annual Statement of Financial Interests. Assuming the amount of compensation from the Nonprofit is \$500 or more, the City Employee is required to disclose the Nonprofit as a source of income. If the total compensation from the Nonprofit exceeds \$5,000 in a calendar year, the City Employee must disclose the total amount of income from the Nonprofit.³

IV. Conclusion

The City employee has a financial interest in their paid part-time employment with the Nonprofit. As a result, they must comply with the disclosure and disqualification procedures of Philadelphia Code Section 20-608 with respect to any official action that would have a significant and substantial impact on the Nonprofit or that would affect their compensation or employment by the Nonprofit, unless that action would similarly impact the general population or a substantial segment thereof. the City employee should submit a revised disclosure and disqualification letter describing each specific matter from which they are disqualifying themselves, as indicated above. Board staff is available to assist them with that process.

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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. § 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 Ethics Code, a version of the Opinion that has been redacted to conceal facts that are reasonably likely to identify you is being made public. If you have any questions, please contact General Counsel staff.

BY THE PHILADELPHIA BOARD OF ETHICS

/s/ Michael H. Reed, Esq.

Michael H. Reed, Esq., Chair
Sanjuanita González, Esq., Member
Brian J. McCormick, Jr., Esq., Member
JoAnne A. Epps, Esq., Member

Board Vice-Chair Judge Phyllis W. Beck (Ret.) did not participate in the consideration or approval of this Opinion

³ The State Ethics Act requires the City employee to file a similar, separate Statement of Financial Interests on which they must disclose any source of income of more than \$1,300 per calendar year.