



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public Board Opinion No. 2022-006

May 18, 2022

Re: Application of Conflict of Interest Rules to Member of a City Commission

Dear Requestor:

You have requested a non-public advisory opinion regarding whether your service on a City commission will limit your ability to write articles for local periodicals when such articles address matters that may come before the commission. As discussed in more detail below, you are advised that:

- a. [Philadelphia Code Section 20-607\(1\)](#) prohibits you from taking official action as a member of the commission on any matter that the periodical is paying you to write about.
- b. While serving on the commission and for two years after leaving City service, [Philadelphia Code Section 20-607\(3\)](#) prohibits you from being paid to write about any matters on which you have taken official action as a member of the commission.
- c. [Philadelphia Code Section 20-609](#) precludes you from disclosing confidential City information for your financial benefit or for the financial benefit of another person.
- d. [Sections 1103\(a\) and 1103\(d\) of the State Ethics Act](#) prohibit you from being paid to write about your work with the commission or about any matters before the commission. The State Ethics Act also prohibits you from using your City title in articles you are paid to write.

II. Jurisdiction

The Board of Ethics administers, enforces, and interprets all Philadelphia Home Rule Charter and Philadelphia Code provisions pertaining to ethical matters, including the conflicts of interest and confidentiality rules found in the City's Ethics Code (Philadelphia Code Chapter 20-600). Charter Section 4-1100 and Code Chapter 20-600 authorize the Board to render advisory opinions concerning a City officer or employee's proposed future conduct. Board Regulation No. 4 describes the procedures related to advisory opinions, including for requesting reconsideration of an advisory opinion issued by the Board.

Home Rule Charter Section 4-1100 grants the Board "concurrent authority" with the Law Department to advise City officials on the application of the State Ethics Act. Our advice on State law, however, does not provide protection from possible enforcement by the State Ethics Commission. For guidance that would provide such protection, you should contact the City's Law Department or the State Ethics Commission.

III. Background

You are a member of a City commission. You are also an employee of a non-profit entity where your work includes addressing various socio-economic issues.

The commission's work and mission involves reviewing projects being carried out in the City. Some of these projects may require multiple stages of review from the commission. As a member of the commission, you review, provide feedback, and vote on projects at various stages in the process. While members of the commission are entitled to receive a small stipend per meeting, the position is otherwise unpaid.

You have been in discussions with a local periodical to write freelance articles. Based on your background and experience, you have an interest in the socio-economic issues that you deal with via your private employment and would like to use the periodical's platform to increase awareness of these issues. The commission is also involved in such issues, from time to time. You are also interested in writing about the public work of the commission including pending projects and projects that have already received final approval. You would be paid per article.

IV. Relevant Law and Discussion

a. Philadelphia Code Section 20-607 (Conflicts of Interest)

i. Section 20-607(1)

Philadelphia Code Section 20-607(1) prohibits a City officer or employee from taking official action on any matter in which they are financially interested. *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 [their] official capacity that requires discretion and is not ministerial in nature.” [Code §20-601\(17\)](#). If 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](#). Official action includes not just final action, but also any preliminary discussion, review, or consideration. *See* Bd. Op. [2022-004](#) at 3 (citing Bd. Op. 2012-001 at 6).

Based on the information you have provided, Code Section 20-607(1) will prohibit you from taking official action as a member of the commission on any matter that the periodical is paying you to write about. For example, if the periodical agreed to pay you to write about a specific project, you would have a conflict of interest if, prior to publication of the article, that same project came before the commission. In such a case, you must submit a disclosure and disqualification letter. You may find a sample letter on our website at this link: [ethics.pub/DnD](#)

ii. Section 20-607(3)

Philadelphia Code Section 20-607(3) prohibits a City officer or employee from acquiring a financial interest in a matter on which they have previously taken official action. Section 20-607(3) applies both during an officer or employee’s term of service or employment and for two years after separating from City service.¹

We examined the applicability of Code Section 20-607(3) to a current employee in Board Opinion 2021-001. There, a City employee sought paid work with a firm to which they had helped award a City contract. *See* Bd. Op. 2021-001 at 2. We held that Section 20-607(3) prohibits acceptance of non-City employment if it is “connected” to an employee’s prior official action. *Id* at 3. We explained the term “connected” means that “the specific official action cannot be a substantial basis for the offer of employment” and that the “mere existence of a prior official action is not sufficient to preclude a subsequent offer of employment.” *Id*.

¹ “No...City officer or employee shall become financially interested, subsequent to final action, in any ...award, contract...decision, decree or judgment made by him in his official capacity, during his term of office or employment and until two (2) years have elapsed since the expiration of service or employment ...of said ...City officer or employee.” Code Section 20-607(3)

Based on the facts you have provided, we find that being paid by the periodical to write about official action you have taken as a member of the commission would violate Code Section 20-607(3). This prohibition will apply for as long as you serve on the commission and for two years after your service ends. With that said, you may receive payment for articles that are unrelated to official action you have taken as a commission member. You may also write about the commission if you are not financially compensated for doing so.

b. State Ethics Act

As a member of the commission, you are a public official subject to the restrictions and requirements of the State Ethics Act. *See* [65 Pa. C.S. §§ 1102](#). As noted above, our advice on the State Ethics Act does not provide protection from possible enforcement by the State Ethics Commission. That said, we have conferred with counsel for the State Ethics Commission and they agree with our understanding of how the Act applies to your question. For a definitive opinion, however, you would need to contact the City’s Law Department or the State Ethics Commission directly.

i. Conflicts of Interest

The State Ethics Act prohibits a public official from using the authority of their office for the private pecuniary benefit of themselves, immediate family members, or a business with which the public official or an immediate family member is associated. *See* [65 Pa. C.S. §§ 1102, 1103\(a\)](#).

It is our understanding that the State Ethics Act prohibits you from being paid to write about your work for the commission or about any matters before the commission. Moreover, we believe the State Ethics Act would prohibit you from including your title as a member of the commission on any articles you are paid to write that relate to other topics, including the socio-economic issues related to your private employment.

ii. Honorarium Restriction

Section 1103(d) of the State Ethics Act prohibits a public official from accepting an honorarium, which the Act defines as a payment “made in recognition of published works, appearances, speeches and presentations and which is not intended as consideration for the value of such services which are nonpublic occupational or professional in nature.” The State Ethics Commission has interpreted this provision to mean that a public official may only refer to their public position in a published work as “a mere ‘backdrop’ – that is minimal and incidental and not a subject matter of the...published work.” *Opinion of the State Ethics Commission 2020-001* at 5 (emphasis in original). The Act would not permit a public official to include as subject matter in a published work “the activities of [their] public office, such as decisions [they have] made as a public official while in office.” *Id.* at 6.

Based on this guidance from the State Ethics Commission, it is our understanding that the State Ethics Act would prohibit you from being paid to write about the work of the commission, including pending projects, projects that have already received final approval, or any decisions you make in your capacity as a member of the commission.

V. 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. Therefore, you should not share confidential information you may receive as a member of the commission for your financial benefit or for the financial benefit of any other person.

VI. Conclusion

As explained in more detail above, you are advised that:

- a. You may not take official action as a member of the commission on any matter that the periodical is paying you to write about.
- b. While serving on the commission and for two years after leaving City service, you may not be paid to write about any matters on which you have taken official action as a member of the commission.
- c. You may not disclose confidential City information for your financial benefit or for the financial benefit of another person.
- d. You may not write about your work with the commission or about any matters before the commission nor may you use your City title in articles you are paid to write.

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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

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