



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public Board Opinion No. 2022-009

July 29, 2022

Re: Application of conflicts of interest rules to matters involving a City employee’s personal attorney

Dear Requestor:

You have requested a non-public advisory opinion regarding the application of the conflicts of interest rules to your engagement of an attorney to represent you in a tax assessment appeal if that attorney represents clients in unrelated matters before your office. As discussed in greater detail below, this relationship will not give rise to a conflict of interest for you absent a change in the nature or scope of your relationship with your attorney or some specific connection between your official action and that relationship.

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. For guidance on the State Ethics Act that would provide such protection, you should contact either the City Solicitor or the State Ethics Commission.

II. Background

You are a City employee. Your role involves regular interactions with various attorneys representing clients before your office.

You would like to hire a private attorney to represent you in an appeal of a real estate tax assessment of your primary residence before the Board of Revision of Taxes. You have a particular attorney in mind whom you know is likely to have at least some matters before you or

your subordinates at your City office. You have explained that this would be true of most attorneys in Philadelphia that have significant experience in tax appeals. The appeals process can be lengthy, in the order of years rather than weeks or months, such that if you have a conflict that disqualified you from reviewing any projects in which your chosen counsel represents other clients, you would likely have significant difficulty carrying out your job duties.

III. Analysis

a. City Code

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. 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 Opinion 2019-002 at 3. If a conflict arises under Section 20-607, Code Section 20-608 requires the City employee to submit a disclosure and disqualification letter prior to any City action on the matter. You can find a sample disclosure and disqualification letter on our website.

The Board has considered various types of financial interests, including recent opinions addressing nonprofit outside employment of City officials (Board Op. 2022-001) and employment of an official's spouse by a business with City contracts (Board Op. 2022-002). It has not, however, addressed a potential financial interest based on a City official's role as a client of someone that represents others in matters on which the City official can take official action.

The relationship between a paying client and whoever they engage to provide particular services is markedly different from the financial interests previously considered by the Board. In the employment context, the employee – whether a City official or their close relative – has a financial interest in being paid, as well as in continuing the employment relationship. The client-provider relationship is nearly the opposite: funds flow from the City official to the provider based on an agreed-upon fee structure. The provider may have professional, ethical, and even fiduciary responsibilities to the client. The provider's compensation may be wholly or partially contingent on the results of their services.

Where the client (rather than the provider) is a City official, the pertinent financial interest is the interest the client has in provision of services and the results obtained, whether that is a medical diagnosis, financial advice, or representation in litigation. Thus, you have a financial interest in the services provided to you by an attorney representing you in your appeal of the tax assessment for your home. That interest applies to both the results and the cost of such services.

Having identified a financial interest, we must determine whether you can affect that interest through official action.¹ Your prospective counsel – like most others experienced in this practice area – regularly represents other clients before your office. While no such matters are currently assigned to you or your subordinates, several are waiting in your office’s backlog. Due to the small number of experienced practitioners in this area of the law, you expect that your prospective counsel will continue to represent other clients before your office.

To the extent your City job requires you to exercise discretion in matters in which your legal counsel represents another client, you could take official action that would affect your attorney. The question remains whether you are able to take official action that would affect your attorney such that your action would also affect your financial interest in your appeal.

The Board has found that a financial interest may be too remote or attenuated to give rise to a conflict of interest under the City Code. *See* Board Op. 2019-002 (citing Board Op. 2009-003); *see also* G.C. Ops. 2020-504 & 2017-504. In some contexts, the Board has articulated a specific measure for assessing whether there is a conflict of interest. *See* Board Op. 2020-001 (clarifying standard for conflicts in nonprofit employment); Board Op. 2019-002 (articulating exception for legislation of general application).

In the matter before us, the underlying financial interest is your ownership of your primary residence. You do not have a general interest in your prospective counsel’s law practice – both your financial interest and your relationship with your attorney are specific to your appeal.² Your attorney’s representation of other clients in matters you can affect in your official capacity raises the possibility that you could affect your counsel’s business prospects or income.³ This possibility, by itself, however, does not support a conclusion that you can affect *your* financial interest in your appeal. We therefore find that a conflict will not arise for you absent (1) a change in your relationship with your attorney or (2) a specific connection between your official action and your relationship with your attorney.⁴ Changes in your relationship that would require further analysis to assess whether they create a conflict would include engaging the same attorney in multiple matters, filing a malpractice lawsuit or ethics complaint against your attorney, or accumulating significant overdue legal fees. A connection between your official

¹ You do not handle tax assessment appeals in your official City role, so you cannot take official action to directly affect the outcome of your own appeal.

² In contrast, if you were a member of the law practice, you would be restricted from taking any official action that would affect the financial interests of the practice. *See* Board Op. 2010-002 at 7.

³ We note that the Pennsylvania Rules of Professional Conduct may impose additional obligations and encourage you to discuss any questions about professional ethics with your attorney.

⁴ While this relationship does not give rise to a conflict, the fact that your attorney has and is expected to appear before your office means they are a restricted source under the gift rule such that you could not accept a gift – e.g., discounted legal services – of over \$99 in a calendar year unless an exception applied. *See* Code § 20-604(a).

action and your relationship with your attorney would include any suggestion, arrangement, or understanding that your attorney's fees would be reduced as a result of official action by you.

While we find that these specific facts do not create a conflict of interest as defined by Section 20-607 of the Ethics Code, we acknowledge that there is the potential for this situation to create an appearance of a conflict in the eyes of those involved in matters involving your City office. While disclosure is not strictly required, we strongly recommend that, if you have not already done so, you notify your supervisor that you plan to engage an attorney who you are likely to encounter in your City work. You are of course free to share this opinion with your supervisor.

b. State Ethics Act

The State Ethics Act, 65 Pa. C.S. §1101, et seq., prohibits a public employee from taking official action that would have a private pecuniary benefit for: (1) the employee; (2) the employee's immediate family; or (3) a business, whether for-profit or not-for-profit, with which the employee or a member of their immediate family is associated. Based on your managerial role, we presume that you are a public employee as defined by the State Ethics Act.

With your permission, Board staff discussed your situation in general terms with Deputy Chief Counsel of the State Ethics Commission. Based on that discussion, it is our understanding that under the State Ethics Act when a public official or employee is a client of a business, that business relationship alone does not, by itself, create a conflict of interest in matters involving the business or its other clients. Thus, if you hire an attorney, that relationship alone would not be the basis for a conflict of interest in matters that would involve your chosen attorney or their clients. A violation of the State Ethics Act could arise, however, if there was an improper understanding under Sections 1103(b) and 1103(c) such as a bribe or quid-pro-quo exchange.

As noted above, this guidance is informal and is not legally protective. If you would like formal guidance, Board staff is happy to connect you with the appropriate person in either the State Ethics Commission or the Law Department.

IV. Conclusion

Based on the information provided, a conflict will not arise for you absent a change in the nature or scope of your relationship with your attorney or some specific connection between your official action and that relationship. Should your City position or the scope of your relationship with your attorney change, you should contact us for further guidance.

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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.

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