



CITY OF PHILADELPHIA

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

Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2021-505

August 27, 2021

Re: Application of ethics rules to a potential City employee who owns and operates a private business

Dear Requestor,

You have asked what restrictions City ethics rules would place on you owning and operating a private business if you were to take a position as a City employee. As discussed below:

- As a City employee, you would not be able to take any official action that would affect the financial interests of your business, your family members, the clients of your business, or any of your business partners.
- You would be prohibited from representing your business or clients of your business in any transactions involving the City.
- You would be prohibited from financially benefiting from any contracts issued by the City.
- You would be prohibited from disclosing any confidential City information to promote the financial interests of yourself or another.
- You may be required to file a Statement of Financial Interest in which you would be required to make disclosures about your business and your interest therein.

I. Background

You and your spouse own and operate a business that provides consulting services to local businesses. You are considering taking a position as a City employee. You stated that the work of your private business does not currently involve the City department you would be working for, however, it does involve other City departments.

II. Relevant Law & Discussion

The Board of Ethics is charged with administering, enforcing, and interpreting 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. Conflict of Interest

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.

As such, if a matter related to your business or to one of your clients were to come before you as a City employee, you would have a conflict of interest and would be required to file a letter disclosing the interest and disqualifying yourself from taking any action on that matter. You can find a sample disclosure and disqualification letter on our website at <http://bit.ly/DnDFormLetter>.

Given the information we have regarding your potential new job with the City, we presume that you would be a “public employee” as defined by the State Ethics Act and, thus, would be subject to the State’s Conflict of Interest Rule. As such, the State Ethics Act, [65 Pa.C.S. §1101, et seq.](#), would prohibit 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. Similar to the conflict of interest rule in the City code discussed above, should a matter pertaining to your business or any of its clients come before you as a City employee, you would have a conflict of interest under the State Ethics Act and would be required to recuse yourself from taking any action on that matter.

B. Representation

City Code Section 20-602(1)(a) prohibits City officers and employees from representing others as an agent or attorney, whether paid or unpaid, in transactions involving the City. Transactions involving the City include applications, decisions, and contracts in which the City takes action, is a party, or has a proprietary interest. Code § 20-601(27). Accordingly, while employed with the City, you may not represent your business or any of its clients in any transaction involving the City, whether that transaction involves the specific City Department you would be working for or any other City entity. Instead, another person would have to be designated to represent your business in those transactions and would have to take care not to use your name when doing so.

C. Interest in City Contracts

[Section 10-102 of the Home Rule Charter](#) provides that a City employee shall not be financially interested in any City contract. The purpose of the rule is to preclude City employees from personally profiting or being interested in City contracts. As a result, should you take a job with the City, your business would not be able to enter into any contracts with the City, or accept any funds that have resulted from contracts its clients may have with the City.

D. 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. This includes confidential information about City property, government, or affairs. *Id.* This means, for example, you cannot use or share confidential City information for the financial benefit of your business or clients. The State Ethics Act also prohibits you from using confidential information received through your public office or employment for the private pecuniary benefit of yourself, a member of your immediate family, or a business with which you or a member of your immediate family is associated.

E. Financial Disclosure

The State Ethics Act requires certain public employees to file a Statement of Financial Interests for each year of employment. As such, should you take a job with the City, you may be required to file this statement and to disclose information about the business and your interest therein.

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 Cooke

Michael J. Cooke
General Counsel

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