



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. 2021-506

September 3, 2021

Re: Application of Ethics Rules to City Employees who are Members of the Board of a Nonprofit that Does Business with the City

Dear Requestors:

You have requested a non-public advisory opinion regarding the extent to which City and State Ethics rules will limit your activities as a City employee based on your service as unpaid board members of a local, nonprofit organization.

As discussed in more detail below:

- a. You may not take official action that would financially benefit the nonprofit.
- b. You may not represent the nonprofit in any transaction involving the City.
- c. You may not use any confidential information obtained via your job for the benefit of the nonprofit.
- d. You must disclose your board membership on your annual Statement of Financial Interest.

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, representation, 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 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

You are both City employees and you both serve as unpaid members of a local, nonprofit's board of directors. The nonprofit provides various youth-related programs to the children of Philadelphia. The nonprofit receives funding from private donors and foundations, as well as from the City and City-related entities.

Your work for the City occasionally intersects with the nonprofit's youth-oriented mission. For example, either of you could be asked to work on matters that would impact City funding for City youth programs.

III. Relevant Law and Discussion

As discussed in more detail below, City and State ethics rules do not prohibit you from serving on the board of the nonprofit, but they do restrict your actions to some degree.

A. Conflicts of Interest

Philadelphia Code Section 20-607 prohibits you from taking action in an official capacity when either (a) you (or a close family member) have a personal financial interest in that action; or (b) a for-profit business of which you are a member or a fellow member of such business has a financial interest in that action. If such a conflict of interest arises, Code Section 20-608 requires you to submit a letter disclosing the conflict and disqualifying yourself from any official action related to it.

Given that you are unpaid board members and that the nonprofit is a nonprofit entity, the City's conflicts of interest rule should not present any issues for you.

The State Ethics Act, however, applies to you as public employees and prohibits you from taking official action that would have a private pecuniary benefit for: (1) you; (2) your immediate family; or (3) a business, whether for-profit or nonprofit, with which you or a member of your immediate family is associated. *See* 65 Pa.C.S. §1101, *et seq.* As a result, because of your board memberships, you are each prohibited from taking any official action that would financially benefit the nonprofit. Official action includes discussing, conferring with others, voting, or advocating for a particular result. [See Advice of Counsel No. 07-521.](#)

Please keep in mind that our advice on State law 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.

B. Representation

Philadelphia Code Section 20-602 prohibits a City employee from representing another person, whether paid or unpaid, in a transaction involving the City, even if it does not involve the specific City agency you work for.

You must also ensure that your name is not included on an application for City funds¹ or on an email or letter to the City requesting donations or other City action. Similarly, your name should not appear on a grant application if the City maintains oversight of the grant. For example, you may not personally submit a grant application to a City-related entity (such as a City-created non-profit or fund) if City employees review and award the entity's grants.

C. Confidential Information

Philadelphia Code Section 20-609 prohibits City employees from using confidential information concerning the property, government, or affairs of the City for the purpose of advancing the financial interest of themselves or others. Since your respective City duties may occasionally overlap with the work of the nonprofit, you should each be mindful of this restriction.

D. Financial Disclosure

As public employees, the State Ethics Act requires you to file an annual Statement of Financial Interests. When you file next year, you will each need to disclose your board positions with the nonprofit. For more information, please visit the [financial disclosure page](#) on our website.

IV. Conclusion

While ethics rules do not bar you from serving on the nonprofit's board, it is your responsibility to comply with the restrictions outlined above. As a practical matter, you may wish to review these restrictions with the nonprofit's staff.

Thank you both for your concern about compliance with the ethics rules 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. *See* Code § 20- 606(1)(d)(ii); Board Reg. 4 ¶ 4.12.

¹ To the extent that the nonprofit has contracts with the City, Section 10-102 of the City's Home Rule Charter prohibits you from soliciting or having any personal financial benefit from those arrangements. Because you are not compensated for your work with the nonprofit, this rule should not present an issue.

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, Esq.
General Counsel

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