



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics General Counsel Opinion No. 2022-501

February 10, 2022

**Re: Application of Post-Employment and Lobbying Rules to Former City
Employee's Consulting Business**

Dear Requestor:

You have requested a non-public opinion on how City post-employment and lobbying rules will apply to work you hope to pursue now that you have left City service and started a consulting firm. As described in detail below, you are advised that:

- (1) For two years after leaving City service, you may not become financially interested in any official action you took while working for the City.
- (2) You may not, at any time after leaving City service, assist another person, with or without compensation, in any transaction involving the City in which you participated while working for the City.
- (3) If you earn more than \$2,500 in a quarter for attempting to influence the legislative or administrative action of City officials (including officials at City-related entities), you are required to register as a lobbyist. Any single client who compensates you more than \$2,500 in a quarter for such activity must register as a lobbying principal and file expense reports with our office.

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 post-employment found in the City's Ethics Code ([Philadelphia Code Chapter 20-600](#)) and the City's Lobbying Law ([Philadelphia Code Chapter 20-1200](#)). Home [Rule Charter Section 4-1100](#) and Code Chapter 20-600 authorize the Board to render advisory opinions concerning a City officer's proposed future conduct. [Board Regulation No. 4](#) describes the procedures related to seeking an advisory opinion and for requesting reconsideration or appeal to the Board of an advisory opinion issued by me.

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. That said, my understanding is that you have requested advice directly from the State Ethics Commission. As such, I will not address the State Ethics Act in this Opinion.¹

II. Background

You are the former employee of a City office (the "City Office"). In that role, you were responsible for overseeing the implementation of strategic initiatives on behalf of the City Office. You served as the liaison and primary point of contact with various City departments. You also assisted with the City's development plan as well as the redevelopment of City-owned sites. Additionally, as part of your City job duties, you served on the boards of a number of organizations.

You are the founder of a consulting firm that offers services to clients, including nonprofit organizations, businesses, and governmental entities. You are interested in pursuing consulting opportunities or board service with the following entities and have inquired whether City post-employment rules would limit your ability to do so: Nonprofit #1; Nonprofit #2; Nonprofit #3; a quasi-governmental organization; and also a number of real estate developers and a restaurant owner. I will address each of these in detail in Section IV.

¹ Section 1103(g) of the State Ethics Act, prohibits a former public employee from being paid to represent someone before their "former governmental body" for one-year after leaving City service. Representation includes, but is not limited to, attending meetings, signing documents with your name on them, and emailing points of contact.

III. Relevant City Law

a. Code Section 20-607(3) – Two Year Prohibition on Acquiring a Financial Interest in Past City Official Action

Philadelphia Code Section 20-607(3) prohibits a City officer or employee from becoming financially interested in any official action taken “during [their] term of office or employment and until two (2) years have elapsed” after leaving City service. The Code defines official action as “an 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).

In addition, as explained in Board Opinion 2021-001, a City employee “may not accept an offer of employment if it is connected to prior official action taken by that employee.” 2021-001 at pg. 3. The Board explained that by “connected” it meant that “the specific official action cannot be a substantial basis for the offer of employment.” *Id.* The Board noted, however, that “the mere existence of a prior official action is not sufficient to preclude a subsequent offer of employment.”² *Id.* Moreover, because Opinion 2021-001 speaks of “specific official action,” I interpret that to mean that neither prior interaction with a potential client while working for the City, nor the fact that clients may value the experience you gained while working for the City will, on their own, give rise to the prohibition under Code Section 20-607(3). That said, at a minimum, for two years after leaving City service, you may not be paid with any funds from, or provide any services pursuant to, a contract that you helped award while working for the City. *See* Bd. Op. 2016-002.

b. Code Section 20-603 – Prohibition on Certain Post-Employment Representation

Philadelphia Code Section 20-603 prohibits a former City officer or employee from assisting “another person, with or without compensation, in any transaction involving the City in which [the officer or employee] at any time participated during their City service or employment.” As such, this rule will prohibit you from assisting a client of your consulting business on any transactions with which you were personally involved while working for the City. As defined in the City Code, a transaction involving the City is:

Any proceeding, application, submission, request for a ruling, or other determination, contract, lease, claim, case, award, decision, decree, judgment or legislation including ordinances and resolutions or other particular matter which the City officer or employee in question believes, or has reason to believe (a) is or will be the subject of City action; or (b) is one to which the City is or will be a party; or (c) is one in which the City has a direct proprietary interest.

Code § 20-601(27).

² Board Opinion 2021-001 involved a current City employee but I do not believe this aspect of its holding would be any different if applied to a former City employee.

“Participated” means “actions that [the former employee was] involved in as part of [their] duties, in a way that [was] more than ministerial...[they] made a recommendation, did some research, participated in a meeting, analyzed some data, drafted a document or the like.” General Counsel Opinion 2012-516, pg. 4; General Counsel Opinion 2021-503, pg. 5.

c. City Lobbying Law

Philadelphia Code Chapter 20-1200 sets forth the rules and requirements for lobbying registration and reporting. Board Regulation No. 9 provides a detailed interpretation and explanation of Code Chapter 20-1200. As defined in Regulation No. 9 at Paragraph 9.1(s), lobbying is an effort “to influence legislative or administrative action, whether through (i) direct communication; (ii) indirect communication; or (iii) by providing any gift, hospitality, transportation or lodging to a City officer or employee for the purpose of advancing the interest of the lobbyist, lobbying firm or principal.”

An individual must register as a lobbyist if, in a quarter, they earn more than \$2,500 for lobbying, that is for seeking to influence the legislative or administrative action of a City official. *See Reg. 9 ¶ 9.2(b)*. This includes officials working not just for the City proper but also for City-related agencies such as the Philadelphia Industrial Development Corporation, the Philadelphia Authority for Industrial Development, the Redevelopment Authority of the City of Philadelphia, the School District and the Land Bank. *See Reg. 9 ¶ 9.1(c)*.

A principal is a person or entity who engages in lobbying on its own behalf or on whose behalf a lobbyist or a lobbying firm engages in lobbying. *See Reg. 9 ¶ 9.1(z)*. A principal must register with the Board during a calendar year if the principal spends more than \$2,500 on non-exempt lobbying activities in a quarter and is required to file quarterly expense reports or statements with the Board. *See Reg. 9 ¶¶ 9.2(a) and 9.9*.

The City Lobbying Law exempts certain persons and activities from the registration and reporting requirements. *See Reg. 9, Subpart D*. The exemptions listed include preparing testimony and testifying or commenting before City Council or a committee of City Council as well as activities and efforts directly related to responding to publicly advertised invitations to bid and requests for proposals. Also notable is that communicating with a City officer or employee on a routine, ministerial matter is exempted from the registration and reporting requirements. At Paragraph 9.19(j), the Regulation provides a list of examples of what constitutes a “routine, ministerial matter.”

IV. Application of Code Sections 20-607(3) and 20-603

a. Nonprofit #1

Nonprofit #1 is a nonprofit organization that does work regarding public events and celebrations. To date, the organization has dozens of sponsors. While working for the City, you (as part of your City job duties) served on the board of the organization and were its point of contact for the City. Several years ago, during your City employment, you were involved in securing and awarding a grant to Nonprofit #1.

You would like to provide consulting services to Nonprofit #1 to help the organization increase community engagement as well as the participation of nonprofits and quasi-governmental entities. You would also like to provide expertise related to infrastructure needs and lobbying the federal government for support.

You have explained that the work you would do for Nonprofit #1 would neither be paid from nor related to the City grant you helped award. As such, given that the grant was made several years ago and Nonprofit #1 has many other sponsors, I do not believe that that specific official action would constitute a substantial basis for Nonprofit #1 retaining your services, for the purposes of Code Section 20-607(3). Nor do I believe that serving on the board in your official capacity (as part of your City job duties) is a specific enough action to give rise to the prohibition of Code Section 20-607(3). In any event, pursuant to Code Section 20-603, you may not become involved in any specific matter for Nonprofit #1 in which you participated while working for the City.

b. Nonprofit #2

Nonprofit #2 is a nonprofit organization that supports various projects and initiatives throughout the City. The City established this organization and provides it with funding and support. The organization also seeks funding from local businesses, nonprofits, and foundations. You previously served as a board member in your official capacity pursuant to your City job duties. You would like to join the board as an external appointee.

Code Section 20-607(3) would not prohibit you from joining the board of Nonprofit #2 because you would not be paid for that service. In that position, however, you would have to take care not to become involved in any specific matter in which you participated while working for the City as provided by Code Section 20-603. For example, if you voted on the nonprofit's 2022 budget while serving as a City employee, you may not vote on an amendment to that same budget as an external appointee - you may, however, vote on the new 2023 budget.

c. Nonprofit #3

While employed by the City, you interacted with Nonprofit #3 on various matters but you have identified only one specific development project in which you were involved. You have proposed to Nonprofit #3 that you advise them on mater unrelated to that project and with which you were not involved while working for the City. As such, Code Section 20-607(3) would not prohibit you from providing the services you propose. Pursuant to Code Section 20-603, you may not become involved in any specific matter involving the quasi-governmental organization in which you participated while working for the City.

d. Quasi-Governmental Organization

While employed by the City, you recruited an individual to serve on the board of a Quasi-Governmental Organization that provides funding to local nonprofits and individuals in the City. Since leaving the City, the Organization has asked you to consult on its capacity and structure. In my opinion, your past recruitment of a board member for the nonprofit does not give rise to the prohibition of Code Section 20-607(3). That said, you must take care to not become involved in any specific matter in which you participated while working for the City. Code Section 20-603.

e. Real Estate Developers and Restaurant Owner

You have proposed work with several real estate developers and a restaurant owner to create development plans for site-specific projects and interact with various City departments and City-related entities and agencies. You did not interact with any of these real estate developers or restaurant owner or work on any of their projects while employed with the City, but you did work closely with the City departments with which you would interact on their behalf. Based on the information you provided us, Code Section 20-607(3) would not prohibit this proposed work, because you did not take any official action related to these persons or projects. So long as you do not offer to assist them with any particular matter on which you worked while in City service, Code Section 20-603 would not prohibit this work either.

V. Application of the Lobbying Law

You also inquired about Philadelphia’s lobbying law and specifically requested advice on what activities on behalf of consulting clients would constitute lobbying. Generally speaking, an interaction you have with a City official will constitute lobbying if (a) you are paid to do it, (b) that interaction seeks to influence administrative or legislative action, and (c) it doesn’t fit into one of the exceptions listed in Paragraph 9.19 of Regulation No. 9. Of course, even if you engage in such activity, you would need to be compensated more than \$2,500 in a quarter for it before you would be required to register as a lobbyist.

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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. Code § 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 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 J. Cooke

Michael J. Cooke, Esq.
General Counsel

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