



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics General Counsel Opinion No. 2022-502

April 14, 2022

Re: Application of Ethics Rules to City Employee in Supervisory Role in Office in which Family Member Works

Dear Requestor:

You have asked how City and State ethics rules will apply if you accept a position as a supervisor for the head of a City office considering that your family member currently works in that office. As explained in more detail below, while these rules will not prevent you from accepting the position, you will need to take significant preventative measures to ensure you do not violate City and State conflict of interest provisions.

I. Jurisdiction

The Board of Ethics administers, enforces, and interprets all Philadelphia Home Rule Charter and Code provisions pertaining to ethical matters, including the conflict of interest rules found at Sections 20-607 and 608 of the City’s Ethics Code (Philadelphia Code Chapter 20-600) that apply to City employees. 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.

II. Background

You are currently a City employee. You have been offered a position as a supervisor in a City office. Your family member is already an employee in that office. As currently constituted in the office, you would supervise all other staff members and report directly to the head of the office.

III. Relevant Law

a. City Ethics Code Conflict of Interest

Philadelphia Code Section 20-607(2) prohibits City employees from taking any official action on a matter in which a family member is financially interested. *See* Board Op. 2021-002 at 3; Board Op. 2019-002 at 3 (citing Board Ops. 2012-001; 2009-003). As defined by Code Section 20-601(8), the term “family member” means a “parent, spouse, life partner, child, brother, sister, or like relative-in-law.” Official action is any “act or omission taken by an officer or employee in his or her official capacity that requires discretion and is not ministerial in nature.” Code § 20-601(17). A financial interest is an interest “involving money or its equivalent or an interest involving any right, power or privilege that has economic value.” Code § 20-601(9). The Board has held 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. Board Op. 2021-002 at 3 (citing Board Op. 2019-002 at 3).

If a conflict arises pursuant to Code Section 20-607(2), a City employee must submit a letter describing the conflict and disqualify themselves from any action on the relevant matter. *See* Code §20-608.

b. State Ethics Act Conflict of Interest

The State Ethics Act prohibits a public employee¹ from using the authority of their office or employment for the 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. *See*, 65 Pa. C.S.A. §§ 1101, 1103. The Act defines the term “immediate family” as a “parent, spouse, child, brother, or sister.” 65 Pa. C.S.A. §§ 1101,

¹ Our understanding is that as a supervisor you would be considered a public employee for the purposes of the State Ethics Act.

IV. Legal Analysis

While the City's Ethics Code and the State Ethics Act² will not prohibit you from accepting the position of supervisor, you will need to take significant preventative measures to ensure you do not violate the conflicts of interest provisions discussed above. Notably, you will not be permitted to supervise your family member or take any actions that would affect their compensation or employment, such as changes to salary, benefits, work schedule, job assignments, or promotions.

As a result, your family member will either need to report directly to the head of the office or to another staff member who reports to the head of the office. Please note that even if you do not supervise your family member, you must take care that none of your official actions have a financial impact on them. For example, even if you are not the person making the ultimate decision, you may not discuss pay, promotions, assignments, etc. involving your family member with anyone in the office. If you are unsure if a particular action would be permissible, please contact our office for guidance.

As soon as you begin employment with the office, you must submit a letter, as required by Code Section 20-608, in which you describe the nature of the conflict of interest and disqualify yourself from any official action involving your family member. You must submit this letter to the head of the office, the Board of Ethics, and the Department of Records. We are happy to assist you with the completion of this letter.

Please note that your family member will also have a conflict of interest with regard to any actions they could take that would affect your financial interest. Because of their position in the office, I assume your family member will not be in a position to take such action. If, however, they are in any doubt about that, please have them contact our office for 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. Code § 20-606(1)(d)(ii); Board Reg. 4 ¶ 4.12.

² While I cannot provide protective guidance about the application of the State Ethics Act, at your request, I have conferred with the Law Department and they agree that so long as you follow the guidance provided in this Opinion, you will also be in compliance with the State Ethics Act.

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 will be 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