



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2022-503

August 1, 2022

Re: Application of Ethics Rules to City Employee Seeking Post-City Employment with a Government Entity

Dear Requestor:

You have requested a non-public advisory opinion regarding how City and State Ethics rules apply to you given that you have applied for a position with a government entity (the “Government Entity”). You have also asked what rules would apply to you if you leave City service.

As discussed in more detail below:

- a. While a City employee, you are prohibited from applying for a job that would be funded by a City contract.
- b. While a City employee, you are prohibited from taking any official action that would affect the financial interests of the Government Entity.
- c. For two years after leaving City service, you may not become financially interested in any official action you took while working for the City.
- d. Because the prospective employer is a government entity, you would be permitted to provide assistance to it on matters in which you participated while working for the City.
- e. For one year after leaving City service, you may not represent a third-party (including your new employer) for pay in any matters involving your former governmental body.

I. Jurisdiction

The Board of Ethics administers, enforces, and interprets all Philadelphia Home Rule Charter and Code provisions pertaining to ethical matters, including the City's Ethics Code (Philadelphia Code Chapter 20-600) and certain provisions of the Home Rule Charter. 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. For guidance on the State Ethics Act that would provide such protection, you should contact either the State Ethics Commission or the City's Law Department.

II. Background

You are currently a City employee. You have applied for a paid position at the Government Entity. In your City job, you frequently interact with the Government Entity.

III. Relevant Law and Discussion

A. Prohibition on seeking an interest in a City contract

Home Rule Charter Section 10-102 prohibits you from soliciting an interest in a City contract, which includes applying for a job that would be funded by a City contract. See [Board Op. 2019-003](#) at 5. As such, you should ensure that the position you are seeking is not funded by a City contract.

B. Conflict of interest arising from prospective employer

Under both City and State law, you will have a conflict of interest with regards to a prospective employer if you are able to take official action that would affect the financial interest of that employer.¹ See Board Op. 2019-003 at 3; SEC Advice of Counsel 11-514, State Ethics Comm'n (Mar. 18, 2011). In such a situation, Code Section 20-608 requires you to disclose the conflict and disqualify yourself from any action affecting the prospective employer.

¹ In [Board Opinion 2022-001](#), the Board explained that a more narrow range of official action will give rise to a conflict when a City employee holds concurrent employment with a not-for-profit entity.

Based on the information you have provided, you have a conflict of interest with regard to any matter on which you could take official action that would affect the financial interest of the Government Entity. As required by Code Section 20-608, you filed a disclosure and disqualification letter with our office, the head of your department, and the Department of Records.

You have explained that you are frequently called upon to take action on matters that involve the Government Entity but, so far as you know, do not result in a financial impact on the entity. Examples of such matters are conversations with the Government Entity employees about various work efforts related to the Government Entity's technical assistance projects. If, in fact, these matters do not have a financial impact on the Government Entity, then neither the City's Ethics Code nor the State Ethics Act would prohibit you from taking action on them. I urge you to exercise caution, however, before taking any action on a matter involving the Government Entity. If you are unsure of whether or not the matter in question would have a financial impact on the Government Entity, please contact me.

C. Prohibition on acquiring a financial interest in prior official action

Code Section 20-607(3) provides that no City employee shall become financially interested in any official action they have taken, and no former City employee shall become so interested until two years have elapsed from their separation from City service. In [Board Opinion 2021-001](#), the Board held that Code Section 20-607(3) prohibits a City employee from accepting an offer of employment if it is connected to prior official action taken by that employee. *See* Board Op. 2021-001 at 3. The Board explained the term "connected" means that "the specific official action cannot be a substantial basis for the offer of employment" and that the "mere existence of a prior official action is not sufficient to preclude a subsequent offer of employment." *Id.*

The Board considered this restriction in [Board Opinion 2022-005](#) with regard to a former City employee who had engaged in numerous interactions with a prospective employer and found that "neither prior interaction with a future employer while working for the City, nor the fact such an employer may value the experience [a City employee] gained while working for the City will, on their own, give rise to the prohibition under Code Section 20-607(3)." Board Op. 2022-005 at 4.

While you have had many interactions with the Government Entity while working with the City, based on the information you have shared with me, I see no reason to believe that any specific official action you have taken would be a substantial basis for an offer of employment the Government Entity may make to you. If anything arises that indicates otherwise, please contact me immediately.

D. Prohibition on assisting another person on a matter in which you participated while a City employee

Philadelphia Code Section 20-603 prohibits a former City employee from “assisting another person, with or without compensation, in any transaction involving the City in which [they] at any time participated during [their] City service or employment.” In [Board Opinion 2022-005](#), the Board held that, based on the relevant definitions in the Ethics Code, the term “person” as used in Section 20-603 does not include a “governmental entity” which is defined in City Code Section 20-601(11). *See* Board Op. 2022-005 at 5. As such, because the Government Entity is a “government entity” (as defined by applicable City Law), if you obtain the position you are seeking, Code Section 20-603 will not prohibit you from assisting that entity with transactions involving the City that you previously worked on as a City employee.

E. Prohibition on representing another person before your former governmental body

Section 1103(g) of the State Ethics Act prohibits a former public employee from being paid to represent someone before their “former governmental body.”² You currently work for a City department that is one of several supervised by the Managing Director. The State Ethics Commission has opined that one’s governmental body is not limited to the particular department or subdivision where they had influence or control but encompasses the entire body by which they were employed. *See* Advice of Counsel No. 90-006. Based on prior guidance from the State Ethics Commission, the Commission would likely consider not just the specific department you work for to be your formal governmental body but also all the other departments that report to the Managing Director. *See* Advice of Counsel No. 20-529 (Gould). For definitive guidance on this question, however, you should contact the State Ethics Commission or the City’s Law Department. If you would like to do so, I can provide you with the appropriate contact information.

I note that for the purposes of the State Ethics Act, representation includes, but is not limited to, personal appearances, negotiations, lobbying, and submitting bids or contract proposals which would be signed by you or contain your name. Importantly, this restriction also extends to participation in telephone calls or email exchanges.

² Based on your job title and duties, my understanding is that you are a public employee, as that term is defined in the State Ethics Act at 65 Pa. C.S. § 1102.

III. Conclusion

As explained in more detail above:

- a. While a City employee, you are prohibited from applying for a job that would be funded by a City contract.
- b. While a City employee, you are prohibited from taking any official action that would affect the financial interests of the Government Entity.
- c. For two years after leaving City service, you may not become financially interested in any official action you took while working for the City.
- d. Because the prospective employer is a government entity, you would be permitted to provide assistance to it on matters in which you participated while working for the City.
- e. For one year after leaving City service, you may not represent a third-party (including your new employer) for pay in any matters involving the specific City department you currently work at or any other City department that reports to the Managing Director.

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 Cooke

Michael J. Cooke
General Counsel

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