



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2023-501

January 4, 2023

Re: Application of Ethics Rules to a Member of a City Board that Owns a Private Business

Dear Requestor:

You are a member of a City board. You are also President and CEO of a for-profit business, which plans to purchase and develop several properties through the Land Bank process. As explained in more detail below, while your business' interest in purchasing property through the Land Bank would not preclude you from serving as a member of a City board, it will require some additional steps to ensure compliance with the conflicts of interest, representation, and other ethics rules.

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 a member of a City board that exercises significant powers of government. You are also the President and CEO of a for-profit business (“your business”). Your business is a Philadelphia-based Pennsylvania corporation that plans to purchase several City-owned properties through the Land Bank process for redevelopment. As part of this process, your business must make a presentation to several Registered Community Organizations (“RCOs”) that serve the communities where the properties are located. Your business must then provide documentation of those RCO interactions to the Philadelphia Housing Development Corporation. Pending this advisory opinion, you stated that you would not participate in any matters before your City board involving any of the RCOs to which your business must present.

III. Relevant Law and Discussion

A. Conflicts of interest

Philadelphia Code Section 20-607 prohibits a City officer or employee from taking official action on any matter in which either the official, a close family member, a for-profit business of which the official is a member, or a fellow member of such business has a financial interest. 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 Opinion 2019-002 at 3](#)*. If a conflict arises under Section 20-607, the City official must follow the procedures of Code Section 20-608 to disclose the conflict and disqualify themselves from official action.

You will have a conflict of interest with respect to any matter in which your business has a financial interest that you can impact in your role with your City board. For example, if a property that your business owns or is targeting for purchase has a matter that requires action from your City board, you must follow the procedures under Section 20-608 to disclose that conflict and disqualify yourself from taking any official action on that matter. Note that official action is not limited to a final vote – it also includes deliberations, advocacy, and analysis leading up to a decision. Also note that this restriction applies to any financial interest of your business, not just those related to the purchase of property from the City.

You have stated that you plan to disqualify yourself from *all* matters before your City board involving the RCOs to which you must present, including matters entirely unrelated to the properties your business is targeting for sale and development. Because your role on your City board requires you to exercise discretion in matters in which these RCOs may have an interest, you could take official action that would affect the RCOs. The key question is whether your actions in matters before your City Board that involve these RCO's but are otherwise unrelated to properties your business owns or seeks to purchase would also affect your financial interest in your business.

Your financial interest is in your business – its assets, projects, and opportunities. While you must interact with RCOs for purposes of the Land Bank process, and the RCOs hold some power to impact your business in specific matters, you do not have a general financial interest in the RCOs. The RCO may be in the position of advocating for a specific result in front of your City board.

This raises the possibility that you could affect the interests of the RCOs. This possibility, without more, does not support a conclusion that you can affect your interest in purchasing and developing properties through the Land Bank process. Thus, in my opinion, a conflict would not arise based on the involvement of an RCO your business deals with absent some specific connection between your actions as a member of your City board and your business' interactions with the RCO. You would still, however, have a conflict in any of your City board matters that impact the properties your business owns or seeks to buy or develop, regardless of whether an RCO is involved.

For most conflicts of interest, you will need to file a disclosure and disqualification letter under Code Section 20-608(3). You can find a [sample disclosure and disqualification letter](#) on our website. If your business has a financial interest in legislation before City Council, and you can influence that legislation in your role with your City board, you must notify the Chief Clerk of City Council, as well as every Councilmember, at least five days before any public hearing on that legislation. Additional details of the process for legislative conflicts can be found in Code Section 20-608(2).

As a member of a City board that exercises significant powers of government, you are also subject to the requirements of the State Ethics Act. It is our understanding that under State law, you would need to make a public statement of recusal as part of the official record of any matter in which you have a conflict of interest that is presented to your City board for a vote. As noted above, this guidance is informal and is not legally protective. If you would like formal guidance, Board staff is happy to connect you with the appropriate person in either the State Ethics Commission or the Law Department.

B. Representation in transactions involving the City

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). For City officials who are either unpaid or part-time, such as members of most City boards and commissions, the restriction prohibits representation only in a matter that is either (1) pending before the department, agency, authority, board or commission in which they serve or (2) in which they previously participated. As a result, you cannot represent your business in matters before your City board, or in matters in which you previously participated in an official City role.

C. Statements of financial interest

As a member of a City board that exercises significant governmental powers, you are required to disclose certain financial information on both a City and State Statement of Financial Interests. In addition to the disclosures required as an owner and officer of a for-profit business,¹ you will need to disclose any purchases of property from the City (or any other governmental entity) as detailed in Board Regulation No. 3, Paragraph 3.12. You can find additional information about the required disclosures in [Board Regulation No. 3](#) and the instructions for both the [City](#) and [State](#) forms.

D. Confidential information

City Code Section 20-609 prohibits City officials 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. As a result, you cannot use or share confidential City information to aid your business in purchasing or developing property, regardless of whether that property belongs to the City.

¹ [Board Regulation No. 3](#) explains the required disclosures for the City Statement of Financial Interests, including disclosures of income (Para. 3.14), offices, directorships, and employment (Para. 3.17), and interests in for-profit businesses (Para. 3.18).

E. Interest in a City contract

Under Section 10-102 of the City's Home Rule Charter, salaried City officials cannot have or solicit an interest in City contracts for services, construction, or the sale/lease of property to the City. Under [Board Regulation No. 6](#), members of the City board on which you serve are not considered salaried for the purposes of Section 10-102. In addition, the proposed transaction involves the purchase of property from the City, which would not be prohibited by Section 10-102.

III. Conclusion

Based on the facts you provided, it is my opinion that neither State nor City law would prohibit you from serving as a member of your City board. As described above, however, you must disclose all conflicts arising from your business and disqualify yourself from official action that would financially impact your business. You cannot represent your business in transactions involving your City board or matters in which you participated in your role as a your City board member. You must also comply with the financial disclosure requirements of both City and State law.

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/ Jordana L. Greenwald

Jordana L. Greenwald
Acting General Counsel

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