



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2023-502

June 23, 2023

Re: Application of Ethics Rules to Participation in Community Development Program

Dear Requestor:

You have requested a non-public opinion explaining how the ethics rules apply to your proposed participation in a program for small developers and contractors offered by a community development organization. Specifically, because you are a City employee, you were directed to submit a “conflict of interest letter” with your application. As explained below, you do not have a conflict of interest that would restrict your participation in this program.

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 City employee. You also own a for-profit business through which you are currently developing various properties. You hope to enhance your real estate development work by participating in a program for small developers and contractors offered by a community development organization. The program may provide, among other things, opportunities to purchase property through the Philadelphia Land Bank. The Land Bank establishes and carries out procedures to sell City-owned property for reuse and redevelopment.

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 employee, a close family member, a for-profit business of which the employee 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 employee 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 you have a financial interest that you can impact in your City role. In your current City role, you are unlikely to be in a position to impact your for-profit business. If, however, a situation arises in which you can impact your business in your City role, 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.¹

B. Interest in a City contract

Under Section 10-102 of the City's Home Rule Charter, City employees cannot have or solicit an interest in City contracts for services, construction, or the sale/lease of property to the City. The purchase of property from the City, whether via the Land Bank or some other avenue, would not be prohibited by Section 10-102. Additionally, because the program is not operated pursuant to a City contract, your participation would not create a prohibited financial interest.

¹ In addition to the City's conflicts of interest rule, as a public employee you are subject to the State Ethics Act. State law contains its own conflicts rule. It is my understanding that State law would not impose materially different restrictions or requirements with respect to your interest in your business.

Section 10-102 would, however, prohibit you from entering into a contract to provide construction or other services as part of a City contract. This includes direct contracts with the City, but also includes subcontracts as well as programs administered by other organizations. For example, in [Board Opinion 2020-003](#), the Board held that Section 10-102 prohibited a City employee with a construction business from seeking or accepting funding through several programs operated by the Philadelphia Housing Development Corporation (“PHDC”) under a City contract or paid for exclusively with City funds.² In contrast, the employee could seek funding through a PHDC program funded by Children’s Hospital of Philadelphia.

C. 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). As a result, you would be prohibited from representing your business in any transactions with the City. *See* Bd. Op. 2020-003 (applying Section 20-602 to single-member LLC).

The prohibition on representation applies regardless of whether the transactions are related to your City role. As a result, you would not be permitted to submit applications or otherwise engage in transactions with the City on behalf of your for-profit business. This would include the purchase of City property via the Land Bank. Section 20-602 does not prohibit you from doing business in the City. Rather, you must designate an official representative other than yourself to act as an agent for your for-profit business in transactions involving the City.

D. Statements of financial interest

You are required by the State Ethics Act to disclose certain financial information on a Statement of Financial Interests. In addition to the disclosures required as an owner and officer of a for-profit business, including income and ownership interests, you will need to disclose any real estate transactions with the Commonwealth or any governmental body within Pennsylvania. You can find additional information about the required disclosures in the [State form instructions](#).

² The specific programs at issue were Community Development Block Grants, Housing Preservation Program Bonds proceeds, Housing Trust Fund, and Restore Repair Renew.

E. Confidential information

City 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. 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.

III. Conclusion

Based on the facts you provided, you do not currently have a conflict of interest, nor would the ethics rules prohibit you from participating in a program for small developers and contractors offered by a community development organization. As described above, however, you cannot represent your business in transactions involving the City and you cannot solicit or obtain a financial interest in a City contract. If conflicts of interest arise, you must disclose all such conflicts and disqualify yourself from official action that would financially impact your business. You must also comply with the State's financial disclosure requirements.

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
General Counsel

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