



CITY OF PHILADELPHIA

BOARD OF ETHICS
One Parkway Building
1515 Arch Street
18th Floor
Philadelphia, PA 19102
(215) 686 – 9450 (t)
(215) 686 – 9453 (f)

Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2023-503

July 26, 2023

Re: *Application of Ethics Laws to a City Contractor*

Dear Requestor:

You have requested a non-public advisory opinion regarding whether you may apply for either permanent or contracted City roles while working as a City contractor. As discussed in more detail below, your current job duties do not make you an “officer or employee” of the City for purposes of either the City Code or the Home Rule Charter. As a result, you are not subject to the City’s rules regarding either interest in City contracts or conflicts of interest.

I. Jurisdiction

The Board of Ethics administers, enforces, and interprets all Philadelphia Home Rule Charter and Philadelphia Code provisions pertaining to ethical matters, including Home Rule Charter Section 10-102 regarding interest in City contracts. Charter Section 4-1100 and Code Chapter 20-600 authorize the Board to render advisory opinions concerning a City officer or employee’s proposed future conduct. [Board Regulation No. 4](#) describes the procedures related to advisory opinions, including for requesting reconsideration or appeal of an advisory opinion issued by me.

Home Rule Charter Section 4-1100 grants the Board “concurrent authority” with the Law Department to advise City officials on the application of the State Ethics Act. Our advice on State law, however, does not provide protection from possible enforcement by the State Ethics Commission. For guidance that would provide such protection, you should contact the City’s Law Department or the State Ethics Commission.

II. Background

You are a contract worker assigned to a City department through a City contract with an outside contracting agency. You and your manager are contractors in a division which houses numerous contractors providing services in multiple program areas.

Your contracting agency handled your hiring, orientation, and initial paperwork. The contracting agency also issues your paychecks. Your primary responsibilities are to provide administrative and programmatic support through documenting meetings and creating minutes, reviewing presentations, and processing invoices and reimbursements to contracting agencies.

While you have worked under various City contracts for several years, you have been in your current role since the Spring of 2022. Your contract is set to end in the Spring of 2024. As your current contract term concludes, you hope to continue working for the City in some capacity. You want to know whether the City’s ethics rules would restrict your ability to apply for or accept either permanent or contracted City positions.

III. Relevant Law and Discussion

A. The City’s Ethics Code

Philadelphia Code Chapter 20-600 is the City’s Ethics Code. Among other rules, the Ethics Code includes restrictions on conflicts of interest, gifts to City officers and employees, and post-employment. More specifically, these rules can restrict a City officer or employee who is in the process of searching for a job and also the activities of officers and employees for years after leaving City service.

With a few exceptions, most provisions of the Ethics Code apply to the activities of City officers and employees.¹ Section 20-601(18) defines an “officer or employee” as:

Any person who is elected or appointed to a position in any branch of the government of the City and/or County of Philadelphia or to any elected or appointed position which serves the City and/or County of Philadelphia including, but not limited to, members of agencies, authorities, boards and commissions however elected or appointed; persons serving full-time or intermittently; persons serving with or without compensation.

In recent Opinions, the Board has articulated factors relevant to determining whether someone is an “officer or employee” and thereby subject to restrictions in the Code. For example, in [Board Opinion 2022-002](#), the question before the Board was whether members of the Institutional Review Board (“IRB”) of the Philadelphia Department of Public Health are officers of the City, as that term is used in the Ethics Code. The Board found that members of the IRB met the Code’s definition of “officer or employee” because they “serve in a defined role in a

¹ Please note that the contracting agency’s contract, like many contracts with the City, may require contract workers to adhere to various rules and policies, including the City’s Ethics Code. While the Board does not have the authority to enforce contract-based ethics obligations, the City department where you currently work and/or your contracting agency could seek to enforce such terms. It is your responsibility to ensure that actions you take based on this advice will not violate the City’s contract with the contracting agency or any of the contracting agency’s work rules.

capacity that is governed by well established laws, policies, and practices” and the IRB “resides in, and provides essential services to, the City’s Health Department.” *Id.* at 3.

Additionally, in [Board Opinion 2022-008](#), the Board addressed the question of whether individuals and entities appointed to fulfill certain roles through contracts with the Water Rate Board would be considered officers or employees. The three roles in question were that of a Hearing Officer, a Public Advocate and a Technical Expert/Consultant. In relying heavily upon their reasoning in the 2022-002 Opinion, the Board found that the Hearing Officer met the definition of officer in the Code, but the Public Advocate and Technical Expert/Consultant did not. The primary reasons for finding that the latter two were not “officers” was that their roles were mostly advisory and they did not appear to exercise significant powers of government.

Applying these factors, it is my opinion that you are not an “officer or employee” because while you “serve in a defined role” in a department that provides essential services to the City, the administrative and programmatic support you provide does not involve the exercise of significant powers of government. Thus, you are not subject to the City’s Ethics Code as administered and enforced by the Board of Ethics and would neither have a conflict of interest in your job search nor restrictions in the post-employment context. As previously noted, you may have contractual obligations to follow City ethics rules.

B. Home Rule Charter Section 10-102 (Interest in City Contracts)

Charter Section 10-102 of the Home Rule Charter states, in relevant part, that “any [] governmental officer or employee paid out of the City treasury... shall not be interested directly or indirectly in...the supplying of any services to be paid out of the City Treasury; nor shall they solicit any contract in which they may have any such direct or indirect interest.”

The Board has found that applying for a position funded through a City contract is solicitation of an interest in a City contract. [Bd. Op. 2019-003](#). As a result, a paid City officer or employee may not apply for a job funded by a City contract while still working for the City. Unlike the Code, the Charter does not include a definition of “officer or employee.” In the absence of such definition, the Board has – as with determining the applicability of the Ethics Code – looked to whether an individual exercises significant powers of government to determine whether Section 10-102 applies. *Bd. Op. 2022-002* at 4.

Applying this analysis, I conclude that you are not subject to Section 10-102 of the Charter. As such, you may apply for both permanent and contract work with the City while still working in your current contract role. Even if Section 10-102 applied, it would not prohibit you from applying for permanent City roles while working under a City contract.

IV. State Law

The State Ethics Act applies to “public employees” and “public officials” and confers a few additional restrictions (primarily in the areas of conflicts of interest and post-employment) than the Ethics Code and Charter on those who are subject to it. Based on my understanding of

State law and your duties as a contract worker, I do not believe that the State Ethics Act would apply to you. With that said, for definitive guidance regarding the application of the State Ethics Act, you should consult with the State Ethics Commission or the City's Law Department.

V. Conclusion

As explained in more detail above, you are advised that based on your current duties and responsibilities as a contract worker, you are neither subject to the City Ethics Code nor Section 10-102 of the Charter as administered and enforced by the Board of Ethics. As a result, the City's ethics rules would not restrict your ability to apply for jobs funded by City contracts while still working under the City's contract with your contracting agency.

Thank you for your concern about compliance with the City's Ethics Code and Home Rule Charter 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. § 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 Ethics Code, a version of the Opinion that has been redacted to conceal facts that are reasonably likely to identify you is being made public. If you have any questions, 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