



# CITY OF PHILADELPHIA

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## **Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2023-504**

October 5, 2023

*Sent via email*

***Re: Application of Ethics Rules to Board Member of Nonprofit Doing Business  
With the City***

Dear Requestors:

You have requested a non-public opinion explaining how the ethics rules apply to your nonprofit organization. Specifically, you have asked how the ethics rules apply to a member of your nonprofit’s board who is a City employee. As explained below, the City’s ethics rules do not prohibit a City employee from serving as an officer or board member of a nonprofit while employed by the City. The ethics rules would, however, prohibit a City employee from representing their nonprofit in City transactions or receiving compensation from City funds.

### **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. This opinion does not address the State Ethics Act because it is my opinion that the City employee’s current City position does not make them a “public employee” or “public official” subject to that law. This could change if the City employee is promoted or changes jobs within the City. If that occurs, we recommend that the City employee contact us for further guidance because State law contains additional restrictions on

conflicts of interest, government contracts, and financial disclosure. My guidance 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 the co-founders of a Pennsylvania nonprofit corporation ("the nonprofit"). The nonprofit grew out of your ongoing volunteer work in Philadelphia.

One of you is the Chief Executive Officer ("CEO") of the nonprofit. The other, a City employee, is a board member and is also identified on the nonprofit's website as an officer of the organization.

Most of your work for the nonprofit is on a volunteer basis. The CEO has occasionally paid modest stipends to himself and the City employee. In doing so, the CEO has ensured that any payments to the City employee were from non-City funds. Eventually, you hope the nonprofit will be able to hire you both on a full-time basis.

The nonprofit plans to seek additional funding for its programs and services through a variety of public and private sources. You plan to meet with the Managing Director's Office and other City officials to explore opportunities for City grants and partnerships. You have asked what restrictions apply to the City employee's interactions with City officials and City funds.

## **III. Relevant Law and Discussion**

### **A. Interest in a City contract**

Under Section 10-102 of the City's Home Rule Charter, City employees cannot have or solicit a financial interest in City contracts for services, construction, or the sale/lease of property to the City. The Board has found that Section 10-102 prohibits a City employee from being compensated from grants awarded by the City. [Board Op. 2020-003](#). This includes direct contracts with the City, but also includes subcontracts as well as programs funded by City grants but administered by other organizations. *See id.*

So long as the City employee's role with the nonprofit is not compensated, they would have no financial interest in any City grant or contract that the nonprofit receives. This is the easiest way to comply with the requirements of Section 10-102.

If the City employee is compensated, they must ensure that such compensation does not come either directly or indirectly from City funds. The obligation to avoid compensation from City contracts rests with the City employee. Note that violations of

Section 10-102 can result in not only a civil penalty for the City employee, but also cancellation of the contract by the City.

Section 10-102 does not prescribe a particular method of compliance in this scenario. It is up to the nonprofit and the City employee to decide how to separate City funds from any amounts paid to the City employee. You are free to use separate bank accounts, an appropriate accounting method, or any other means that will allow you to demonstrate that all payments to the City employee are from sources distinct from City funds.

This requires that the nonprofit receive funds from non-City sources. As a practical matter, the larger the percentage of City funding, the greater the difficulty of demonstrating that those funds were not used to pay the City employee and the higher the risk that the City employee has a financial interest in the City contract.

Even if the City employee received funds through another person or entity, such payment would still be prohibited if the money came from a City contract. *See* Board Op. 2020-003 (citing Solicitor's Op. 96-12 (May 7, 1996) (Ravelli)). For example, the nonprofit cannot direct City funds to another entity and use the recipient entity to pay the City employee.

Note that Section 10-102 does not preclude the nonprofit from seeking contracts funded by governmental bodies that are not part of the City, such as the Commonwealth of Pennsylvania or other municipalities. The nonprofit may also enter into contracts that are solely funded by the School District of Philadelphia. *See* Board Op. 2020-003. It is the City employee's responsibility to obtain information about whether a particular contracting opportunity involves City contracts or funds.

### **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). As a result, the City employee would be prohibited from representing the nonprofit in any transactions with the City.

The prohibition on representation applies regardless of whether the transactions are related to the City employee's Department. The City employee would not be permitted to sign or submit applications for City-funded programs, attend meetings with City officials, or otherwise engage in transactions with the City on behalf of the nonprofit.

Section 20-602 does not prohibit the nonprofit from doing business in the City. Rather, the nonprofit must designate an official representative other than the City employee to act as an agent for the organization in transactions involving the City. So long as their work for the nonprofit is unpaid and they otherwise comply with the restrictions discussed in this opinion, the City employee can also assist the nonprofit behind the scenes, such as preparing for meetings with the City or drafting proposals for City grants.

### **C. 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.

The City employee's role as an officer of the nonprofit and member of its board does not create a conflict of interest under City law so long as the City employee does not receive any compensation, benefits, or other financial gain from the organization. Because, however, the City employee has occasionally received a stipend from the nonprofit and hopes to eventually receive a salary, they have a personal financial interest in their role with the nonprofit.

Based on the information provided, the City employee cannot take any official action in their current City position that would affect their position with the nonprofit. As a City employee in their current City Department they cannot, for example, award a contract or grant to the nonprofit. So long as the City employee cannot take official action that affects their financial interest, they have no conflict of interest under City law. If, however, the employee's City responsibilities change such that they could take official action that would impact their financial interest in the nonprofit, they must comply with the requirements of Code Section 20-608 to disclose the conflict and disqualify themselves from any such official action. A [sample disclosure and disqualification letter](#) is available on our website.

#### **D. 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, the City employee cannot use or share confidential City information to the financial benefit of the nonprofit.

#### **III. Conclusion**

Based on the facts you provided, the City employee is not precluded from serving as an officer or board member of the nonprofit. As described above, however, the City employee cannot represent the nonprofit in transactions involving the City and cannot solicit or obtain any financial interest in a City contract. While there is currently no conflict of interest based on the City employee's affiliation with the nonprofit, if a conflict does arise, the City employee must disclose all such conflicts and disqualify themselves from official action that would financially impact their role with the nonprofit.

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