

City of Detroit Board of Ethics

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Advisory Opinion #2018-05
Issued: September 18, 2018

Advisory Opinion #2018-05: The Board of Ethics concludes the Request for Advisory Opinion 2018-05 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion. The Requestor, if she accepts the City's offer of employment, may continue her volunteer and paid extracurricular activities inasmuch as they do not appear to presently conflict with the City Code provisions discussed in this memorandum. Requestor should exercise caution that her judgment and actions on behalf of the City remain independent and that her outside activities are not performed during City business hours or utilizing City resources.

I. Procedural Background

Request for Advisory Opinion 2018-05 (the "Request") is dated May 17, 2018, and was submitted electronically to the Board of Ethics (the "Board"). The Request was submitted by a current public servant as defined by Section 2-6-3 of the Detroit Ethics Ordinance (the "Ordinance") who did not waive confidentiality with respect to identity.

At its meeting on July 17, 2018, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. At that meeting the Board reviewed a Preliminary Analysis of the Request. At its meeting on September 18, 2018, after consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion pursuant to Section 2-6-104(b)(4) of the Ordinance.

II. Facts Alleged In the Request

In the Request, the Requestor, who resides out-of-state, has an offer of employment from the City of Detroit, and has queried whether her current volunteer and business relationships may be continued/limited should she accept the position. The Request included six entities with whom the Requestor volunteers or participates and may receive remuneration. By this request, the Public Servant seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter.

III. Applicable Charter Sections

This Request involves Section 2-106.1 of the 2012 Detroit City Charter codified at Sections 2-6-62, -65, 2-6-66, 2-6-67, 2-6-71 and 2-6-73.

Sec. 2-6-62. Improper use or disclosure of confidential information prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly use or disclose to third parties confidential information, which is gained by reason of his or her official duties, concerns the property, government or affairs of the city or any office, department or agency thereof, and is not available to members of the public.

Sec. 2-6-65. - Incompatible employment or rendering services prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly engage in or accept employment, or knowingly render services, for a private or public interest where such employment or service is in conflict or incompatible with the proper discharge of the public servant's official duties for the city, or where such employment or service is reasonably expected to impair the public servant's independence of judgment or action in the performance of his or her official duties for the city.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 18-12, § 1, 7-31-12)

Sec. 2-6-66. - Representation of private person, business or organization prohibited; exceptions.*

A public servant shall not act as an agent, attorney, or representative for another person, business or organization in any matter that is pending before a city agency, except that:

- 1) A public servant may represent another person, business, or organization before a city agency where such representation is a required part of the public servant's official duties; or
- 2) (2)A public servant who is an uncompensated member of a city board, commission, or other voting body may act as an agent, attorney, or representative for another person, business or organization in a manner that is pending before a city agency, other than the board, commission, or other voting body on which he or she is a member; or

*the name has been changed to protect the confidentiality of the process

- 3) (3)A public servant who is compensated by the city may act as an agent, attorney or representative for another person, business, or organization in a matter that is pending before a city board, commission or other voting body, other than the board, commission or other voting body on which he or she serves as an appointee or as an employee, or under a personal services contract, as long as he or she does so:
- a. Without compensation; and
 - b. On his or her leave time; and
 - c. For appointees, in accordance with Chapter 13, Article V, of this Code; or
 - d. For non-union employees, in accordance with Chapter 13, Article V, of this Code and the City's Civil Service Rules; or
 - e. For union employees, in accordance with his or her respective union contract and the city's civil service rules; or
 - f. For individuals who provide services to the City of Detroit pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 43-06, § 1, 11-17-06)

***Commentary—** In general, there is an inherently high risk for the presence of a conflict of interest 1) where a public servant receives compensation from both the city and a person who, or an organization which, the public servant represents before a city agency, or 2) where an uncompensated member of a city board, commission, or other body wishes to represent a person or organization before the same board, commission or voting body on which he or she serves. At the same time, it is important to recognize that a public servant should be allowed to voluntarily commit his or her time to serving the public good, and that, as a volunteer, an uncompensated member of a city board, commission, or other body needs to earn a living.

There is a recognized interest in permitting a public servant who receives compensation from the city to voluntarily serve the community without compensation by appearing before a city agency on behalf of another. Such a policy serves, in part, to protect the public servant's rights to freedom of speech and freedom of association. For these reasons, this section is intended to eliminate the potential for creating such conflict. Accordingly, this section expressly permits a public servant to engage in uncompensated volunteer service to the community within the applicable legal and regulatory guidelines.

There is a parallel interest in permitting an uncompensated member of a city board, commission or other body to represent a person or organization before a different city agency. This section also permits an uncompensated member of a board, commission, or other voting body to represent non-city interests for compensation so long as it is not before the same board, commission or voting body on which he or she serves. This policy encourages the most highly qualified individuals to serve the city in uncompensated positions while allowing these individuals to earn their livelihood.

For purposes of clarification, any action taken under this section must conform to any other applicable provision of this article. In addition, any action taken under this section must conform to other applicable laws, rules, and regulations.

Sec. 2-6-67. - Self-interested regulation prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly vote, or knowingly participate in the negotiation or making of any City contract, or any other type of transaction with any business entity in which he or she or an immediate family member has a financial interest.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 18-12, § 1, 7-31-12)

Sec. 2-6-71. - Gifts and Gratuities.

A Public Servant shall not accept gifts, gratuities, honoraria, or other things of value, as determined by ordinance, from any person or company doing business or seeking to do business with the City, is seeking official action from the City, has interests that could be substantially affected by the performance of the Public Servant's official duties, or is registered as a lobbyist under applicable laws.

This prohibition shall not apply to:

1. An award publicly presented to a Public Servant by an individual, governmental body or nongovernmental entity or organization in recognition of public service.
2. Complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials.
3. A gift received from a Public Servant's relative or immediate family member, provided that the relative or immediate family member is not acting as a third party's intermediary or an agent in an attempt to circumvent this article.
4. Admission or registration fee, travel expenses, entertainment, meals or refreshments that are furnished to the Public Servant:
 - i. By the sponsor(s) of an event, appearance or ceremony which is related to official City business in connection with such an event, appearance or ceremony and to which one (1) or more of the public are invited; or
 - ii. In connection with teaching, a speaking engagement or the provision of assistance to an organization or another governmental entity as long as the City does not compensate the Public Servant for admission or registration fees, travel expenses, entertainment, meals or refreshments for the same activity.

(Amended, election of 11-6-12)

Sec. 2-6-73. - Prohibition on campaign activities using city personnel or property, or during working hours.

- a) Elective officers, as defined in section 2-6-3 of this Code, are prohibited from soliciting appointive officers, appointees, and employees to work on political campaign activities using city property or during working hours.
- b) (b)Appointive officers, appointees, and employees are prohibited from engaging in campaign activities by using city property or engaging in such activity during working hours.

(Ord. No. 18-12, § 1, 7-31-12)

IV. Application of the Charter to the Facts Presented

The Requestor presented the question of whether she may continue her relationships with the six (6) entities if she accepts the position with a department of the City of Detroit. Requestor's involvement in these activities has a wide range from [REDACTED].

None of the entities named in this Request is a contractor or vendor with the City of Detroit. None of the entities has a pending contract or other business or awaits a decision from Council or another department.

The Requestor's work does not place her as one who exercises significant authority although she will be part of a group who makes decisions by consensus about [REDACTED]. While continued engagement with these entities is not prohibited, care and caution should be exercised so that any paid work for a non-City entity does not conflict with Requestor's official duties as a public servant.

If Requestor or an immediate family member acquires a financial interest in any of these entities and the entity does business with the City of Detroit, the Requestor would have to immediately disclose that financial interest.

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V. Conclusion

The Board of Ethics concludes the Request for Advisory Opinion 2018-05 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion. The Requestor, if she accepts the City's offer of employment, may continue her volunteer and paid extracurricular activities inasmuch as they do not appear to presently conflict with the City Code provisions discussed in this memorandum. Requestor should exercise caution that her judgment and actions on behalf of the City remain independent and that her outside activities are not performed during City business hours or utilizing City resources.

Detroit Board of Ethics
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Dated: October 30, 2018