

City of Detroit Board of Ethics

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Advisory Opinion #2019-08
Issued: June 18, 2019

Advisory Opinion #2019-08: The Board of Ethics concludes the Request for Advisory Opinion 2019-08 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion. The Requestor has no conflict of interest as to his volunteering for the nonprofit. Additionally, Requestor has no current conflict with the third party who may become a medical marijuana facility in the City of Detroit. However, when Requestor becomes aware of the third party's intent to fund his nonprofit, he must disclose any action that would provide him or his agency with a direct or indirect financial interest.

I. Procedural Background

A Public Servant filed Request for Advisory Opinion 2019-08 ("Request") on February 21, 2019. As defined by Section 2-6-3 of the Detroit Ethics Ordinance ("Ordinance"), only a public servant may submit a Request. In this Request, the Public Servant has maintained confidentiality with respect to identity. As required by the Ethics Ordinance, the Public Servant signed and submitted the Request in writing.

At its meeting on May 21, 2019, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. The Board also reviewed a privileged and confidential Preliminary Analysis of the Request. The 91-day deadline was June 21, 2019. At this meeting, the Board of Ethics allowed an extension of the investigation for an additional 91 days, making the new deadline September 20, 2019. On June 18, 2019, the Board heard an investigative report. After consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion pursuant Section 2-6-104(b)(4) of the Ethics Ordinance.

II. Facts Alleged In the Request

The Requestor states:

I am [REDACTED] on a volunteer basis to [REDACTED] program. We were approached by the proposed new neighbor, as the only youth program in the area and asked if we would be interested in being the recipient of a community benefits initiative they are required to undertake to gain approval to establish their business. I have no authority or influence over the establishment approval or denial. Our children are from underserved neighborhoods and family struggle to even get the kids to class, Let alone pay to tuition regularly or finance tournament expenses. Benefiting from the addition of a neighbor to offset the impact of their business seems reasonable. Our kids are mostly at risk youth from single parent households and we are there for them since 2010 under my watch.

Requestor seeks to know whether a conflict of interests exist for him if this organization receives funding from a neighborhood Medical Marijuana Facility. An additional question exist for the Requestor and it is whether a conflict of interest exist with [REDACTED] of the City of Detroit.

III. Applicable Charter Sections

The 2012 Detroit City Charter provides at Section 2-106.1 that the purpose of applying and enforcing these requirements and standards is to ensure that governmental decisions are made in the public's best interest by prohibiting public servants from participating in matters that affect their personal or financial interests.

This Request involves Section 2-106.1 of the 2012 Detroit City Charter codified at Sections 2-6-31, -62, -65, -66, -67, and -68 of the Ethics Ordinance.

Sec. 2-6-31. Disclosure of interests by public servants.

(a) Except as otherwise provided for by applicable law, a public servant who exercises significant authority[^] over a pending matter shall disclose:

- (1) Any financial interest, direct or indirect, that he or she or an immediate family member has in any contract or matter pending before city council;
- (2) Any financial interest, direct or indirect, that he or she or an immediate family member has in any contract or matter pending before or within any office, department or agency of the city; and
- (3) Any interest that he or she, or an immediate family member has in real or personal property that is subject to a decision by the city regarding purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement or a development agreement.

(b) All disclosures that are required under subsection (a) of this section shall be made, in writing, on a form that is created by the law department and sworn to in the presence of a notary public. After completion, the form shall be filed

with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

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) 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

(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.

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.

Sec. 2-6-68. - Improper use of official position prohibited.*

Except as otherwise provided for by applicable law, a public servant shall not knowingly use his or her official position in violation of applicable law, to improperly influence a decision of the mayor, of the city council, of the city clerk, or of a member of a city authority, board, commission, committee, council or group, or other city agency.

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

***Commentary**— This provision prohibits a public servant from using his or her official position in violation of federal or state law, such as the state law prohibiting bribery, being MCL 750.118, the state law regulating conflicts of interest pertaining to public contracts involving public servants under the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.310 et seq, the state law regulating political campaign organizations under the Michigan Campaign Finance Act, being MCL 169.201 et seq, and the provisions of the Michigan Gaming Control and Revenue Act prohibiting a government official from soliciting or knowingly accepting anything of value or benefit from a casino licensee in return for influencing official action (see MCL 432.218(2)(c) and (d)).

The prohibition in the article is not intended to prevent a public servant from giving advice or seeking information as a necessary part of the public servant's duties, or from communicating with a city agency in the ordinary course of the city's business. Nor is this prohibition intended to chill a public servant's free speech rights under the First Amendment to the United States Constitution or under Article I, Section 5, of the 1963 Michigan Constitution where the public servant is expressing his or her views to another City public servant or before a City agency in a non-official capacity.

IV. Application of the Charter to the Facts Presented

Requestor's employment as a [REDACTED] with [REDACTED] does not conflict with his volunteer service at [REDACTED] as his official duties with the City are not incompatible with the provision of [REDACTED] training under Sec. 2-6-65 or Sec. 2-6-66.

However, whether Requestor, in his role as director of the [REDACTED], can accept a donation from a prospective medical marihuana facility seeking to locate next

door to the [REDACTED] facility without violating the 2012 Detroit City Charter or 1984 Detroit City Code is a much more nuanced analysis.

Requestor has no direct role in the inspection process. After Zoning and Planning issues a permit, [REDACTED] inspects to ensure compliance with the permit. Requestor's division still has no authority over MMF facility permit issuance. Requestor's department determines [REDACTED] on location, zoning, and code requirements.

As such, when Requestor becomes aware of the third party's activities that are before the City of Detroit (department, agencies, boards, Council, etc.) he must disclose in accordance with Section 2-6-31 (see above). The third party's activities place Requestor to receive an indirect financial benefit for his [REDACTED]. Disclosure will ensure that Requestor remains detached from any City of Detroit processes that involve this third party.

V. Conclusion

The Board of Ethics concludes the Request for Advisory Opinion 2019-08 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion. The Requestor has no conflict of interest as to his volunteering for the [REDACTED]. Additionally, Requestor has no current conflict with the third party who may become a medical marijuana facility in the City of Detroit. However, when Requestor becomes aware of the third party's intent to fund his nonprofit, he must disclose any action that would provide him or his agency with a direct or indirect financial interest.

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