

City of Detroit Board of Ethics

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Advisory Opinion #2018-15
Issued: February 19, 2019

Advisory Opinion #2018-15: The Ethics Ordinance does not prohibit the Requestor from co-hosting the 2019 National Association of African-Americans in Human Resources (NAAAHR) Michigan Conference. Additionally, the Requestor, and the public servants in the Human Resources Department, may accept the waiver of conference fees without violation of the gifts and gratuities provisions under Sec. 2-6-71 of the Ethics Ordinance as the exception contained in Section 2-6-71(b)(4) is met and the NAAAHR is doing no business, seeking no contracts with the City of Detroit.

I. Procedural Background

Request for Advisory Opinion 2018-15 (the “Request”) is dated October 12, 2018, and was sent to the Board of Ethics (the “Board”) by electronic communication and received on the same date. In accordance with Sec. 2-6.101, the Request was submitted by a current public servant as defined by Section 2-6-3 of the Detroit Ethics Ordinance (the “Ordinance”). The Public Servant waived confidentiality with respect to identity.

At its meeting on November 20, 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 and reviewed a Preliminary Analysis from Legal Council. On February 19, 2019, 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

In the Request, Iris Ware, states as follows:

The Office of Talent Development and Performance Management would like to co-host the 2019 National Association of African-Americans in Human

Resources (NAAAHR) Michigan Conference. We would like to know the approval process and gain your insights related to the overall feasibility of engaging as co-host. NAAAHR is a national organization with both State and local chapters across the nation. We would like to co-host with NAAAHR's Michigan Chapter. Our primary contribution would be the use of space, rooms at Cobo Hall as available to our department, as well as session facilitation, logistics and marketing support roles. Our primary benefits would be the ability to continue to demonstrate the City's transformation on an employee level, enhance our department's role and position us as contributor's to the field Human Resources and particularly the talent development function.

Additionally, all Human Resources department employees would be allowed to attend the conference free of charge. City of Detroit employees would not be engaged in any activities related to the payments, contracts, vendor solicitation, selection or distribution of any of the components of the conference. Can you please advise us as to the process and feasibility?

By this request, Ms. Ware seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter.

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 2-106.4 of the 2012 Detroit City Charter codified at Sections 2-6-62, 2-6-65, 2-6-66, 2-6-67, and 2-6-71 of the Ethics Ordinance. It states as follows:

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.

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. 2-6-71. - Prohibition on gifts and gratuities; exceptions.

(a) A public servant shall not **accept** gifts, gratuities, **honoraria, or other thing of value from any person or entity 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 law and Section 2-6-35 of this Code.

(b) The prohibition in Subsection (a) of this section shall not apply:

(1) To an award publicly presented to a public servant by an individual, governmental body or non-governmental entity or organization in recognition of public service;

(2) To complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials;

(3) To a gift received from a public servant's immediate family member or relative, provided, that the immediate family member or relative is not acting as a third party's intermediary or an agent in an attempt to circumvent this prohibition;

(4) To an 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 refreshment for the same activity.**

IV. Application of the Charter to the Facts Presented

As a public servant, the Requestor is subject to the relevant sections of the Ethics Ordinance cited above. Sections 2-6-62, and 65 through 67 are included as guidance regarding conflicts in service between an outside entity and City employment. These are conflicts that can create bias or influence actions. Requestor noted that she nor other City employees would be soliciting or selecting vendors; it is possible that vendors with a relationship (or seeking one) with the City could be participating in the 2019 Conference. While an important consideration under the City Charter and Code, these relationships would need to be continuously monitored to protect against potential issues of self-interest.

A closer analysis of Section 2-106.4 of the 2012 Detroit City Charter codified at Section 2-6-71, is in order as it relates to City employees, including Requestor, attending the 2019 Conference free of charge. This Charter Section is codified in the 1984 Detroit City Code at Sec. 2-6-71. Subsection (a) prohibits a public servant such as Requestor (and HR employees under her direction) from accepting a gift, gratuity "or other thing of value," regardless of value or amount, from an entity that 1) is doing business with the city, 2) seeks to do business, 3) seeking official action, 4) has interests that could be substantially affected by the performance of Requestor's duties or 5) is registered as a lobbyist. As the vendors for the 2019 Conference are not being selected by Requestor or City employees the prohibition in subpart (a) appears to be inapplicable. However, it is possible that a vendor participating has or seeks a business relationship with the City as co-host therefore, an analysis of the exceptions contained in Section 2-6-71(b) would be prudent.

The exception contained in Section 2-6-71(b) (4) is applicable. Requestor is seeking authorization to accept an "admission or registration fee" to a *public* event to serve as a session facilitator on behalf of the City of Detroit; therefore, the exception under Section 2-6-71(b)(4)(i) is met. Further, Requestor's actions and those of other City employees attending the conference free of charge would also qualify under the exception contained in Section 2-6-71(b)(4)(ii) permitting the acceptance of the conference fee so long as they are not reimbursed or compensated for such fee by the City. Therefore, Requestor may accept the waiver of the conference fee because the exception contained in Section 2-6-71(b)(4) is met and the prohibition on acceptance of gifts and gratuities would not apply.

Requestor's participation in the planning and facilitation of the 2019 Conference does not appear to violate any of the listed sections of the Ordinance. However, Requestor should use caution that there is no correlation between her City responsibilities and her prospective responsibilities as part of co-hosting duties. She should act in a manner that ensures no confidential or proprietary City information is implicated in the subject matter, nor are the duties related or incompatible with Requestor's duties with the City. Further, Requestor is not representing the outside agency (NAAHR) before any City agency, nor does she appear to hold any financial interest or self-dealing that would benefit from her involvement in the NAAHR Conference.

V. Conclusion

The Board of Ethics concludes the Request for Advisory Opinion 2018-15 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the request. It is important to note that the City's executive leadership, not the Board of Ethics, has the authority to grant permission for the Human Resources Department to co-host the 2019 National Association of African-Americans in Human Resources (NAAHR) Michigan Conference.

If such permission were granted, the Requestor would not be in violation of the 2012 Detroit City Charter or Ethics Ordinance should she elect to participate in

the facilitation and co-hosting of the 2019 NAAHR Conference on behalf of the City of Detroit 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.

Further, the Requestor, as a public servant and the public servants in the Human Resources Department, may accept the waiver of conference fees without violation of the gifts and gratuities provisions under Sec. 2-6-71 of the Ethics Ordinance as the exception contained in Section 2-6-71(b)(4) is met and the NAAHR is doing no business, seeking no contracts with the City of Detroit.

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Dated: March 7, 2019