

Advisory Opinion #2021-12
Issued: May 28, 2021

Advisory Opinion #2021-12: It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-12. Accepting outside employment as a [REDACTED] [REDACTED] is reasonably expected to impair the Requestor's independence of judgment or action in the performance of her official duties with the City of Detroit, as prohibited by Section 2-5-64. Similarly, since the Requestor is applying to the City for permits on behalf of an outside employer, she is representing another business on a matter pending before a City agency, as prohibited by Section 2-5-65. Therefore, to comply with the Ethics Ordinance, the Requestor cannot accept employment with the outside employer.

I. Procedural Background

Request for Advisory Opinion 2021-12 (the "Request") was sent to the Board of Ethics (the "Board") by electronic communication and received on March 11, 2021. In accordance with Sec. 2-106.1, the Request was submitted by a current public servant as defined by Section 2-5-3 of the Detroit Ethics Ordinance (the "Ordinance"). The Public Servant maintains confidentiality in this matter.

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code ("Code"), the 91-day period for review of this request will conclude on June 10, 2021. Section 2-5-124(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on September 9, 2021.

At its meeting on May 28, 2021, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-5-121 of the Ordinance. The Board reviewed a Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board decided to issue this advisory opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

Requestor serves as a [REDACTED] for the City of Detroit's [REDACTED]. On the initial Request, Requestor indicated the position with [REDACTED] is only clerical and that she does not have any say in whether a permit is approved or denied. Requestor did not provide information on what her clerical duties entail. More specifically, she did not indicate whether her clerical duties involve handling permits in any capacity, dealing with people who handle permits, or provides access to permit applicants' applications.

Requestor indicated that her perspective role as a consultant with the outside company would have begun as soon as March 12, 2021, where she would be responsible for “doing the permit application process for [the outside company].” Requestor indicated that her name, phone number, and email address that is associated with the City of Detroit (“City”) would not be used in any capacity in her part-time position. However, Requestor did not indicate whether the outside company is interested in obtaining permits from the City, the work hours she is required to fulfill in her part-time position, or the name of the outside employer.

As directed by the Board during its meeting on April 29, 2021, the Board’s staff obtained additional information relevant to the Request. The additional information provided clarity on Requestors duties as a [REDACTED] for [REDACTED] and insight on her position as [REDACTED]. As a [REDACTED] with [REDACTED], she works Monday through Friday, 8:00 a.m. to 4:30p.m., and her manager is [REDACTED]. Her job duties include: filing and completing requests for permits, completing data entry on permit requests, prescreening for documents, participating with Plan Review on permit requests submitted in order to ensure all supporting paperwork is present, assessing fees, and issuing requested permits once payment is made. Her position with [REDACTED] also provides her with access to information on contractors, vendors, and others who are doing business with the City.

Requestor’s outside employment as a [REDACTED] would require her to work part-time (nights and weekends), at \$30 per hour, completing permits on behalf of a company that does business with the City. Requestor’s job would be through [REDACTED], a staffing company located in Warren, Michigan that provides staffing for the [REDACTED]. The [REDACTED] is one of 25 companies under the [REDACTED] umbrella, an entity that has a substantial history of conducting business with the City.

Requestor indicated that she developed a conflict of interest plan where she could complete her outside employer’s permits after hours. Requestor’s manager, however, has indicated that he does not believe that there are any set of conditions that could be set in place that would prevent a conflict of interest. The manager has also indicated that he has received a request for outside employment from the Requestor but is awaiting the Board’s decision before processing said request.

III. Applicable Charter Sections

The 2012 Detroit City Charter (“Charter”) provides at Section 2-106.1, *Ethical Standards of Conduct*, 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 2-5-62, 63, 64, 65, and 66 of the 2019 Detroit City Code. The relevant provisions of the Code state as follows:

Section 2-5-64. - 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 the public servant's official duties for the City.

(Code 1984, § 2-6-65; Ord. No. 22-00, § 1(2-6-65), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-65), eff. 8-31-2012)

Section 2-5-65. - 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;

(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 the public servant 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 the public servant serves as an appointee or as an employee, or under a personal services contract, as long as the public servant does so:

a. Without compensation; and

b. On the public servant's leave time; and

c. For appointees, in accordance with Chapter 35, Article III, Division 2, of this Code, Vacation, Sick, Departmental, Funeral, and Jury Leave; or

d. For non-union employees, in accordance with Chapter 35, Article III, Division 2, of this Code, Vacation, Sick, Departmental, Funeral, and Jury Leave, and the City's Civil Service Rules; or

e. For union employees, in accordance with the employee's respective union contract and the City's Civil Service Rules; or

f. For individuals who provide services to the City pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

(Code 1984, § 2-6-66; Ord. No. 22-00, § 1(2-6-66), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-66), eff. 12-15-2006)

IV. Application of the Charter and Code to the Information Presented

The Requestor serves as a [REDACTED] for [REDACTED], therefore, she is a public servant as defined in Section 2-105 of the Charter and Section 2-5-3 of the Ethics Ordinance. The Requestor seeks an advisory opinion regarding the application of the standards of conduct related to the Requestor accepting a part-time [REDACTED] position with an outside company. The Request was properly submitted; accordingly, the Requestor's conduct is regulated by the Ethics Ordinance.

According to Section 2-5-1 of the Ethics Ordinance, the standards of conduct and disclosure requirements apply to public servants "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." The following provisions are implicated in this Request.

A. Sec. 2-5-64. Incompatible employment or rendering services prohibited.

This provision is violated when outside employment is in conflict or incompatible with the proper discharge of the public servant's official duties for the City or where such employment is reasonably expected to impair the public servant's independence of judgment. To determine whether outside employment is in conflict or incompatible with a public servant's official duties two things must be considered: (1) whether there is a relationship between the public servant's duty to the City and outside employment, such that providing services to that outside employer creates, or could create circumstances where the public servant has to choose whether to act in the City's best interest, and (2) the time commitment to the outside employer.

According to the additional information the Requestor provided, her duties primarily involve completing permits, or permit applications, on behalf of a company that does business with the City. The Requestor's position with [REDACTED] requires her to handle the permits she would complete on behalf of the outside employer and participate in the processing of said permits, thereby allowing her to issue permits to her outside employer once the necessary payment is made. While the Requestor has indicated that she has developed a conflict of interest plan, her manager has indicated that he does not believe there are any set of conditions that could be set in place to prevent a conflict of interest. Where the interests of the City and her outside employer conflict, she would have to choose whether to act in the City's best interest. As such, acceptance of the [REDACTED] [REDACTED] is reasonably expected to impair the Requestor's independence of judgment or action in the performance of her duties with [REDACTED], which violates Section 2-5-64

B. Sec. 2-5-65. Representation of private person, business, or organization prohibited; exceptions.

Section 2-5-65 of the Ethics Ordinance prohibits a public servant from representing an outside organization, in any matter that is subject to a decision by the City of Detroit, unless there is an applicable exception. According to the additional facts provided by the Requestor, she will complete the permit application process on behalf of an outside company. Completing the application process on behalf of an outside company amounts to representing an outside organization. Building, demolition, sign, awning, and temporary use permits must be approved by BSEED and all other permits must be approved by some City agency. Consequently, *all permit applications* are subject to a decision by an agency of the City. Since representing the outside company is not a part of the Requestor's official duties, the Requestor is compensated by the City, the Requestor works with ██████████ and would be compensated by an outside employer, none of the exceptions exempt the Requestor from the general prohibition. Accordingly, since the Requestor would represent an outside organization in a matter that is subject to a decision by or pending before the City, accepting employment would be in violation of Section 2-5-65 of the Ethics Ordinance.¹

V. Conclusion

As set forth above, the Requestor accepting outside employment as a ██████████ is reasonably expected to impair the Requestor's independence of judgment or action in the performance of her duties with ██████████. As such, acceptance of the position would violate Section 2-5-64 of the Ethics Ordinance, which prohibits incompatible employment or rendering of services. Moreover, since the Requestor would be applying for permits with the City on behalf of an outside employer, she would represent another business on a matter pending before a City agency in violation of Section 2-5-65 of the Ethics Ordinance. Therefore, the Requestor cannot accept employment with the outside employer without violating the Ethics Ordinance.

¹ Requestor is not protected by the exceptions because she is compensated by the City and it is assumed that she will be receiving compensation from the outside company.