

# *City of Detroit Board of Ethics*

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## **ADVISORY OPINION #2016-03**

Issued: September 19, 2016

**Advisory Opinion # 2016-03:** A public servant, employed by the Office of Grants Management, who also serves on the board of directors of a non-profit senior center that receives grants administered by the City of Detroit, can remain on this board so long as the public servant's employment does not entail actual decision making regarding the award or monitoring of any grant to this organization. The requestor is cautioned to avoid participation in any transactions between the City and the community service organization, advocacy on behalf of the organization before the Office of Grants Management, or providing confidential information to the organization. In addition, in the event the public servant exercises significant authority in any pending matter regarding this organization, the public servant must make disclosures in accordance with the Ethics Ordinance.

### **I. PROCEDURAL BACKGROUND**

On March 21, 2016, the Board received Request for Advisory Opinion No. 2016-03. The requestor, currently employed as an Assistant Director in the Office of Grants Management, submitted the following request:

I am requesting an opinion regarding my continued service on the St Pats Senior Center of Detroit Michigan Board of Directors. The organization receives funding from the City of Detroit, however the decision to fund and in what amount lies with Detroit City Council, and I would have no direct/indirect decisions regarding the organization.

In an email attached to the request, the Requestor added the following:

In my new position as Assistant Director in the Office of Grants Management I wanted to make sure that if I did continue to serve on the board it would not be a conflict of interest for myself or for the board. As I do hold this position, my duties are merely federal oversight, as I have no authority to make decisions on who gets awarded grant funds in the City of Detroit nor do I hold any authority to make decisions on the amount of assistance an organization would receive.

The Requestor waived confidentiality.

The Detroit City Charter defines the term "public servant" as including "the Mayor, members of City Council, City Clerk, appointive officers, any member of a board, commission or other voting body established by either branch of City government or this Charter and any appointee, employee or individual who provides services to the City within or outside of its offices or facilities pursuant to a personal services contract." Section 2-105(A)(9), 2012 Detroit City Charter. (See also, Section 2-6-3, 1984 Detroit City Ordinances.)

The Requestor is a public servant. Pursuant to the Charter and the Ethics Ordinance, the Board has jurisdiction to review and respond to requests for advisory opinions from current and former employees regarding their own conduct or actions. (See Section 2-106.9, 2012 Detroit City Charter and Section 2-6-101, 1984 Detroit City Code.)

At its meeting of June 16, 2016, the Board approved a 91 day extension of time in which to respond to this request. At its meeting of September 15, 2016, the Board received and considered a 2<sup>nd</sup> Preliminary Analysis of the request and voted to issue this Advisory Opinion pursuant to Section 2-6-104(b)(4) of the Ethics Ordinance.

## II. FACTS

On June 27, 2014, the Emergency Manager (EM) issued Emergency Manager Order No. 27. In that Order, the EM found that the City lacked “a centralized grants management system capable of monitoring and ensuring compliance with the requirements of its various federal, state and local grants.” To remedy this situation, the EM directed the Chief Financial Officer to “establish a Grants Management Department to be called the Office of Grants Management.” The Order divided the department into four divisions, “(a) Transportation and Public Spaces; (b) Public Safety and Health; (c) Community Development Block grants; and (d) Housing and Urban Development.

In follow-up communications, the Requestor indicated that her employment with OGM entailed drafting grant applications to the U.S. Department of Housing and Urban Development (HUD). The City is a grantee of HUD and other federal agencies. In her city employment, the Requestor deals exclusively with HUD. The Requestor has no contact with or responsibility regarding local agencies that receive funds from or through the OGM. The monitoring of these sub-grantees is outside the scope of her employment.

Saint Patrick Senior Center is, on occasion, a sub-grantee of the City, but the center does not provide any housing services. Its charitable outreach consists largely of providing daily meals and activities for seniors. According to the Requestor, St. Patrick receives approximately 10 percent of its funding from the City. Not surprisingly, given its emphasis on service to seniors, it receives the majority of its funding from the Area Agency on Aging.

## III. APPLICABLE LAW AND DISCUSSION

### Standards of Conduct

Conflict of interest regulation generally prohibits a public employee from placing himself in a position where the public servant must choose between the public good and private interests. As a public servant, the Requestor is subject to the provisions of Section 2-6-65 of the Ethics Ordinance which states as follows:

**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 her or her official duties for the city.

As the ordinance includes both paid employment and "rendering of services," it clearly regulates uncompensated services to a non-profit or community organization. (See Request for Advisory Opinion No. 2015-01.) The provision outlines three circumstances which violate this section; the rendering of services is in conflict with the public servant's responsibilities to the city, the rendering of services is incompatible with the public servant's responsibilities to the city, or such service would "impair the public servant's independence of judgement or action. . . ."

The Requestor indicates she has no direct or indirect involvement in making decisions regarding the award or amount of grants issued to St Patrick Senior Center. . . . Indeed, the Requestor's employment with OGM is exclusively focused on grant applications to HUD. St. Patrick provides no housing services and thus receives no funds that might have been obtained through the Requestor's city employment. Based on the requestor's representation, it appears there is no conflict of interest.

Active decision making however, is but one aspect of the concerns raised here. The Ordinance provides that "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 in which he or she . . . has a financial interest." Section 2-6-67, 1984 Detroit City Code. Again, relying on the Requestor's representations, this provision is not violated, but she must refrain from decision making or actions which shape and define the interaction between the City of Detroit and Saint Patrick.

In addition, the Ordinance also provides that public servants "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 . . ." Section 2-6-66, 1984 Detroit City Code. The Requestor is barred from advocating on behalf of St Patrick Senior Center regarding any matter pending before the Office of Grants Management. She may, however, "act as 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 . . . employee** . . ." so long as the representation is without compensation and on the employee's leave time. Section 2-6-66(3), 1984 Detroit City Code.

Finally, decision making and advocacy are not the only challenges posed by the Requestor's board membership. The Requestor must also exercise caution regarding the

use of confidential information. Section 2-6-3, 1984 Detroit City Code, defines confidential information as follows:

Confidential information means information that has been obtained by a public servant in the course of acting as a public servant, that is not available to members of the public pursuant to the Michigan Freedom of Information Act, being MCL 15.231 et seq . , or pursuant to other law, regulation, policy or procedure recognized by law, and that the public servant is unauthorized to disclose, including:

(1) Any written information, whether in document or in electronic form, which could be exempted from disclosure pursuant to state law or to other pertinent law, regulation, policy or procedure recognized by law, unless the public servant disclosing the information is permitted by such authority to make disclosure; and

(2) Any non-written information which, if written, could be exempted from disclosure pursuant to state law or to other pertinent law, regulation, policy or procedure recognized by law, unless the public servant disclosing the information is permitted by such authority to make disclosure; and

(3) Information which was obtained in the course of or by means of a written or electronic record or oral report of a lawful executive or closed session, whether or not the disclosure of the information would violate state law, unless the public servant disclosing the information is authorized by state law to make disclosure, or unless the public servant disclosing the information has been properly authorized to make disclosure pursuant to an applicable law, regulation, policy or procedure, except that when such information is available through channels which are open to the public, this provision does not prohibit public servants from disclosing the availability of those channels.

The Ethics Ordinance addresses the improper use of confidential information at Section 2-6-62, 1984 Detroit City Code, which states as follows:

Except as otherwise provided by applicable law, **a public servant shall not knowingly use or disclose confidential information to third parties concerning** the property, government or affairs of the City or any office, department or agency thereof, **which is not available to members of the public and gained by reason of her or her official duties.** (Emphasis added.)

In the course of her employment, the Requestor may become aware of matters not available to the public concerning the interests of St. Patrick Senior Center. The Requestor must refrain from sharing that information with Saint Patrick Senior Center.

### **Disclosure Standards**

The Requestor also sought information regarding disclosure requirements. The Ordinance addresses the disclosure requirements for public servants as follows:

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

(1) Any financial interest, direct or indirect, that she 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 she 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 she 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. (Section 2-6-31, 1984 Detroit City Code.)

However, this provision is only triggered regarding a pending matter over which the public servant “exercises significant authority.” The Requestor indicates she exercises no authority regarding the award of grants to Saint Patrick Senior Center. Assuming this is true, she would have no disclosure requirements under the Ordinance.

#### IV. CONCLUSION

Based on the Requestor's representation that she has no direct or indirect involvement in decision making regarding the award or administration of grants to the Saint Patrick Senior Center, she has no current conflict of interest.

The Requestor must refrain from advocating on behalf of the Saint Patrick Senior Center on any matter pending before the Office of Grants Management and must avoid sharing confidential information with the Center. In addition, he must refrain from participating in the negotiation or making of contracts or transactions between the City and the Center. Finally, if she exercises significant authority regarding any transaction or interaction between the City and the Center, the Requestor must comply with the Ordinance's disclosure requirements. With these restrictions in mind, and assuming her representations regarding non-involvement are complete and accurate, her service on the Board of Directors of the Saint Patrick Senior Center is not barred by the Ordinance.

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Dated: September 19, 2016