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Advisory Opinion #2021-18
Issued: November 19, 2021

Advisory Opinion #2021-18: It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) of the Code. In summary, the Ethics Ordinance prohibits Requestor from accepting employment with Miller Canfield because the employment does not require the sharing of confidential information and Requestor was not involved in the award or management of the contract during his tenure as a public servant. Nevertheless, for a period of one year following his tenure with the City, the Requestor must abide by Section 2-5-71 in its entirety, including the prohibition on lobbying or appearing before City entities and applicable restrictions relating to rendering services and compensation. For further details, review the Conclusion section of this Opinion.

I. Procedural Background

The Board of Ethics (“Board”) received this matter on October 25, 2021, by electronic communication. In accordance with Section 2-106.1 of the 2012 Detroit City Charter (“Charter”), the Request was submitted by a current public servant, as defined by Section 2-5-3 of the Detroit Ethics Ordinance (“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 concludes on January 24, 2022. 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 April 25, 2022.

At a special meeting held on November 19, 2021, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under to Section 2-5-121(b) of the Code. As such, the Board heard a Preliminary Analysis from legal counsel on the same day and, after consideration and discussion of the issues presented, voted to issue this Advisory Opinion pursuant to Section 2-5-124(b)(4) of the Ethics Ordinance.

II. Information from the Request

The Requestor is a public servant and currently serves as [REDACTED] for the City of Detroit (“City”). As [REDACTED], the Requestor is [REDACTED] and is responsible for providing legal services to the City, its constituent branches, units, and agencies of government. At times, these services are rendered by outside counsel, which is engaged and paid for through the Law Department.

The question presented to the Board is whether the Requestor may accept employment with a private entity that does business with the City, given that the prospective employment would not require the sharing of confidential information and that Requestor neither awarded nor managed the entity’s contract with the City? The Requestor has indicated that for a one-year period after beginning employment with the private entity, he will recuse himself from any and all City of Detroit matters.

III. Applicable Charter and Ordinance Provisions

Section 2-106.1 of the 2012 Detroit City Charter, *Ethical Standard of Conduct*, provides that the purpose of applying and enforcing these 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 2-106.5 of the 2012 Detroit City Charter, codified at Section 2-5-71 of the 2019 Detroit City Code. It states as follows:

Sec. 2-5-71. – One year Post-Employment Prohibition.

- (a) Subject to state law, for one year after employment with the City, a public servant shall not lobby or appear before the City Council or any City department, agency, board, commission or body, or receive compensation for any services in connection with any matter in which the public servant was directly concerned, personally participated, actively considered or acquired knowledge while working for the City.
- (b) Subject to state law, for one year after employment with the City, a public servant shall not accept employment with any person who, or entity which, did business with the City during the former public servant's tenure where the public servant was in any way involved in the award or management of the contract, or the employment would require the sharing of confidential information.

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

The first part of Section 2-106.5 of the Charter, and Section 2-5-71(a) of the Code, provides guidance about a public servant’s lobbying, advocacy, and receiving compensation for a matter over which the public servant had control over or obtained knowledge as part of their official duties for the City. As such, for one (1) year after the Requestor’s employment with the City, he cannot personally lobby or appear before City Council (or any board, commission, department, agency or

body), or receive any compensation in connection with any matter that he was directly concerned, personally participated, actively considered, or acquired knowledge of as part of his official duties during his tenure.

The second part of Section 2-106.5 of the Charter, Section 2-5-71(b) of the Code, prohibits a public servant from accepting employment with an outside entity where the employment would require the sharing of confidential City information or if the servant had influence over the award or management of a contract to that entity. Supplemental information provided to the Board shows that Requestor was [REDACTED] in January 2018.

The private entity at issue, [REDACTED] has provided legal services to the City on a variety of matters, and for many years. Recently, [REDACTED] served as outside counsel to the City's Law Department during bankruptcy proceedings that began in July 2013 and continued until November 2014. During this time, [REDACTED] was [REDACTED]. Sometime after the City exited bankruptcy, [REDACTED] negotiated a fee agreement with [REDACTED], which called for an 8% discount on all attorney fees except bankruptcy attorneys [REDACTED]'s bankruptcy attorneys' rates were roughly 60% less than Jones Day's). The same [REDACTED] fee schedule continues in effect today and, at all times thereafter (including after Requestor became [REDACTED]), Deputy [REDACTED] has been the sole manager of the [REDACTED] contract.

Deputy [REDACTED] was, and continues to be, solely responsible for determining the terms and conditions of proposed amendments to the contract; although at times, he has consulted on those matters with the City's Office of Chief Financial Officer ("OCFO"). Similarly, Deputy [REDACTED] has solely approved all of [REDACTED] invoices although, on occasion, has consulted with OCFO when the matter involves that office. When questions regarding the contract have arisen, Deputy [REDACTED] has been the City representative with whom [REDACTED] has communicated.

Lastly, most of the work [REDACTED] has performed for the City over the years has been bankruptcy related. Thus, Deputy [REDACTED] has been the sole or primary City contact, although on occasion, OCFO has been involved. Other work performed by [REDACTED] for the City has mostly involved bond and transactional matters on which [REDACTED] has dealt with the OCFO or City departments, such as the jobs and economy team. [REDACTED]C has done some litigation work for the City, although Deputy [REDACTED] has limited that to the extent possible because of their high rates relative to other firms the Law Department uses for litigation.

Therefore, because nothing suggests that employment with [REDACTED] would require the sharing of confidential City information and the Requestor was not involved with the award or management of the [REDACTED] contract during his tenure as a public servant, he is not subject to the one-year post-employment prohibition of Section 2-106.5 of the Charter and Section 2-5-71(b) of the Code.

[The Conclusion Follows on the Next Page]

V. Conclusion

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 2021-18.

For a period of one year following the end of his employment with the City, pursuant to Section 2-5-71(a), the following restrictions will apply to the Requestor:

- The Requestor must not lobby, or appear before, the City Council or any department, agency, board, commission, or other body of the City in relation to any matter that he was directly concerned with, personally participated in, actively considered, or acquired knowledge about, while he was in the course of performing his official duties for the City.
- The Requestor must not receive compensation for performing any services in relation to any matter that he was directly concerned with, personally participated in, actively considered, or acquired knowledge of, while he was in the course of performing his official duties for the City.

The above restrictions would include any projects in which the Requestor was directly concerned, personally participated, actively considered, or acquired knowledge about while working for the City.

Additionally, for a period of one year following the end of the Requestor's employment with the City, pursuant to Section 2-5-71(b) of the Code, the Requestor must not accept employment with any person who, or entity that, provided goods or services to the City pursuant to a contract, other than a personal services contract with the Requestor, if:

- The Requestor was in any way involved in the award or management of the contract pursuant to which the person or entity provided goods or services to the City while he was a public servant; or
- The employment would require the Requestor to share confidential information, which refers to information that is 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 applicable laws, and that the public servant is not authorized to disclose.

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