

Advisory Opinion #2021-03
Issued: May 28, 2021

Advisory Opinion #2021-03: 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 2021-03. The Requestor is not in violation of the disclosure requirements set forth by Section 2-5-31 of the Ethics Ordinance because the Requestor does not have a financial interest in any contract or pending matter that comes before the [REDACTED] over which he exercises significant authority.

I. Procedural Background

Request for Advisory Opinion 2021-03 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on January 28, 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”).

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 April 29, 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 July 29, 2021.

At its meeting on March 16, 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 heard 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

The Requestor is a [REDACTED] under the [REDACTED]. In relevant part, he states:

Due to my previous Board Experience, expertise, and volunteer work and leadership in the community I was recently nominated and awarded to serve as a Board Member on an [REDACTED] for [REDACTED]. The person who nominated me for the role previously worked for the [REDACTED] [REDACTED] 2 years ago, [REDACTED]. As a [REDACTED]. She was aware of my volunteer work in the Community experience. As an [REDACTED] [REDACTED] I am to work with the [REDACTED] team and Board (outside of business hours) to give insight and ideas on how [REDACTED] would reach Millennials the next generation. Additionally, this nomination and Board Position comes with an honorarium of \$10,000. The term limit is one year.

The Request seeks an advisory opinion regarding the applicability of the Disclosure Requirements as to the Requestor prospectively serving as a Board Member on an ██████████ ██████████ for ██████████. By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 Detroit City Code.

III. Applicable Charter Sections

Section 2-106.1, *Ethical Standards of Conduct*, of the 2012 Detroit City Charter provides requirements and standards to ensure that governmental decisions are made in the public's best interest. One way this purpose is executed is by prohibiting public servants from participating in matters that affect their personal or financial interests. This Request involves Section 2-106.2, *Disclosures*, of the 2012 Detroit City Charter, codified at Section 2-5-71 of the 2019 Detroit City Code. The Code states as follows:

Section 2-5-31. - 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 the public servant or an immediate family member has in any contract or matter pending before City Council;

(2) Any financial interest, direct or indirect, that the public servant 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 the public servant, 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.

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

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

Section 2-5-31 of the 2019 Detroit City Code only pertains to public servants who “exercise significant authority.”¹ The Requestor identifies his job duties as follows:

¹ *Exercises significant authority* means having the ability to influence the outcome of a decision on behalf of the City government in the course of the performance of a public servant’s duties and responsibilities. Section 2-5-3.

The [REDACTED] performs a variety of program and project management functions including but not limited to:

- Provides advisory services to the [REDACTED] and [REDACTED];
- Supports the goals, objectives, strategies, and policies of the [REDACTED];
- Sources and conducts due diligence on development projects, including private companies, foundations, and funds for PRI, MRI, and impact development investments;
- Evaluates and communicates the risk/reward potential for foundations, private investments, and funds.
- Writes and manages successful grant proposals;
- Manages special projects and provides oversight and guidance to projects of high importance;
- Promotes, structures and negotiates innovative public and private partnerships with foundation and philanthropic business leaders to support City of Detroit initiatives;
- Coordinates with City Executives, City Agencies, nonprofit partners, foundations, state and federal agencies around grant opportunities;
- Tracks public and private grant and strategic resource announcements and competing proposals from other cities;
- Researches develops and requests mobility funding from local, state, federal and philanthropic sources;
- Coordinates complex grant applications between City Agencies, external partners and stakeholders;
- Works with City Agencies to find innovative solutions to fill revenue shortfalls;
- Evaluates and recommends changes to City Agencies to ensure effective cooperation in the development of successful grant proposals; and
- Develops processes for best practices informed by successful and unsuccessful funding applications.

Upon review of the Requestor's duties and responsibilities to the City of Detroit, it does not appear that Requestor exercises significant authority as contemplated by the ordinance.

The Commentary of Section 2-5-31 provides an excellent summary of the implementation of the Charter's directive as requiring "the disclosure of any financial interest, which a public servant, or his or her immediate family member,² has in any contract or in any real or personal property, that is the subject of a governmental decision by the city or any agency of the city over which the public servant exercises significant authority in the performance of his or her duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.310 *et seq.*" Accordingly, Section 2-5-31 is not implicated by the Request.

² *Immediate family member* means: (1) A public servant's spouse; or (2) A public servant's domestic partner; or (3) An individual claimed by a public servant or a public servant's spouse as a dependent under the United States Internal Revenue Code, being 26 USC1 *et seq.*, or (4) An individual who lives in the household of a public servant.

Additionally, the information obtained by the Board's staff indicates that the Requestor has put voluntary safeguards in place to ensure that there are no violations of the Ethics Ordinance. Such safeguards include a Statement of Intent to inform the [REDACTED] that Requestor will recuse himself on any City of Detroit voting matters, a Conflict of Interest Workflow Plan that has been approved by Requestor's supervisor, and the completion of the outside employment form also approved by Requestors Supervisor.

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 2021-03. The Requestor is not in violation of the disclosure requirements set forth by Section 2-5-31 of the Ethics Ordinance and is encouraged to continue using the voluntary safeguards that the Requestor has put in place.