

City of Detroit Board of Ethics

Kristin Lusn, Esq., Vice Chairperson
Rev. Dr. Charles C. Adams
Beth Greenberg Morrow, Esq.
Freda G. Sampson
Hon. Alma G. Stallworth
Robert Watt

**Advisory Opinion #2018-03
Issued: May 15, 2018**

Advisory Opinion #2018-03: The Ethics Ordinance does not require the Requestor to make a disclosure requirement until there is a matter pending before Council or within any office, department, or agency, or real or personal property subject to a decision by the City regarding purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement or a development agreement.

I. Procedural Background

Request for Advisory Opinion 2018-03 (the “Request”) is dated February 20, 2018, and was submitted electronically to the Board of Ethics (the “Board”). The Request was submitted by a current public servant as defined by Section 2-6-3 of the Detroit Ethics Ordinance (the “Ordinance”) who did not waive confidentiality with respect to identity.

At its meeting on May 15, 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. At that meeting the Board reviewed a Preliminary Analysis of the Request. On September 18, 2018, after consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion pursuant to Section 2-6-104(b)(4) of the Ordinance.

II. Facts Alleged In the Request

In the Request, the Requestor states:

██████████,* a not for profit consulting agency, has been consulting (pro bono/ gratis) with City of Detroit on a number of issues since January of 2016. This includes the formation of my office, the Office of OOfficcee. As part of this endeavor, ██████████ Associates has

offered to pay for airfare, lodging, and other expenses for me and my team (5 total) to travel to New York City to learn from practitioners of municipal [work]* in NYC, observe specific projects relevant to this work, and develop a more informed strategy as an office. My office currently does not have a budget for such travel or professional development and we would benefit greatly from learning from those who have been involved in this work for many years. It would help forward the movement and activities of our office in a concerted way that only learning for experienced peers can.

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

III. Applicable Charter Sections

This Request involves Section 2-106.2 of the 2012 Detroit City Charter codified at Sec. 2-6-71.

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.

*the name has been changed to protect the confidentiality of the process

IV. Application of the Charter to the Facts Presented

It appears that the Requestor is prohibited from accepting this trip. The parties are “doing business.” It does not matter that services are rendered by a nonprofit or that there is no remuneration or that this activity is outside of Requestor’s budget. It fits none of the exceptions. Additionally, the City and ██████████ Associates have an operating agreement. Within the agreement, it explains that travel costs are covered by the City and not by ██████████ Associates.

While this activity is in violation of the gifts and gratuity prohibition, the Requestor appears to have operated in good faith. At the onset, he sent two emails and made no less than four telephone calls to this office requesting guidance. He contacted us on February 9, 2018, informed us that the travel dates were March 7 through March 9, 2018. He was directed to act in the best interest of the residents of the City and told the time requirements of the process. He was also told that the Board of Ethics has no method to expedite his Request.

The recommendation for Request for Advisory Opinion 2018-03 in accordance with Sec. 2-6-104(b)(4) is to issue an advisory opinion in response to the request that adopts the opinion of legal counsel.

Additionally, the Requestor is strongly encourage to discuss issues of this nature with his leadership, review all memorandums of understanding, contracts, and consulting agreement to determine if travel is addressed. Requestor should act according to the binding agreement before embarking on travel or other activities that could be construed as a gift or gratuity.

V. Conclusion

The Board of Ethics concludes the Request for Advisory Opinion 2018-06 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the request that shows no requirement to file a disclosure requirement based on Sec. 2-6-31 and strongly encourages the Requestor to impart care when seeking to invest in the City of Detroit.

Detroit Board of Ethics
7737 Kercheval, Suite 213
Detroit, MI 48214
www.detroitmi.gov/boardofethics
(313) 224-9521

Dated: October 30, 2018

*the name has been changed to protect the confidentiality of the process