

*City of Detroit Board of Ethics*

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**Advisory Opinion #2019-07**  
**Issued: June 18, 2019**

**Advisory Opinion #2019-07:** The Board of Ethics concludes the Request for Advisory Opinion 2019-07 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion. The Board determines that the Requestor, as a public servant, may not assist an outside entity or third parties with grant writing activities because it is a conflict under Sec. 2-6-62, 2-6-63, 2-6-65, and Sec. 2-6-66 of the Ordinance.

**I. Procedural Background**

A Public Servant filed Request for Advisory Opinion 2019-07 (“Request”) on February 22, 2019. As defined by Section 2-6-3 of the Detroit Ethics Ordinance (“Ordinance”), only a public servant may submit a Request. In this Request, the Public Servant has maintained confidentiality with respect to identity. As required by the Ethics Ordinance, the Public Servant signed and submitted the Request in writing.

At its meeting on April 16, 2019, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. The Board also reviewed a privileged and confidential Preliminary Analysis of the Request. The 91-day deadline was May 24, 2019. At this meeting, the Board of Ethics allowed an extension of the investigation for an additional 91 days, making the new deadline August 23, 2019. On June 18, 2019, the Board heard an investigative report. After consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion pursuant Section 2-6-104(b)(4) of the Ethics Ordinance.

## II. Facts Alleged In the Request

The Requestor states:

Two concerns:

1. Would you please advise on whether or not it would be appropriate to use this [REDACTED] to support [REDACTED] in seeking out finding opportunities through grants.
2. Would it be appropriate to be paid both an administrative fee for work done and a percentage payment for any grant writing or fund seeking beyond administrative pay from the City of Detroit?

The Requestor seeks an opinion on whether (1) as a staff in [REDACTED] may she also perform grant writing or fund seeking activities on behalf of the district as part of her employment with the City and (2) be paid both an administrative fee for outside work and a percentage payment from any grant writing without violating the 2012 Detroit City Charter or 1984 Detroit City Code.

## III. Applicable Charter Sections

The 2012 Detroit City Charter provides at Section 2-106.1 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 2-106.1 of the 2012 Detroit City Charter codified at Sections 2-6-62, -63, -65, -66, and -67 of the Ethics Ordinance.

### **Sec. 2-6-62. - Improper use or disclosure of confidential information prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly use or disclose to third parties confidential information, which is gained by reason of his or her official duties, concerns the property, government or affairs of the city or any office, department or agency thereof, and is not available to members of the public.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 18-12, § 1, 7-31-12)

### **Sec. 2-6-63. - Disclosure of confidential information prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly use City property in violation of City policies and procedures.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 18-12, § 1, 7-31-12)

### **Sec. 2-6-65. - 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 his or her official duties for the city.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 18-12, § 1, 7-31-12)

**Sec. 2-6-66. 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; or

(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 he or she 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 he or she serves as an appointee or as an employee, or under a personal services contract, as long as he or she does so:

- a. Without compensation; and
- b. On his or her leave time; and
- c. For appointees, in accordance with Chapter 13, Article V, of this Code; or
- d. For non-union employees, in accordance with Chapter 13, Article V, of this Code and the City's Civil Service Rules; or
- e. For union employees, in accordance with his or her respective union contract and the city's civil service rules; or
- f. For individuals who provide services to the City of Detroit pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

**Sec. 2-6-67. Self-interested regulation prohibited.**

Except as otherwise provided for by applicable law, 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 with any business entity in which he or she or an immediate family member has a financial interest.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 18-12, § 1, 7-31-12)

#### **IV. Application of the Charter to the Facts Presented**

To provide outside assistance to an outside entity would violate Sections 2-6-62 and 2-6-63. The Requestor would have to use City resources and City information for an outside entity. This would entail using City resources for personal gain or commercial gain.

Even though assisting with grant writing activities to support entities in a District appears to be acceptable "official duties," conflicts could arise between Requestor's work for the outside entity and Requestor's responsibilities to [REDACTED] as a body, and the City of Detroit as a public corporation. These interests may not always align.

Sec. 2-6-66 allows public servants to perform work for outside entities if they meet the exception in subpart (3). The exception includes, but are not limited to, performing the service on your own time and performing the service for no compensation. The circumstance in this instance do not meet the requirements of the exception. As such, these activities would violate Section 2-6-66.

The Commentary to Sec. 2-6-66 recognizes the inherent high risk for the presence of a conflict of interest in situations where a public servant receives compensation from the city and represents an outside entity before the same voting body that employs the public servant. The City recognizes an interest in permitting a compensated public servant to volunteer for the community by appearing before a city agency on behalf of another.

Additionally, a Council Member or supervisor cannot direct or authorize staff, such as Requestor, to work on behalf of an outside entity without violation of Sec. 2-6-66. Requestor could "volunteer" independently to provide grant-writing efforts (inclusive of advice and general assistance) to an outside entity so long as they adhered to the exceptions contained in Sec. 2-6-66.

However, even with strict adherence to the exceptions, Requestor must use extreme caution to avoid the perception that "volunteer" activities are City sanctioned or City authorized. City Remuneration (salary) and outside entities payments (percentage payments and/or administrative fees, etc.) for these volunteer activities are strictly prohibited under the Ordinance.

Also in the present situation, the City and the outside entity would compensate the Requestor so it is not volunteer services and the perception that such service or advice is "sanctioned" by the City would be very high. In addition, this payment arrangement constitutes "double dipping" i.e. double payment for the same work and the 2012 Detroit City Charter and 1984 Detroit City Code prohibit this action.

When a Council Member or supervision directs staff to assist an outside entity, not associated with the City, naturally leads us to an analysis of Sec. 2-6-62.

As a public servant employed by the legislative body, a staff member would have access to information that a third party would likely not have regarding City operations or City resources. As such, this sharing of information would be a violation.

Therefore, a [REDACTED] direct Requestor to assist an outside entity with grant writing activities. A staff member may volunteer in their personal time while adhering to the parameters of the exceptions outlined in the Ordinance. Alternatively, Requestor could perform grant-writing activities for third parties for remuneration on her personal time without using City resources or information, as long as those activities are not in conflict with her responsibilities to [REDACTED]

## **V. Conclusion**

The Board of Ethics concludes the Request for Advisory Opinion 2019-07 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion. The Board determines that the Requestor's activities would be violations of under Sec. 2-6-62, 2-6-63, 2-6-65, and Sec. 2-6-66. The Requestor, as a public servant, may not assist an outside entity or third parties with grant writing activities because it is a conflict under Sec. 2-6-62, 2-6-63, 2-6-65, and Sec. 2-6-66 of the Ordinance.

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