

City of Detroit Board of Ethics

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Advisory Opinion 2018-09

Issued: May 21, 2019

Advisory Opinion 2018-09: The Board of Ethics determined the Requestor's involvement and partial ownership in [REDACTED], [REDACTED] constitutes a conflict under the 2012 Detroit City Charter and corresponding provisions of the 1984 Detroit City Code. Requestor's actions to exclude himself from the operation of the LLC were appropriate. The department must create a procedure that removes Requestor from decision making regarding property held by his LLC.

For his other properties, Requestor must file a notarized disclosure under Section 2-6-31 as he has a direct or indirect financial interest (or interest in real or personal property) in a contract or matter pending before Council or other agency or department of the City.

I. Procedural Background

Requestor filed this Request for Advisory Opinion 2018-09 (the "Request") on August 16, 2018. Requestor falls under the definition of public servant as defined Section 2-6-3 of the Detroit Ethics Ordinance (the "Ordinance") and in accordance with Sec. 2-6-101; his inquiry is about his conduct. The Requestor did not waive confidentiality with respect to identity.

At its meeting on September 18, 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 its meeting on April 16, 2019, the Board reviewed a Privileged and Confidential Preliminary Analysis of the Request and allowed a 91-day extension of time. On May 21, 2019, 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 wrote:

Requestor request an advisory opinion on the disclosures provided whether a conflict of interest exist in my position as [REDACTED]. Specifically as it relates to [REDACTED] Prentis filing for a [REDACTED]. If a conflict of interest is identified, I request an action that will alleviate that conflict.

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

Along with the Request form, the Requestor attached the following.

Letter to the Board of Ethics
 Public Servant Disclosure of Interest form
 The Operating Agreement – [REDACTED]
 Amendment to [REDACTED] Operating Agreement
 Articles of Organization – [REDACTED]
 Resignation of Resident Agent

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 2-106.4 of the 2012 Detroit City Charter codified at Sections 2-6-62, Section 2-6-67, and Section 2-6-68 of the Ethics Ordinance, which state as follows:

Sec. 2-6-31. - 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 he 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 he 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 he 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.

(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.

(Ord. No. 18-12, § 1, 7-31-12)

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. 2-6-67. 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.

Sec. 2-6-68. - Improper use of official position prohibited.*

Except as otherwise provided for by applicable law, a public servant shall not knowingly use his or her official position in violation of applicable law, to improperly influence a decision of the mayor, of the city council, of the city clerk, or of a member of a city authority, board, commission, committee, council or group, or other city agency.

(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

Collectively, the standards of conduct in these three City Code standards of conduct seek to prevent a public servant from sharing non-public information," prohibit self-dealing and improperly influencing other decision-makers while the disclosure requirement seeks to required disclosure of financial interest.

The Requestor was quite thorough with his documentation. In the Letter to the Board of Ethics, he divulged all of his properties and included a Disclosure of Interest form. He also took prospective steps to avoid a conflict of interest. This included resignation as the resident agent from the entity that owns the property and amendments to its Operating Agreement. In the Amended Operating Agreement, he takes a lesser role to avoid using confidential information to further his personal goals.

While the Requestor's disinvestment in the operation of the LLC and internal firewall at [REDACTED] shields him from potential violation of Sec. 2-6-67 (in regard to self-dealing), caution should be used in any future interactions with the LLC to avoid information sharing. Additionally, Requestor must refrain from advocacy efforts on behalf of the LLC with any City department or agency (including approvals from the Assessor's Division, City Planning Commission, Planning Dept. or matters before City Council for formal action).

Requestor should take similar action regarding his other real property holdings on [REDACTED] and [REDACTED] streets. Given Requestor's real property holdings, heightened awareness is required relative to all three Code sections cited above as the continuing nature of the relationship and direct financial interest.

Requestor's department should create a formal internal process that creates a shield to keep him or any other member of his department from participating in City services that involve his properties.

V. Conclusion

The Board of Ethics concludes the Request for Advisory Opinion 2019-01 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the request. The Requestor involvement and partial ownership in [REDACTED], LLC constituted a conflict under the 2012 Detroit City Charter and corresponding provisions of the 1984 Detroit City Code. However, Requestor's actions to exclude himself formally from the operation of the LLC and to request a departmental firewall is appropriate.

Given Requestor's employment with the City, similar actions should be taken relative to the [REDACTED] and [REDACTED] properties. The Requestor, under the information presented, is required to file a notarized disclosure under Section 2-6-31 as he has a direct or indirect financial interest (or interest in real or personal property) in a contract or matter pending before Council or other agency or department of the City. Formal disclosure of the interest in [REDACTED] and [REDACTED] properties is required.

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Dated: June 17, 2019