

City of Detroit Board of Ethics

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Advisory Opinion #2018-16
Issued: May 21, 2019

Advisory Opinion #2018-16: The Board of Ethics concluded the Request for Advisory Opinion 2018-16 in accordance with Sec. 2-6-104(b)(4) and issues an advisory opinion that the Requestor would be in violation should she accept the stipend. Additionally, the Board of Ethics recommends the City develop consistent parameters around Election Day opportunities for employees.

I. Procedural Background

The Public Servant filed the Request for Advisory Opinion 2018-16 (the “Request”) on November 21, 2018, and sent it to the Board of Ethics (the “Board”) by electronic communication. As defined by Section 2-6-3 of the Detroit Ethics Ordinance (the “Ordinance”), only a public servant may submit a Request. The Public Servant maintains confidentiality with respect to identity. As required by the Ethics Ordinance, the Public Servant signed and submitted the Request in writing and with notary.

At its meeting on February 20, 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 this meeting, the Board of Ethics allowed an extension of the investigation for an additional 91 days. the Board also reviewed a Preliminary Analysis of the Request. 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 states:

As a City employee, am I allowed to work for the [REDACTED]
handling [REDACTED]? My job now includes [REDACTED]
[REDACTED]. Can I get paid for it?

The question presented to the Board of Ethics is whether Requestor can accept the stipend for her volunteer efforts with another department without violation of 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 2-6-31, -62, -65, -66, and -67 of the Ethics Ordinance. It states 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.

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.

IV. Application of the Charter to the Facts Presented

Under Sec. 2-6-65, Incompatible Employment Or Rendering Services Prohibited, there is a conflict. While it is well within the administration's authority to provide employees a stipend for volunteering to work at election polls, the spirit of the activity is to increase overall volunteer activity at the polls. For this opportunity, the City, through the Department of Elections and Department of Human Resources, asked employees to work at the polls rather than work in their regular department.

In this instance, the Requestor goes to her regular place of work during her regular hours (not the poll or the poll hours). She performs her regular work (which happens to include work generated by the elections). As the Requestor put it, "It didn't seem right to get a stipend for nothing."

The Election Department requests her to perform work that she normally performs during her work hours. The Elections Department will provide her a stipend for this extra work in addition to her regular salary.

The prohibition states, "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.

The Requestor did report that she is able to meet the needs of the Elections Department and properly perform her normal duties within her normal hours. This activity seems to be incompatible because she is receiving two payments for one service, a service that she perform as part of her regular job duties, during her regular hours.

Additionally, there appears to be a conflict of policy. During this investigation, some employees reported that their department heads directed them to take personal time off (vacation days or other) to work at the polls on Election Day. Key departments (Dept. Of Elections, Labor Relations, Law Department, and Human Resources) should strategize to develop a fair consistent policy for all employees.

V. Conclusion

The Board of Ethics concluded the Request for Advisory Opinion 2018-16 in accordance with Sec. 2-6-104(b)(4) and issues an advisory opinion that the Requestor would be in violation should she accept the stipend. Additionally, the Board of Ethics recommends the City develop consistent parameters around Election Day opportunities for employees.

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Dated: June 17, 2019