

City of Detroit Board of Ethics

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Advisory Opinion #2019-26
Issued: March 5, 2020

Advisory Opinion #2019-26: The Board of Ethics concludes the Request for Advisory Opinion 2019-26 by following Sec. 2-6-104(b)(4) and issues this advisory opinion. If Requestor was employed by the City pursuant to a personal services contract, the prohibition set forth in Sec. 2-106.5 of the 2012 Detroit City Charter and Sec. 2-5-71 or the 2019 Detroit City Code are inapplicable as personal services contracts are specifically exempted from the one-year post-employment prohibitions even though personal service contracts are included in the definition of public servant. If Requestor was not employed under a personal services contract, the one-year post employment prohibitions set forth in the above analysis are applicable to his professional activities with the City, if any, from January 1, 2020 through December 31, 2020. Requestor should also be advised that as a former public servant, he is able to submit Requests for Advisory Opinions under Section 2-5-121 (a) should he need additional guidance in the future. Requestor should also be advised that disclosure requirements under Division 2, Section 2-5-34, Disclosure of interests by contractors and vendors, and Section 2-5-35, Lobbying registration and reporting, are required should he wish to directly engage with the City when any applicable one-year post employment restrictions expire on December 31, 2020.

I. Procedural Background

A Public Servant (Requestor) filed Request for Advisory Opinion 2019-26 (“Request”) on December 04, 2019. As defined by Section 2-6-3 of the Detroit Ethics Ordinance (“Ordinance”), only a public servant may submit a Request *about their own activity*. In this Request, the Public Servant has kept confidentiality concerning identity. As required by the Ethics Ordinance, the Public Servant signed and submitted the Request in writing.

At its meeting on March 05, 2020, 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 is March 04, 2020. At this meeting, the Board of Ethics allowed an extension of the investigation for an additional 91 days, making the new deadline on June 04, 2020. After consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion pursuant to Section 2-5-124(b)(4) of the Ethics Ordinance.

II. Facts Alleged In the Request

The Requestor states:

I am a City of Detroit employee who is resigning on [date redacted]. When I move on to the private sector, I will be starting my own business in the [REDACTED] in regards to my resignation, I am seeking guidance on the one year post employment prohibition, in 2-5-71 of the 2019 City Code. I do not intend to appear before City Council in regards to projects I have worked on while working at the city of Detroit, but was seeking clarity on new project I will embark upon while in the private sector.

Because he is leaving City employment, Requestor seeks to gain clarity about the one year post employment prohibition and whether it conflicts with his plan to venture into the real estate development industry. We look to the 2012 Detroit City Charter and the 2019 Detroit City Code for guidance.

III. Applicable Charter Sections

The 2012 Detroit City Charter provides in 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 2-106.5 of the 2012 Detroit City Charter codified at Sections 2-5-71 of the Ethics Ordinance.

Sec. 2-5-71. - One year post-employment prohibition.

(a) Subject to state law, for one year after employment with the City, a public servant shall not lobby or appear before the City Council or any City department, agency, board, commission or body, or receive compensation for any services in connection with any matter in which the public servant was directly concerned, personally participated, actively considered or acquired knowledge while working for the City.

(b) Subject to state law, for one year after employment with the City, a public servant shall not accept employment with any person who, or entity which, did business with the City during the former public servant's tenure where the public servant was in any way involved in the award or management of the contract, or the employment would require the sharing of confidential information.

(Code 1984, § 2-6-72; Ord. No. 18-12, § 1(2-6-72), eff. 8-31-2012)

IV. Application of the Charter to the Facts Presented

The first paragraph of the One Year Post Employment Prohibition (Sec. 2-106.5) addresses lobbying/advocacy or the receipt of compensation by a public servant for a matter in which they would have control over or obtained knowledge of as part of their official duties for the City. The second paragraph prohibits public servants from accepting employment with an outside entity, where they had influence over the awarding or management of a contract to that entity or if such employment would require sharing confidential City information. This prohibition applies to public servants within 1-year of leaving City employment. The prohibition on outside employment expires after the one-year period has concluded. Therefore, if Requestor has resigned his City employment effective December 31, 2019, the one-year period will expire on December 31, 2020.

If the Requestor was engaged under a personal services contract, the prohibitions set forth in Sec. 2-106.5 of the Charter and Sec. 2-5-71 of the Code are inapplicable as they are specifically exempted in the one-year post employment prohibitions even though personal service contracts are included in the definition of public servant. If he was not employed under a personal services contract, Requestor is subject to the following:

Under both the first paragraph of Section 2-106.5 the Charter and Section 2-5-71 (a) of the City Code, from January 1, 2020 through December 31, 2020, Requestor cannot personally lobby or appear before City Council (or any board, commission, department, agency or body) or receive compensation in connection with a matter in which he was directly concerned, personally participated, actively considered or acquired knowledge during his City employment as part of his official duties. Therefore, Requestor is free to engage in lobbying activity and/or personally appear before City Council or any board, commission, department, agency or body, or receive compensation in connection with any matter in which he was not directly concerned, personally participated, actively considered or acquired knowledge as part of his direct or official employment duties with the City.

Under both the second paragraph of Section 2-106.5 the Charter and Section 2-5-71 (b) of the City Code, from January 1, 2020, through December 31, 2020, Requestor cannot accept direct employment with any person or entity that did business with the City and the Requestor was in any way involved in the award or management of the contract or the employment would require the sharing of confidential information not available to the general public. As Requestor has indicated, he will be forming his own company and is not being employed by an entity so this provision is inapplicable at this time. Requestor should be mindful if he were to explore employment opportunities that could run afoul of this prohibition during that timeframe.

V. Conclusion

The Board of Ethics concludes the Request for Advisory Opinion 2019-26 in accordance with Sec. 2-5-124(b)(4) and issues this advisory opinion.

If Requestor was employed by the City pursuant to a personal services contract, the prohibition set forth in Sec. 2-106.5 of the 2012 Detroit City Charter and Sec. 2-5-71 or the 2019 Detroit City Code are inapplicable as personal services contracts are specifically exempted from the one-year post-employment prohibitions even though personal service contracts are included in the definition of public servant.

If Requestor was not employed under a personal services contract, the one-year post employment prohibitions set forth in the above analysis are applicable to his professional activities with the City, if any, from January 1, 2020 through December 31, 2020. Requestor should also be advised that as a former public servant, he is able to submit Requests for Advisory Opinions under Section 2-5-121 (a) should he need additional guidance in the future. Requestor should also be advised that disclosure requirements under Division 2, Section 2-5-34, Disclosure of interests by contractors and vendors, and Section 2-5-35, Lobbying registration and reporting, are required should he wish to directly engage with the City when any applicable one-year post employment restrictions expire on December 31, 2020.

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Dated: April 2, 2020