

*City of Detroit Board of Ethics*

Kristin Lusn, Esq., Chairperson  
Freda G. Sampson, Vice Chairperson  
David W. Jones, Esq.  
Mario Morrow, Sr.  
Byron Osbern  
Robert Watt

**Advisory Opinion #2020-11**

**Issued: July 21, 2020**

**Advisory Opinion #2020-11:** It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2020-11. The Requestor may not accept employment from a contractor if the Requestor was involved, in any way, with the award or management of a contract pursuant to which the contractor provided services to the City during the Requestor's tenure as a public servant. The Requestor must wait until a year has passed from the date that he was laid off from his job working for the City pursuant to a personal services contract.

Additionally, during that same time period, the Requestor may not accept employment from a contractor that did business with the City while the Requestor was a public servant if the Requestor's prospective employment with the contractor would require the Requestor to share information that was gained by Requestor's official duties as a public servant, i.e. information that is unavailable to members of the public, and that he has not been authorized to disclose. The Requestor is welcome to file another Request for Advisory Opinion when he has more details such as a specific contractor for whom he like to be employed.

**I. Procedural Background**

Request for Advisory Opinion 2020-11 (the "Request") was sent to the Board of Ethics (the "Board") by electronic communication and received on June 17, 2020. In accordance with Sec. 2-5-121, the Request was submitted by a former public servant as defined by Section 2-5-3 of the Detroit Ethics Ordinance (the "Ordinance"). The Public Servant maintains confidentiality in this matter.

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code (Code), the 91-day period for review of this request will conclude on September 17, 2020. Section 2-5-124(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by

not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on December 16, 2020.

At its meeting on July 21, 2020, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-5-121 of the Ordinance. The Board heard a Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board decided to issue the Advisory Opinion pursuant to Section 2-5-124(b)(4).

## **II. Information from the Request**

The Requestor is a former public servant who was employed under a personal services contract. The Requestor is considering potential employment with a City of Detroit contractor, a third party vendor who supplies services to the City. The Requestor was laid off due to the economic impact of the COVID-19 pandemic. The Requestor does not mention his former title or department. Although wanting to return to City employment, the Requestor asked whether a conflict of interest would result if he began working for a contractor that provided services to the City. The question presented to the Board is whether a former public servant who provided services on behalf of the city pursuant to a personal services contract may work for a contractor that provided services to the City. By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 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 2-106.4 of the 2012 Detroit City Charter codified at Sections 2-5-71 of the 2019 Detroit City Code. It states as follows:

### **IV. 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)

## V. Application of the Charter and Code to the Information Presented

There are two part to Section 2-5-71 of the Ethics Ordinance. One part applies to persons under personal services contracts while the other does not. In November 2012, the Detroit City Charter was amended to provide an exception to the prohibitions described in Section 2-5-71(a) of the Code for individuals who perform services for the City pursuant to a personal services contracts. Because the Requestor worked for the City under a personal services contract, and was not an employee or appointee of the City, Section 2-5-71(a) does not apply to the Requestor.

However, the Charter does not provide an exception from the prohibition described in Section 2-5-71(b) of the Code, like it does in respect to Section 2-5-71(a), for individuals who perform services for the City pursuant to a personal services contract. As such, the Requestor is subject to the restrictions provided in Section 2-5-71(b).

Section 2-5-71(b) of the Code provides that:

for a period of one year following the end of a public servant's employment with the City, the public servant is generally prohibited from accepting employment with any person who, or entity that, did business with the City pursuant to a contract (other than a personal services contract) while the public servant worked for the City if the public servant was involved in any way with the award or management of the contract, or if the employment with the person or entity would require sharing confidential information.

The Ethics Ordinance defines "confidential information" as the following:

[I]nformation that has been obtained by a public servant in the course of acting as a public servant, that is not available to members of the public pursuant to the Michigan Freedom of Information Act, . . . or pursuant to other law, regulation, policy or procedure recognized by law, and that the public servant is unauthorized to disclose.

Accordingly, for a period of one year starting from the date that Requestor's layoff began, the Requestor must not accept employment with any contractor that did business with the City pursuant to a contract (other than a personal services contract) while the Requestor was a public servant *if the Requestor was in any way involved in either the award or management of the contract*, or if the employment *would require the Requestor to share information* that was obtained by the Requestor in the course of acting as a public servant, that is unavailable to members of the public, and that the Requestor has not been authorized to disclose.

Requestor could accept employment from a contractor who he was not involved with in either the award or management of the contract or where he is not required to share confidential information. The Requestor should be careful in determining what contractor he may pursue for employment.

## **VI. Conclusion**

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2020-11. The Requestor may not accept employment from a contractor if the Requestor was involved, in any way, with the award or management of a contract pursuant to which the contractor provided services to the City during the Requestor's tenure as a public servant. The Requestor must wait until a year has passed from the date that he was laid off from his job working for the City pursuant to a personal services contract.

Additionally, during that same time period, the Requestor may not accept employment from a contractor that did business with the City while the Requestor was a public servant if the Requestor's prospective employment with the contractor would require the Requestor to share information that was gained by Requestor's official duties as a public servant, i.e. information that is unavailable to members of the public, and that he has not been authorized to disclose.

The Requestor is welcome to file another Request for Advisory Opinion when he has more details such as a specific contractor for whom he like to be employed.

Detroit Board of Ethics  
7737 Kercheval, Suite 213  
Detroit, MI 48214  
(313) 224-9521 (office)  
ethics@detroitethics.org

Dated: August 26, 2020