

City of Detroit Board of Ethics

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Advisory Opinion #2020-04

Issued: May 13, 2020

Advisory Opinion #2020-04 It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) of the Code. The Requestor should refrain from using any City property for her service as a Wilderness Trip Leader. If she wishes to use any City property while on the Cranbrook Schools trip, then she should check the City's policies and procedures applicable to the DPRD and obtain approval from her supervisor to ensure that any such use of City property is permitted. Additionally, the Requestor's service as a Wilderness Trip Leader for the Cranbrook Schools trip is appropriate if she uses vacation to participate and the trip timing has no conflict with any of her work priorities for DPRD.

If the Requestor expects to receive compensation for her service as a Wilderness Trip Leader for Cranbrook Schools, she should complete a *Request for Approval of Outside Employment* form, which may be obtained from the DPRD's Human Resources Office, and submit the completed form to the head of the DPRD. The Requestor must receive permission from the head of the DPRD before she provides services for which she expects to be compensated by a non-City entity.

I. Procedural Background

Request for Advisory Opinion 2020-04 (the "Request") was sent to the Board of Ethics (the "Board") by electronic communication and received on February 04, 2020. In accordance with Sec. 2-6.101, the Request was submitted by a current public servant as defined by Section 2-6-3 of the Detroit Ethics Ordinance (the "Ordinance"). The Public Servant waives 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 May 05, 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 August 04, 2020.

At its meeting on May 13, 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 heard a Preliminary Analysis from legal council on the same day and 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. Information from the Request

The Requestor is a Naturalist for the DPRD. The Request asks for an advisory opinion regarding the Requestor's prospective service as a "Wilderness Trip Leader" for Cranbrook Schools on a trip with students of Cranbrook Schools during their Spring Break. Cranbrook Schools is a private school system with a campus in Bloomfield Hills where its schools are located. The Request indicates that the Requestor's prospective service as a Wilderness Trip Leader would be pursuant to a short-term contract.

The Requestor states that the Spring Break trip would be the only trip for which she would be a Wilderness Trip Leader this year. The Requestor also states that she will use vacation time for the days that she will be absent from her job with the City due to the trip. She also indicates that the trip will not conflict with any of her work duties for the DPRD, as there are no scheduled programs during the time when the trip will occur. According to the Requestor, "DPRD Nature Programs and Cranbrook Wilderness do not currently partner or contract with each other for nature programming."

The question presented to the Board is whether the Requestor may serve as a Wilderness Trip Leader for an event that is organized by Cranbrook Schools if the Requestor uses vacation days for that time. 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 2-5-62,-63 of the 2019 Detroit City Code. It states as follows:

Sec. 2-5-62. - 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 the public servant's 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.

(Code 1984, § 2-6-62; Ord. No. 18-12, § 1(2-6-62), eff. 8-31-2012)

Sec. 2-5-63. - Improper use of City property 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.

(Code 1984, § 2-6-63; Ord. No. 18-12, § 1(2-6-63), eff. 8-31-2012)

IV. Application of the Charter and Code to the Information Presented

In regard to Section 2-5-63 of the Ethics Ordinance, public servants are generally prohibited from using City property, which would violate the City's policies and procedures. The Requestor has not indicated whether she is considering using any City property during the trip or in relation to her service as a Wilderness Trip Leader for Cranbrook Schools. For the purpose of avoiding any potential violation of Section 2-5-63, the Requestor should either refrain from using any City property for her service as a Wilderness Trip Leader for Cranbrook Schools, or, if the Requestor does wish to use any City property for her service with Cranbrook Schools, the Requestor should check the City's policies and procedures applicable to the DPRD and obtain approval from her supervisor to ensure that the use of City property is permitted.

Section 2-5-64 of the Ethics Ordinance generally prohibits public servants from engaging in employment or rendering services for entities other than the City when doing so would be "in conflict or incompatible with the proper discharge of the public servant's official duties for the City," or when doing so would be "reasonably expected to impair the public servant's independence of judgment or action in the performance of the public servant's official duties for the City." The Requestor indicated that she will be using vacation days to participate in the trip with the Cranbrook Schools students. The Requestor also stated that the timing of the trip does not conflict with any of her work priorities for the DPRD, and that the DPRD does not have any scheduled programs during the time that the trip will occur. Accordingly, the Requestor's prospective service for the Cranbrook Schools trip does not seem to present any potential conflict or incompatibility with the Requestor's job duties for the DPRD. Furthermore, there does not seem to be any reason to believe that serving as a Wilderness Trip Leader for the Cranbrook Schools will affect the Requestor's independence of judgment or action in the performance of her official duties for the City.

Additionally, if the Requestor receives compensation for her service as a Wilderness Trip Leader for Cranbrook Schools, then she must ensure that she complies with the City's Outside Employment Policy. That policy requires City employees to notify and obtain approval from the head of their department or agency if they expect to begin or continue employment with an outside entity while a City employee.

According to the policy, "[a] *Request for Approval of outside Employment* form must be completed by the employee to notify his/her department or agency management of any current or future expected outside employment." The Requestor may obtain a *Request for Approval of outside Employment* form from the DPRD's Human Resources Office. If the Requestor expects to receive compensation for her service as a Wilderness Trip Leader, then she should submit a completed form to the head of the DPRD, and not begin work as a Wilderness Trip Leader for Cranbrook Schools until she receives approval from the head of the DPRD to do so.

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b) (4) of the Code. The Requestor should refrain from using any City property for her service as a Wilderness Trip Leader. If she wishes to use any City property while on the Cranbrook Schools trip, then she should check the City's policies and procedures applicable to the DPRD and obtain approval from her supervisor to ensure that any such use of City property is permitted. Additionally, the Requestor's service as a Wilderness Trip Leader for the Cranbrook Schools trip is appropriate if she uses vacation to participate and the trip timing has no conflict with any of her work priorities for DPRD.

If the Requestor expects to receive compensation for her service as a Wilderness Trip Leader for Cranbrook Schools, she should complete a *Request for Approval of Outside Employment* form, which may be obtained from the DPRD's Human Resources Office, and submit the completed form to the head of the DPRD. The Requestor must receive permission from the head of the DPRD before she provides services for which she expects to be compensated by a non-City entity.

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Dated: June 12, 2020