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REDACTED

Advisory Opinion #2019-18
Issued: April 21, 2020

Advisory Opinion #2019-18: The Board of Ethics concludes the Request for Advisory Opinion 2019-18 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the Request. The Requestor should avoid **any** participation in the process of obtaining the [REDACTED] Certificate that is pending before the City Council. If the Requestor represents the LLC before the City or any department, he may be in violation of the Ethics Ordinance. Although, the Requestor does not exercise significant authority and could not be in violation of Section 2-5-67, the Requestor, to be prudent, should avoid discussing the pending [REDACTED] tax abatement matter with City Council Members or their staff or engaging in other forms of interactions that could be reasonably interpreted as exerting pressure on City Council Members or others to influence their decision on the matter.

Although the Requestor does not seem to be at risk of violating Section 2-5-68 of the Code while working in his current position with the City, he could potentially violate that section if he were to receive a position with the City that would involve the exercise of significant authority while the LLC receives the benefit of a tax abatement from the City.

As it pertains to Section 2-5-68 of the Code, if the [REDACTED] Certificate were approved by the City Council, then the Requestor is prohibited from accepting money from the LLC if his position with the City involved the exercise of significant authority. However, the nature of the authority exercised by the Requestor, as described in the information provided with the Request and on the disclosure form, does not constitute the "exercise of significant authority."

I. Procedural Background

Request for Advisory Opinion 2019-18 (the “Request”) is dated November 7, 2019, and was sent to the Board of Ethics (the “Board”) by electronic communication and received on the same date. 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 requested confidentiality in this matter.

At its meeting on April 21, 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 and heard a Preliminary Analysis from legal council. On the same day, 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

In summation, the Requestor and his spouse own a limited liability corporation in the City of Detroit; each owns fifty percent of the business. The Requestor’s spouse is an employee of Detroit Economic Growth Corporation. The Requestor seeks an advisory opinion regarding the application of the Standards of Conduct as to the Requestor's partial ownership of a limited liability company (LLC) that has a pending application for a tax abatement for property owned by the LLC.

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 2-5-65, -66, -67 and -68 of the 2019 Detroit City Code.

It states as follows:

Sec. 2-5-65. - 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;
- (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 the public servant 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 the public servant serves as an appointee or as an employee, or under a personal services contract, as long as the public servant does so:

- a. Without compensation; and
- b. On the public servant's leave time; and
- c. For appointees, in accordance with Chapter 35, Article III, Division 2, of this Code, Vacation, Sick, Departmental, Funeral, and Jury Leave ; or
- d. For non-union employees, in accordance with Chapter 35, Article III, Division 2, of this Code, Vacation, Sick, Departmental, Funeral, and Jury Leave , and the City's Civil Service Rules; or
- e. For union employees, in accordance with the employee's respective union contract and the City's Civil Service Rules; or
- f. For individuals who provide services to the City pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

(Code 1984, § 2-6-66; Ord. No. 22-00, § 1(2-6-66), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-66), eff. 12-15-2006)

Sec. 2-5-66. - Self-interested regulation and participation 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 the public servant or an immediate family member has a financial interest.

(Code 1984, § 2-6-67; Ord. No. 22-00, § 1(2-6-67), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-67), eff. 8-31-2012)

Sec. 2-5-67. - Improper use of official position prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly use the public servant's 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.

(Code 1984, § 2-6-68; Ord. No. 22-00, § 1(2-6-68), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-68), eff. 8-31-2012)

Sec. 2-5-68. - Solicitation or acceptance of loan or payment prohibited.

A public servant who, in the course of the public servant's duties, exercises significant authority shall not solicit or accept a loan or payment from an individual who, or entity which, is providing service to, or receiving tax abatements, credits, or exemptions from the City.

(Code 1984, § 2-6-69; Ord. No. 18-12, § 1(2-6-69), eff. 8-31-2012)

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

As a public servant, the Requestor is subject to the relevant sections of the Ethics Ordinance cited above. The analysis is as follows.

Sec. 2-5-31. - Disclosure of interests by public servants.

Requestor should update, for the purpose of accuracy, his disclosure form to include his spouse's interest in the LLC and the property at 8431 Oakland Avenue because both are the interest of an immediate family member. However, the Requestor may not be required to disclose his interest in the matter pertaining to the OPRA tax abatement because he does not "exercise significant authority," as that phrase is defined in the Ethics Ordinance.

Sec. 2-5-65. - Representation of private person, business, or organization prohibited; exceptions.

Sec. 2-5-66. - Self-interested regulation and participation prohibited.

If Requestor meets an exception in Section 2-5-65 and represents the LLC and his family in the transaction to receive the [REDACTED], he may still be in violation of Section 2-5-66.

Requestor should avoid representing, or otherwise acting as an agent for the LLC in relation to its application for the [REDACTED] Certificate pending before the City Council, unless the Requestor does so without receiving compensation from the LLC and on his leave time in accordance with any applicable laws, policies, or contracts governing his leave time. However, even if the Requestor acts as an agent or representative of the LLC, in compliance with the relevant exception to Section 2-5-65 of the Code, he may still be in violation of Section 2-5-66 of the Code because of his and his spouse's financial interest in the LLC. Requestor may not participate.

Sec. 2-5-67. - Improper use of official position prohibited.

Additionally, Requestor is prohibited from using his position with the City to improperly influence a decision of the City Council. The Requestor has not provided any indication that he intends to improperly influence the City Council to make a certain decision regarding the [REDACTED] tax abatement.

Sec. 2-5-68. - Solicitation or acceptance of loan or payment prohibited.

The Requestor does not exercise significant authority as defined in the Ethics Ordinance and as such, he cannot be in violation of this Section.

V. Conclusion

The Board of Ethics concludes the Request for Advisory Opinion 2019-18 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the Request. The Requestor should avoid any participation in the process of obtaining the [REDACTED] Certificate that is pending before the City Council. If the Requestor represents the LLC before the City or any department, he may be in violation of the Ethics Ordinance.

Although, the Requestor does not exercise significant authority and could not be in violation of Section 2-5-67, to be prudent, the Requestor should avoid discussing the pending [REDACTED] tax

abatement matter with City Council Members or their staff or engaging in other forms of interactions that could be reasonably interpreted as exerting pressure on City Council Members or others to influence their decision on the matter.

Although the Requestor does not seem to be at risk of violating Section 2-5-68 of the Code while working in his current position with the City, he could potentially violate that section if he were to receive a position with the City that would involve the exercise of significant authority while the LLC receives the benefit of a tax abatement from the City.

As it pertains to Section 2-5-68 of the Code, if the [REDACTED] Certificate were approved by the City Council, then the Requestor is prohibited from accepting money from the LLC if his position with the City involved the exercise of significant authority. However, the nature of the authority exercised by the Requestor, as described in the information provided, does not constitute the "exercise of significant authority."

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Dated: May 15, 2020

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