

City of Detroit Board of Ethics

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Advisory Opinion #2019-28

Issued: May 13, 2020

Advisory Opinion #2019-28: 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 2019-28. Participating in the [REDACTED] program described in the Request would be a violation of Section 2-5-62 of the Ethics Ordinance because of the Requestor receives information in the course of performing their duties as [REDACTED] that is not publicly available and could be relevant to property that is available through the [REDACTED] program. The Requestor is advised that their organization's participation in the [REDACTED] program would be a violation of Section 2-5-64 of the Ethics Ordinance because it would comprise a financial interest in the [REDACTED]'s operations and the property that is subject to the [REDACTED] program, and that financial interest could reasonably be expected to impair the Requestor's independence of judgment or action in regard to their duties as a [REDACTED]. Furthermore, because the Requestor's job duties involve making decisions related to the disposition [REDACTED] by the [REDACTED], their organization's participation in the [REDACTED] program would constitute a violation of Section 2-5-66 of the Ethics Ordinance if they continued performing such job duties as [REDACTED]. Therefore, the Board of Ethics strongly discourages the Requestor from engaging in the conduct described in the Request because the participation would violate multiple sections of the Ethics Ordinance.

I. Procedural Background

Request for Advisory Opinion 2019-28 (the "Request") was sent to the Board of Ethics (the "Board") by electronic communication and received on December 10, 2019. 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 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 March 10, 2020. Section 2-5-1 24(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 June 08, 2020.

At its meeting on May 13, 2020, the Board determined that the Request will meet 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 requested additional legal analysis. The Board heard a supplemental preliminary analysis on May 22, 2020, at a Special Meeting 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 [REDACTED] for the City's [REDACTED]. The Request seeks an advisory opinion regarding the application of the Disclosure Requirements as to the Requestor, through their non-profit organization, purchasing [REDACTED] from the [REDACTED] ([REDACTED]) and collaborating with other non-profit organizations that purchase [REDACTED] from the [REDACTED].

The question presented to the Board is whether the Requestor must provide disclosures for purchasing [REDACTED], through their nonprofit, from [REDACTED] ([REDACTED]) and collaborating with other non-profit organizations that purchase [REDACTED] from the [REDACTED]. 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 2-5-70 of the 2019 Detroit City Code. It states as follows:

Sec. 2-5-31. - 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 the public servant or an immediate family member has in any contract or matter pending before City Council;
- (2) Any financial interest, direct or indirect, that the public servant 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 the public servant, 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. (Code 1984, § 2-6-31; Ord. No. 18-12, § 1(2-6-31), eff. 8-31-2012)

Commentary— This provision implements the directive of [Section 2-106.2](#) of the Charter that this article shall provide for the disclosure of any financial interest, which a public servant, or the public servant's immediate family member, has in any contract or in any real or personal property, that is the subject of a governmental decision by the City or any agency of the City over which the public servant exercises significant authority in the performance of the public servant's duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.301 *et seq.*

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)

Sec. 2-5-64. - 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 the public servant's official duties for the City.

(Code 1984, § 2-6-65; Ord. No. 22-00, § 1(2-6-65), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-65), eff. 8-31-2012)

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)

Commentary— This provision prohibits a public servant from using the public servant's official position in violation of federal or state law, such as the state law prohibiting bribery, being MCL 750.118, the state law regulating conflicts of interest pertaining to public contracts involving public servants under the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.301 *et seq.*, the state law regulating political campaign organizations under the Michigan Campaign Finance Act, being MCL 169.201 *et seq.*, and the provisions of the Michigan Gaming Control and Revenue Act, being MCL 432.218(2)(c) and (d), prohibiting a government official from soliciting or knowingly accepting anything of value or benefit from a casino licensee in return for influencing official action.

The prohibition in the article is not intended to prevent a public servant from giving advice or seeking information as a necessary part of the public servant's duties, or from communicating with a City agency in the ordinary course of the City's business. Nor is this prohibition intended to chill a public servant's free speech rights under the First Amendment to the United States Constitution or under Article I, Section 5, of the 1963 Michigan Constitution where the public servant is expressing the public servant's views to another City public servant or before a City agency in a non-official capacity.

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 Information Presented

In regard to Section 2-5-62 of the Ethics Ordinance, public servants are generally prohibited from using confidential information for personal gain. The Ethics Ordinance defines “confidential information” as

information 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, being MCL 15.231 *et seq.*, or pursuant to other law, regulation, policy or procedure recognized by law, and that the public servant is unauthorized to disclose.

The Requestor has not described the nature of information that they receive in the course of performing their official duties for the City. However, as an appointee who works in a major functional area of ██████████, it is very likely that the Requestor receives and has access to confidential information. Furthermore, as a ██████████ between the City government and the residents of, and organizations operating in, ██████████ the Requestor receives information related to activity and property in ██████████. It is very likely that some of that information is not publicly available. Such information allows the Requestor to have a better understanding of the market and property values in the City. The Requestor would not be able to completely separate such knowledge from their decision-making as a participant in the ██████████’s program, or in their collaboration with other participating non-profit organizations. Therefore, there is a

significant risk that the conduct described in the Request would lead to a violation of the Ethics Ordinance.

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.” If the Requestor’s non-profit organization was to participate in the [REDACTED] program, the Requestor would develop a financial interest in the operations of the [REDACTED] and the [REDACTED] that are subject to the program, some of which may be located in the [REDACTED] that the Requestor serves. Such a financial interest could reasonably be expected to impair the Requestor’s independence of judgment or action in their role as [REDACTED], as the financial interest in obtaining [REDACTED] may not always be aligned with the best interests of City residents, including those in [REDACTED].

As to Section 2-5-66 of the Ethics Ordinance, the Requestor is generally prohibited from participating in the negotiation or making of any contract or transaction between the City and a business entity in which they have a financial interest, including their non-profit organization. Section 2-5-66 would also generally prohibit the Requestor from participating in any negotiation or making of any contract or transaction between the City and any other non-profit organization that they collaborate with if the collaboration causes the Requestor to develop a financial interest in such an organization. As part of the [REDACTED], the Requestor makes decisions related to the disposition of [REDACTED] by the [REDACTED]. If a [REDACTED] was to make a decision related to the conveyance of [REDACTED] by the [REDACTED] to a non-profit organization or other business entity in which the [REDACTED] had a financial interest, it would constitute self-interested participation in violation of Section 2-5-66.

The application of the above-referenced standards of conduct demonstrates that the prospective conduct described in the Request would constitute a violation of the Ethics Ordinance. As such, it is not necessary to provide an analysis of the application of the disclosure requirements.

V. 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 2019-28. Participating in the [REDACTED] program described in the Request would be a violation of Section 2-5-62 of the Ethics Ordinance because the Requestor receives information in the course of performing their duties as [REDACTED] [REDACTED] that is not publicly available and could be relevant to property that is available through the [REDACTED] program. The Requestor is advised that their organization's participation in the [REDACTED] program would be a violation of Section 2-5-64 of the Ethics Ordinance because it would comprise a financial interest in the [REDACTED]'s operations and the property that is subject to the [REDACTED] program, and that financial interest could reasonably be expected to impair the Requestor's independence of judgment or action in regard to their duties as a [REDACTED]. Furthermore, because the Requestor's job duties involve making decisions related to the disposition of property owned by the [REDACTED], their organization's participation in the [REDACTED] program would constitute a violation of Section 2-5-66 of the Ethics Ordinance if they continued performing such job duties as [REDACTED]. Therefore, the Board of Ethics strongly discourages the Requestor from engaging in the conduct described in the Request because the participation would violate multiple sections of the Ethics Ordinance.

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