

City of Detroit Board of Ethics

Kristin Lusn, Esq., Chairperson
Freda G. Sampson, Vice Chairperson
Rev. Dr. Charles C. Adams
David W. Jones, Esq.
Hon. Alma G. Stallworth
Robert Watt

Advisory Opinion #2018-11

Issued: October 16, 2018

Advisory Opinion #2018-11: The Ethics Ordinance does not bar the Requestor from teaching a security certification course for a local third party organization who: 1) is doing no business with the city; 2) seeks to do no business with the city; 3) is seeking no official action from the city; 4) has no interests that could be substantially affected by the performance of Requestor's duties; or 5) is not registered as a lobbyist. Requestor should exercise caution that his judgment and actions on behalf of the City remain independent, that he refrain from sharing any confidential information with the outside agency, and that his outside activities are not performed during City business hours or utilizing City resources.

I. Procedural Background

Request for Advisory Opinion 2018-11 (the “Request”) is dated August 29, 2018, and was sent to the Board of Ethics (the “Board”) by electronic communication on the same date. The Request was submitted by a current public servant as defined by Section 2-6-3 of the Detroit Ethics Ordinance (the “Ordinance”) who waived confidentiality with respect to identity.

At its meeting on September 18, 2018, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. At this meeting the Board reviewed a Preliminary Analysis of the Request. On October 16, 2018, after consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion pursuant to Section 2-6-72 of the Ordinance.

II. Facts Alleged In the Request

In the Request, Atty. Lawrence T. Garcia, Corporation Counsel for the City of Detroit, states as follows:

I have been invited to teach a class on Risk Management. See attached email string. I would like to know whether this would be permissible outside employment, if properly disclosed. The outside employer would be the Detroit Medical Center, and the total amount of compensation would be less than \$1,000.00 USD. I would envision taking a vacation day from work to teach the class, if deemed permissible.

By this request, Corporate Counsel Garcia seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter.

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 Section 2-6-71 of the Ethics Ordinance. It states as follows:

Sec. 2-6-62. - 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 his or her 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.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 18-12, § 1, 7-31-12)

Section 2-6-65 - 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 his or her official duties for the city.

Sec. 2-6-66. 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; or
- (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 he or she 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 he or she serves as an appointee or as an employee, or under a personal services contract, as long as he or she does so:

- a. Without compensation; and
- b. On his or her leave time; and
- c. For appointees, in accordance with Chapter 13, Article V, of this Code; or
- d. For non-union employees, in accordance with Chapter 13, Article V, of this Code and the City's Civil Service Rules; or
- e. For union employees, in accordance with his or her respective union contract and the city's civil service rules; or

Sec. 2-6-67. Self-interested regulation 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 he or she or an immediate family member has a financial interest.

IV. Application of the Charter to the Facts Presented

Requestor's instruction of the aforementioned risk management certification class violates none of the listed sections of the Ordinance. More specifically, there is no correlation between his City responsibilities and his prospective responsibilities as the instructor of the two-hour class and therefore no potential to share confidential or proprietary City information is implicated in the subject matter. Additionally, DMC is not a contractor or vendor with the City. There is also no hint of surreptitious personal or financial gain.

The Requestor's one-time DMC training focuses on certification of security officers in keeping the peace at DMC facilities and these duties do not relate to Requestor's duties with the City.

Further, Requestor is not representing the outside agency (DMC) before any City agency and he does not hold any financial interest nor is he self-dealing that would benefit from his instructing the risk management certification class.

V. Conclusion

The Board of Ethics concludes the Request for Advisory Opinion 2018-11 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the request that shows no prohibition of Sec. 2-6-62, 65, 66, and 67 of the Ethics Ordinance. The Ethics Ordinance does not bar the Requestor from teaching a security certification course for a local third party organization who: 1) is doing no business with the City of Detroit; 2) seeks to do no business with the City of Detroit; 3) is

seeking no official action from the City of Detroit; 4) has no interests that could be substantially affected by the performance of Requestor's duties; or 5) is not registered as a lobbyist. Requestor should exercise caution that his judgment and actions on behalf of the City remain independent, that he refrain from sharing any confidential information with the outside agency, and that his outside activities are not performed during City business hours or utilizing City resources.

Detroit Board of Ethics
7737 Kercheval, Suite 213
Detroit, MI 48214
(313) 224-9521
BoardofEthics@detroitmi.gov

Dated: March 7, 2019