

*City of Detroit Board of Ethics*

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

**Advisory Opinion #2019-02**  
**Issued: April 16, 2019**  
**Amended: January 14, 2020**

**Advisory Opinion #2019-02:** The Board of Ethics concluded the Request for Advisory Opinion 2019-02 in accordance with Sec. 2-6-104(b)(4) and issues an advisory opinion that the Requestor will not be in violation should he continue to conduct lead and clearance inspections on behalf of a third party entity, during his personal time. The Requestor should exercise caution that his judgment and actions on behalf of the City remain independent and that his outside activities are not performed during City business hours or utilizing City resources.

**I. Procedural Background**

The Public Servant filed the Request for Advisory Opinion 2019-02 (the “Request”) on January 10, 2019. As defined by Section 2-6-3 of the Detroit Ethics Ordinance (the “Ordinance”), only a public servant may submit a Request. In this Request, the Public Servant maintains confidentiality with respect to identity. As required by the Ethics Ordinance, the Public Servant signed and submitted the Request in writing.

At its meeting on February 19, 2019, 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 also reviewed a privileged and confidential Preliminary Analysis of the Request. The 91-day deadline was April 11, 2019. At this meeting, the Board of Ethics allowed an extension of the investigation for an additional 91 days, making the new deadline July 11, 2019. On April 16, 2019, the Board heard an investigative report. 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**

The Requestor states:

I work as a building inspector in the Development Resources Center Division of BSEED. My outside employment duties consist of doing lead & clearance inspections for [REDACTED]. [REDACTED] The division in which I work does not directly have any regulatory powers over lead inspections ...

The question presented to the Board of Ethics is whether Requestor can engage in outside employment with this third party entity without violation of the 2012 Detroit City Charter or 1984 Detroit City Code.

The investigation revealed that the Requestor performs work for the third party entity on his own time and not during his City of Detroit work hours. The Requestor performs his third party activities primarily in the City of Detroit. The third party entity who employs the Requestor has contracts with independent property owners in the City of Detroit.

### **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 2-106.1 of the 2012 Detroit City Charter codified at Sections 2-6-62, 65, 66, and 67.

#### **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)

#### **Sec. 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.

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

**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
- f. For individuals who provide services to the City of Detroit pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 43-06, § 1, 11-17-06)

**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.

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

#### **IV. Application of the Charter to the Facts Presented**

##### **Sec. 2-6-31. Disclosure of Interests by Public Servants**

Neither the Requestor nor the third party entity do business with the City. For that reason, the Requestor is required to complete an Outside Employment form with Human Resources and not the Board of Ethics.

##### **Sec. 2-6-62. Improper Use or Disclosure of Confidential Information Prohibited**

Requestor's current employment with [REDACTED], specifically with [REDACTED], as a Building Inspector, is in a separate division and does not participate in lead inspections and clearances. Requestor has no access to City lead inspections and clearances and has no ability to share confidential information with his third party employer.

##### **Sec. 2-6-65. Incompatible Employment or Rendering Services Prohibited**

Requestor's current employment with [REDACTED] is in a separate division from lead inspections and clearances. Requestor does not perform the same work for the third party. There is no conflict of interest with the third party entity.

##### **Sec. 2-6-66(3). Representation of Private Person, Business or Organization Prohibited, Exceptions**

Requestor does not represent the third party entity before any division of the City.

##### **Sec. 2-6-67. Self-interested Regulation Prohibited**

Requestor's current employment with [REDACTED] is in a separate division from lead inspections and clearances and his contractual employer has does no business with the City.

#### **V. Conclusion**

The Board of Ethics concludes the Request for Advisory Opinion 2018-16 in accordance with Sec. 2-6-104(b)(4) and states that Requestor will not be in violation of the 2012 Detroit City Charter or Ethics Ordinance should he continue to conduct lead and clearance inspections on behalf of [REDACTED] on his personal time. The Requestor should exercise caution that his judgment and actions on behalf of the City remain independent 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  
Ethics@detroitethics.org

Dated: August 6, 2019