

City of Detroit Board of Ethics

Beth Greenberg Morrow, Esq., Chairperson
Ponce De Leon Clay, Vice Chairperson
Rev. Dr. Charles C. Adams
Hon. Alma G. Stallworth
Robert Watt

Advisory Opinion #2017-06
Issued: November 21, 2017

Advisory Opinion #2017-06: In accordance with Sec. 2-6-104(b)(2), the Board of Ethics declines to issue an advisory opinion where the Board determines that the request does not merit review by the Board. However, the Board of Ethics will refer this matter to other authorities for review.

I. Procedural Background

Request for Advisory Opinion #2017-04 (the "Request"), is dated August 1, 2017, and was sent to the Board of Ethics (the "Board") by electronic communication and received August 4, 2017. The Request was submitted by a current public servant as defined by Section 2-6-3 of the Detroit Ethics Ordinance (the "Ordinance"), who did not waive confidentiality with respect to identity.

At its meeting September 21, 2017, 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 and a Staff Memo detailing the investigation. After consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion pursuant to Section 2-6-104(B)(3) of the Ordinance.

II. Facts Alleged In the Request

In the Request, the Requestor states in summary as follows:

Currently DEGC is in the process of selecting the award recipients for applicants in the Motor City Match Program (MCMP) Round 8 and they are considering my [spouse]¹* for an award. I am the [public servant]* that performs certain work for [City Department]*. I [perform various task]*. I am not involved in direct program administration or any direct decision making, this is all completed contractually by the sub-recipient. As well, this is a Sole source contract that [Department Head], the Mayor, and City Council approve for our investment. My [spouse]* disclosed my employment in [the] application for the program. Can you please advise on the situation?

By this request, the Public Servant seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter to this circumstance.

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.

The 2012 Detroit City Charter, at Section 2-105.A provides the following relevant definition:

27. Public Servant means the mayor, members of the city council, the city clerk, any member of any city agency, board, commission, or other voting body that is established by the 1997 Detroit City Charter or by this Code, and any appointee, any employee, or any individual who provides services to the City of Detroit within or outside of its offices or facilities pursuant to a personal services contract.

The Motor City Match Program began in 2015 and was designed to encourage and assist in the development of local businesses that might not otherwise survive. At its website, the program describes its mission as follows:

Motor City Match connects new and expanding businesses with Detroit's quality real estate opportunities, providing them with funds and tools to fuel the City's entrepreneurial revolution.

The program is primarily administered by Economic Development Corporation of the City of Detroit (EDC). This corporation was formed pursuant to the provisions of the Economic Development Corporations Act of 1978, MCL 125.1601 et seq. This statute authorizes

¹ *Language has been edited to protect the identity of the Requestor.

counties and municipalities to create economic development corporations to “assist and retain local industrial and commercial enterprises . . .” MCL 125.1602. The statute grants broad authority to these corporations. They are empowered to acquire land, make loans, borrow money, issue revenue bonds or notes, enter into leases, mortgage property, sell property, and “lend, grant, transfer, or convey funds.” MCL 125.1608(1). These corporations may also sue and be sued in their own name. MCL 125.1632.

Economic development corporations must be approved by the legislative body governing the municipality following application by three or more persons to incorporate. MCL 125.1604. The Detroit City Council enacted an ordinance approving and establishing the Economic Development Corporation of the City of Detroit. Section 14-3-1, 1984 Detroit City Code. The Michigan Planning Association describes the role of an Economic Development Corporation as follows:

An Economic Development Corporation (EDC) is a tax-exempt, semi-autonomous, locally chartered public corporation whose purpose is to encourage development in a community. In general, EDC's are self-supporting non-profit organizations that help potential developers obtain financing to expand or build new businesses. An EDC utilizes revenue bonds to help developers secure necessary funds. Because these bonds have tax-exempt status, and thus lower interest rates, the EDC is better able to attract targeted development projects that support the economic development goals of the community. A municipality, either a county, city, village, or township, may organize an EDC. The EDC is formed by the governing body of the municipality by resolution and incorporated as a nonprofit corporation.

On October 28, 2014, the Detroit City Council approved Contract No. 2899173, which awarded \$4.25 million dollars to the EDC for small business development. This money came from HUD's Community Development Block Grants (CDBG) award to the City. The EDC's contract to administer the Motor City Match program with these funds will expire on December 31, 2017.

While the EDC has primary responsibility for the administration of the Motor City Match program, there is significant involvement by other entities. In a report to City Council dated January 11, 2015, the EDC described the administration of the Motor City Match Program as follows:

The EDC entered into a subrecipient agreement with the City (Contract #2899173) for Four Million Two Hundred Fifty Thousand and 00/100 Dollars (\$4,250,000.00) in CDBG funding to manage administer and implement this initiative for a term ending December 31, 2015. The subrecipient agreement was approved by the EDC Board approval on October 14, 2014 (Resolution #14-10-91-01) and City Council on October 28, 2014.

The Economic Development Corporation (EDC) of the City of Detroit is staffed and managed by the Detroit Economic Growth Corporation (DEGC). The EDC is the primary citywide public redevelopment authority and will allow for transparency over public funds and process. The EDC has a history of managing publicly funded programs and is the entity managing the CDBG sub-recipient agreement.

In addition to the EDC, the DEGC's sister entity, the Detroit Economic Growth Association is soliciting and receiving philanthropic contributions to support the Motor City Match. Together these combinations of entities are the right vehicle for a complex program such as this. (Economic Development Corporation of Detroit, *Report to City Council*, January 11, 2015, p 3.)

The Detroit Economic Growth Corporation is a private non-profit entity. It is not a part of city government and describes itself in its literature "as not part of the city of Detroit's government, but rather a long-time partner." Detroit Economic Growth Corporation, Online Brochure, p 14.

The EDC's Motor City Match Business Owner Guidelines expressly provides as follows:

The following individuals are not eligible to apply – building owners who are: (1) employees, elected officials or appointed officials or officers of the City of Detroit government (the City), (2) employees or board members of the Detroit Economic Growth Corporation (DEGC); (3) employees or board members of the Economic Development Corporation of the City of Detroit (EDC); (4) contractors affiliated with the Motor City Match program; (5) Motor City Match Jurors; (6) spouses and dependents of (a) employees and board members of the City, DEGC, and EDC; (b) contractors affiliated with the Motor City Match program; and (c) Motor City Match Jurors. (Motor City Match Business Owner Guidelines, July 2016, p 8.)

IV. Application of the Charter to the Facts Presented

While this inquiry concerns standards of conduct, the Requestor's inquiry is outside the scope of the Ethics Ordinance. The inquiry is regarding the conduct of a public servant's spouse. In this instance, the Ordinance does not give guidance. However, because the resolution for this Request is stated in the Guidelines of MCM, the Board of Ethics will direct the Requestor to the policy explicitly.

The Requestor need not go beyond the EDC's Motor City Match Business Owner Guidelines. The Motor City Match Program, at a minimum, involves the City of Detroit, EDC, and DEGC. To eliminate the appearance of impropriety, the Business Owner Guidelines of the MCM Program expressly prohibits City of Detroit employees and their spouses from participation as a business owner or property owner.

EDC is to be commended for having the foresight to implement a policy that keeps the MCM program from being used for purposes not aligned with its original intent and which ensures, just as the Ethics Ordinance does, 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.

V. Conclusion

In accordance with Sec. 2-6-104(b)(2), the Board of Ethics declines to issue an advisory opinion where the Board determines that the request does not merit review by the Board. However, the Board of Ethics will refer this matter to other authorities for review.

Detroit Board of Ethics
7737 Kercheval, Suite 213
Detroit, MI 48214
(313) 224-9521

Dated: September 21, 2017

