

City of Detroit Board of Ethics

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

Advisory Opinion #2020-06

Issued: May 13, 2020

Advisory Opinion #2020-06:—It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) of the Code. The Requestor may only serve as a member of Ford's advisory board only if he is uncompensated. The Ethics Ordinance prohibits public servants from soliciting or accepting any payment from Ford because it receives tax abatements from the City. Serving as an uncompensated member of Ford 's advisory board, in and of itself, presents no issue of incompatibility with the Requestor's official duties as the Director of Public Safety and Cyber Security.

Nevertheless, the Requestor should take note of several other requirements imposed by the Ethics Ordinance that may be implicated by serving as a member of Ford's advisory board. The Ethics Ordinance generally prohibits Requestor from accepting any gift, or other thing of value provided without remuneration, from Ford. However, the Requestor, due to one of the exceptions, may accept complimentary copies of informational materials. Requestor is also permitted to accept admission or registration fees, travel expenses, entertainment, meals, or refreshments that are provided in relation to his provision of assistance to Ford, but only if the City does not compensate the Requestor for admission or registration fees, travel expenses, entertainment, meals, or refreshments for the same activity. Additionally, any item the Requestor is permitted to accept from Ford without remuneration must not be provided in the form of a direct monetary payment, as acceptance of payment from Ford would constitute a violation of Section 2-5-68 of the Code.

Furthermore, the Ethics Ordinance prohibits the Requestor from acting as a representative of Ford in regard to matters that are pending before a City agency, unless either the representation is required by the Requestor's official duties to the City; or a) the representation pertains to a matter that is not pending a decision by a voting body on which the Requestor does not serve, b) the Requestor is not compensated by a n y party for the representation, and c) the representation occurs only during the Requestor's vacation or departmental leave time.

Additionally, the Requestor is prohibited from using or disclosing confidential information in the course of serving Ford's advisory board. If the Requestor believes that circumstances necessitate or warrant the use or disclosure of confidential information, then the Requestor must obtain authorization from the appropriate City officials before using or disclosing the

relevant information. Additionally, the Requestor is encouraged to avoid using any City property to perform activities within the scope of his service to Ford's advisory board.

Also, because the Ethics Ordinance does not directly prohibit the use of City property for activities that are outside the scope of a public servant's job duties, if the Requestor believes pertinent circumstances warrant the use of City property for purposes related to his service on Ford's advisory board, he must check the applicable policies and procedures governing the use of that property before using it and ensure that the desired use of City property would not violate the applicable policies or procedures.

I. Procedural Background

Request for Advisory Opinion 2020-06 (the "Request") was sent to the Board of Ethics (the "Board") by electronic communication and received on February 11, 2020. 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 waives 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 12, 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 August 11, 2020.

At its meeting on May 13, 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. The Board heard a Preliminary Analysis from legal council on the same day 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 the Director of Public Safety and Cyber Security for the City's Department of Innovation and Technology (DoIT). The Request seeks an advisory opinion regarding the application of the Standards of Conduct as to the Requestor prospectively serving as a member of a Ford Motor Company (Ford) advisory board. Ford manufactures motor vehicles that are purchased by the City from local automobile dealerships. Ford is also a party to an agreement with the City to provide benefits to the community in the area impacted by Ford's renovation of Michigan Central Station.

The advisory board provides insight to Ford regarding police and first responder vehicles and reviews those types of vehicles made by Ford. Less than 30 people currently serve on the board. According to the Request, the advisory board meets three times per year and members may serve on the advisory board for no longer than three years. The Requestor states that he was invited to join the advisory board due to his experience and knowledge of vehicles.

The question presented to the Board is whether the Requestor may serve as a member of Ford's advisory board that provides insight to Ford regarding police and first responder vehicles and performs reviews of those types of vehicles made by Ford. 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 2-5-62,-63, -64, -65, -68, and -70 of the 2019 Detroit City Code. It states as follows:

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. 2-5-68. - 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)

Sec. 2-5-70. - Prohibition on gifts and gratuities; exceptions.

(a) A public servant shall not accept gifts, gratuities, honoraria, or other thing of value from any person or entity doing business or seeking to do business with the City, is seeking official action from the City, has interests that could be substantially affected by the performance of the public servant's official duties, or is registered as a lobbyist under applicable law and [Section 2-5-35](#) of this Code.

(b) The prohibition in Subsection (a) of this section shall not apply:

- (1) To an award publicly presented to a public servant by an individual, governmental body, or non-governmental entity or organization in recognition of public service;
- (2) To complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials;

- (3) To a gift received from a public servant's immediate family member or relative, provided, that the immediate family member or relative is not acting as a third party's intermediary or an agent in an attempt to circumvent this prohibition;
- (4) To an admission or registration fee, travel expenses, entertainment, meals or refreshments that are furnished to the public servant:
- a. By the sponsor of an event, appearance or ceremony, which is related to official City business in connection with such an event, appearance or ceremony and to which one or more members of the public are invited; or
 - b. In connection with teaching, a speaking engagement, or the provision of assistance to an organization or another governmental entity as long as the City does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshment for the same activity.
- (Code 1984, § 2-6-71; Ord. No. 18-12, § 1(2-6-71), eff. 8-31-2012)

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

Section 2-5-68 of the Code is the first relevant section of the Ethics Ordinance analyzed in this Preliminary Analysis because its application to the facts and circumstances of the Request is the most pivotal to the question of whether the Requestor may serve as a member of Ford's advisory board, and it provides implications that affect the analyses of other relevant sections of the Ethics Ordinance. Section 2-5-68 provides, in relevant part, that "[a] public servant who, in the course of the public servant's duties, exercises significant authority shall not solicit or accept. . . payment from an . . . entity which [] is . . . receiving tax abatements. . . from the City." The phrase "exercises significant authority" is defined in Section 2-5-3 of the Code as "having the ability to influence the outcome of a decision on behalf of the City government in the course of the performance of a public servant's duties and responsibilities."

As the Director of Public Safety and Cyber Security, the Requestor exercises significant authority because his authority over matters pertaining to public safety and cybersecurity provides him the ability to direct actions related to those matters, and also because his experience with public safety and cybersecurity allows him to influence decisions made by other City officials regarding matters related to public safety and cybersecurity by providing recommendations that are based on his experience with those subjects. Ford is receiving tax abatements from the City that are related to Ford's renovation and development project for Michigan Central Station.

The Request does not state whether or not the Requestor expects to be compensated for his prospective service on Ford's advisory board. However, because the Requestor exercises significant authority and because Ford receives tax abatements from the City, the Requestor is prohibited by Section 2-5-68 of the Code from accepting or soliciting payment from Ford, including compensation for service on Ford's advisory board.

Section 2-5-64 of the Code generally prohibits public servants from knowingly rendering service for a non-City entity if the service is "in conflict or incompatible with the proper discharge of the public servant's official duties for the City," or if the services 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." Because Ford 's advisory board meets only three times per year and the activities of Ford's advisory board members do not negatively affect the City 's public safety or cybersecurity, Ford's advisory board membership is not in conflict or incompatible with the discharge of the Requestor's duties for the City if the Requestor receives no payment for his service as an advisory board member and does not engage in any activities for the advisory board, including the attendance of meetings, during times when he is expected to be performing work for the City. The Requestor may use vacation time to attend meetings or engage in other activities for the advisory board during normal business hours for the City.

Furthermore, because the Requestor is prohibited from accepting payment from Ford, his prospective service as a member of Ford's advisory board would be uncompensated, and thus it would not be reasonably expected to impair the Requestor's independence of judgment or action in the performance of his duties as Director of Public Safety and Cyber Security for the City. Therefore, the Requestor serving as an uncompensated member of Ford's advisory board would not violate Section 2-5-64 of the Code because that service would not be in conflict or incompatible with the discharge of the Requestor's duties to the City, and it would not be reasonably expected to impair the Requestor's independence of judgment or action in the performance of his duties to the City.

Section 2-5-70 of the Code generally prohibits public servants from accepting any gifts, or anything of value that is provided without requital, from an entity that is “doing business or seeking to do business with the City, is seeking official action from the City, has interests that could be substantially affected by the performance of the public servant's official duties, or is registered as a lobbyist under applicable law and Section 2-5-35 of this Code...” Ford is 'doing business" with the City because Ford, pursuant to an agreement with the City, provides benefits to the community in the area impacted by Ford 's renovation of Michigan Central Station, and, in return, Ford receives tax abatements from the City. Therefore, because Ford is doing business with the City, it fits the description of an entity from which public servants are generally prohibited from accepting things of value.

However, Section 2-5-70 of the Code does provide several exceptions to the prohibition. Two exceptions to the prohibition could be potentially implicated by the Requestor serving as a member of Ford’s advisory board. One of those exceptions would allow the Requestor to accept “... complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials” from Ford. The other exception would allow the Requestor to accept “an admission or registration fee, travel expenses, entertainment, meals or refreshments that are furnished to” the Requestor. If any of those items are provided in connection with the Requestor's "provision of assistance" to Ford, then "the City does not compensate the Requestor for admission or registration fees, travel expenses, entertainment, meals or refreshment for the same activity."

Therefore, in accordance with Section 2-5-70 of the Code, the only things of value that the Requestor may accept from Ford without being required to provide remuneration are complimentary copies of information materials, and the Requestor may accept an admission or registration fee, travel expenses, entertainment, meals, or refreshments from Ford in connection with his service as an advisory board member but not if the City compensates the Requestor for

any of those items in relation to the same activity." Furthermore, because the Requestor is prohibited from accepting payment from Ford pursuant to Section 2-5-68 of the Code, any of those items that the Requestor is permitted to accept from Ford must not be provided in the form of payment. For example, if Ford offers to cover travel expenses for the Requestor to attend one of the advisory board's meetings, Ford may only provide for the travel expenses in a form other than a monetary payment, such as plane tickets.

In regard to Section 2-5-65, the Requestor would be prohibited from acting as an agent, attorney, or representative of Ford in any matter that is pending a decision by a City agency unless one of the provided exceptions applies. Because the Requestor is compensated for his work as the Director of Public Safety and Cyber Security, only two of the three exceptions could potentially apply to the Requestor. One of the exceptions would allow the Requestor to represent Ford in a matter that is pending a decision by a City agency if "such representation is a required part of the public servant's official duties." Although the Requestor has not mentioned whether his job duties involve the representation of businesses, it seems unlikely that his job duties would require that.

The other exception that may apply to the Requestor would allow him to represent Ford in a matter that is pending a decision by a City agency if the matter is pending before a voting body on which the Requestor does not serve, the Requestor is not compensated by either the City or Section 2-5-62 of the Code generally prohibits public servants from knowingly using confidential information outside the scope of the public servant's official duties, or disclosing confidential information to third parties. The Ethics Ordinance provides the following definition for the phrase "confidential information":

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, ... or pursuant to other law, regulation, policy or procedure recognized by law, and that the public servant is unauthorized to disclose.

Accordingly, any information that the Requestor has obtained in the course or acting as a public servant, that is not available to members of the public pursuant, and that the Requestor has not been authorized to disclose, is confidential information, which the Requestor is prohibited from using for purposes of Ford's advisory board, or from disclosing to Ford or its advisory board. If the Requestor believes the use or disclosure of confidential information in relation to the purposes of Ford's advisory board is warranted, then he must seek approval to use or disclose that information from the appropriate City officials that are permitted to authorize that use or disclosure.

As to Section 2-5-63 of the Code, the public servant is prohibited from us[ing] City property in violation of City policies and procedures." Accordingly, the Requestor should avoid using any City property to perform activities for Ford's advisory board. However, if the Requestor believes that the use of City property to perform an activity for Ford's advisory board is warranted, the Requestor must check the applicable policies and procedures governing the use of that property to ensure that the desired use of City property would not violate those policies or procedures.

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) of the Code. The Requestor may only serve as a member of Ford's advisory board only if he is uncompensated. The Ethics Ordinance prohibits public servants from soliciting or accepting any payment from Ford because it receives tax abatements from the City. Serving as an uncompensated member of Ford's advisory board, in and of itself, presents no issue of incompatibility with the Requestor's official duties as the Director of Public Safety and Cyber Security. Nevertheless, the Requestor should take note of several other requirements imposed by the Ethics Ordinance that may be implicated by serving as a member of Ford's advisory board.

The Ethics Ordinance generally prohibits Requestor from accepting any gift, or other thing of value provided without remuneration, from Ford. However, the Requestor, due to one of the exceptions, may accept complimentary copies of informational materials. Requestor is also permitted to accept admission or registration fees, travel expenses, entertainment, meals, or refreshments that are provided in relation to his provision of assistance to Ford, but only if the City does not compensate the Requestor for admission or registration fees, travel expenses, entertainment, meals, or refreshments for the same activity. Additionally, any item the Requestor is permitted to accept from Ford without remuneration must not be provided in the form of a direct monetary payment, as acceptance of payment from Ford would constitute a violation of Section 2-5-68 of the Code.

Furthermore, the Ethics Ordinance prohibits the Requestor from acting as a representative of Ford in regard to matters that are pending before a City agency, unless either the representation is required by the Requestor's official duties to the City; or a) the representation pertains to a matter that is not pending a decision by a voting body on which the Requestor does not serve, b) the Requestor is not compensated by a n y party for the representation, and c) the representation occurs only during the Requestor's vacation or departmental leave time.

Additionally, the Requestor is prohibited from using or disclosing confidential information in the course of serving Ford's advisory board. If the Requestor believes that circumstances necessitate or warrant the use or disclosure of confidential information, then the Requestor must obtain authorization from the appropriate City officials before using or disclosing the relevant information. Additionally, the Requestor is encouraged to avoid using any City property to perform activities within the scope of his service to Ford's advisory board.

Also, because the Ethics Ordinance does not directly prohibit the use of City property for activities that are outside the scope of a public servant's job duties, if the Requestor believes pertinent circumstances warrant the use of City property for purposes related to his service on Ford's advisory board, he must check the applicable policies and procedures governing the use of that property before using it and ensure that the desired use of City property would not violate the applicable policies or procedures.

Detroit Board of Ethics
7737 Kercheval, Suite 213
Detroit, MI 48214
(313) 224-9521
ethics@detroitethics.org

Dated: June 12, 2020