

City of Detroit Board of Ethics

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Corrected

ADVISORY OPINION #2016-04

Issued: September 9, 2016

Advisory Opinion # 2016-04: A public servant who also serves on governance committee of a service organization that receives grants administered by the City of Detroit can remain on this committee so long as the public servant's employment does not entail actual decision making regarding the award or monitoring of any grant to this organization. The requestor is cautioned to avoid participation in any transactions between the City and the community service organization, advocacy on behalf of the organization before City agencies, or providing confidential information to the organization. In addition, in the event the public servant exercises significant authority in any pending matter regarding this organization, the public servant must make disclosures in accordance with the Ethics Ordinance.

I. Procedural Background

On March 30, 2016, the Board received Request for Advisory Opinion No. 2016-03. The requestor, currently employed as a Program Analyst in the Office of Grants Management, submitted the following request:

I am requesting the opinion of the Board of Ethics on if it is a Conflict of Interest for Myself . . . to maintain membership on the Coordinated Access Model (CAM) Governance Committee. The Committees (sic) general duties include: Oversee the implementation of coordinated entry, consult with ESG Grantees and other stakeholders, and make recommendations to CoC Board for approval.

The Requestor waived anonymity.

The Board requested and received additional information from the Requestor, including his appearance before the Board on July 21, 2016. At its meeting on August 18, 2016, the Board received and considered a Preliminary Analysis of the Request and voted to issue this Advisory Opinion pursuant to Section 2-6-104(b)(4) of the Ethics Ordinance (“Ordinance”).

II. Facts

On June 27, 2014, the Emergency Manager (EM) issued Emergency Manager Order No. 27. In that Order, the EM found that the City lacked “a centralized grants management system capable of monitoring and ensuring compliance with the requirements of its various federal, state and local grants.” To remedy this situation, the EM directed the Chief Financial Officer to “establish a Grants Management Department to be called the Office of Grants Management.” The Order divided the department into four divisions, “(a) Transportation and Public Spaces; (b) Public Safety and Health; (c) Community Development Block grants; and (d) Housing and Urban Development.

The requestor submitted additional information regarding his duties and appeared before the Board in person on July 21, 2016, to answer any questions. He emphasized that he had no role in awarding grants, nor does he have any role in administering any grants.

III. Applicable Law and Discussion

The Detroit City Charter defines the term “public servant” as including “the Mayor, members of City Council, City Clerk, appointive officers, any member of a board, commission or other voting body established by either branch of City government or this Charter and any appointee, employee or individual who provides services to the City within or outside of its offices or facilities pursuant to a personal services contract.” Section 2-105(A)(9), 2012 Detroit City Charter. (See also, Section 2-6-3, 1984 Detroit City Ordinances.)

The Requestor is a public servant. Pursuant to the Charter and the Ethics Ordinance, the Board has jurisdiction to review and respond to requests for advisory opinion from current and former employees regarding their own conduct or actions. (See Section 2-106.9, 2012 Detroit City Charter and Section 2-6-101, 1984 Detroit City Code.)

Standards of Conduct

Conflict of interest regulations generally prohibit a public employee from placing himself in a position where the public servant must choose between the public good and private interests. As a public servant, the Requestor is subject to the provisions of Section 2-6-65 of the Ethics Ordinance which states as follows:

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.

As the ordinance includes both paid employment and "rendering of services," it clearly regulates uncompensated services to a non-profit or community organization. (See Request for Advisory Opinion No. 2015-01.) The provision outlines three circumstances which violate this section: the rendering of services is in conflict with the public servant's responsibilities to the city; the rendering of services is incompatible with the public servant's responsibilities to the city; or such service would "impair the public servant's independence of judgement or action. . ."

The Requestor informed the Board that he has no direct or indirect involvement in making decisions regarding the award or amount of grants issued to the Coordinated Access Model Governance Committee. Based on this representation, it appears there is no conflict of interest.

Active decision making however, is but one aspect of the concerns raised here. The Ordinance provides that "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 in which he or she . . . has a financial interest." Section 2-6-67, 1984 Detroit City Code. Again, relying on the Requestor's representations, this provision is not

violated, but he must refrain from decision making or actions which shape and define the interaction between the City of Detroit and the Committee.

The Ordinance also provides that public servants “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 . . .” Section 2-6-66, 1984 Detroit City Code. Accordingly, the Requestor is barred from advocating on behalf of Coordinated Access Model Governance Committee before the Office Grants Management.

Finally, decision making, negotiations, or advocacy are not the only challenges posed by the Requestor’s committee membership. The Requestor must also exercise caution regarding the use of confidential information. Section 2-6-3, 1984 Detroit City Code, defines confidential information as follows:

Confidential information means 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, including:

- (1) Any written information, whether in document or in electronic form, which could be exempted from disclosure pursuant to state law or to other pertinent law, regulation, policy or procedure recognized by law, unless the public servant disclosing the information is permitted by such authority to make disclosure; and
- (2) Any non-written information which, if written, could be exempted from disclosure pursuant to state law or to other pertinent law, regulation, policy or procedure recognized by law, unless the public servant disclosing the information is permitted by such authority to make disclosure; and
- (3) Information which was obtained in the course of or by means of a written or electronic record or oral report of a lawful executive or closed session, whether or not the disclosure of the information would violate state law, unless the public servant disclosing the information is authorized by state law to make

disclosure, or unless the public servant disclosing the information has been properly authorized to make disclosure pursuant to an applicable law, regulation, policy or procedure, except that when such information is available through channels which are open to the public, this provision does not prohibit public servants from disclosing the availability of those channels.

The Ethics Ordinance addresses the improper use of confidential information at Section 2-6-62, 1984 Detroit City Code, which states as follows:

Except as otherwise provided by applicable law, **a public servant shall not knowingly use or disclose confidential information to third parties concerning** the property, government or affairs of the City or any office, department or agency thereof, **which is not available to members of the public and gained by reason of his or her official duties.** (Emphasis added.)

In the course of his employment, the Requestor may become aware of matters not available to the public concerning the interests of the Committee. The Requestor must refrain from sharing that information with the Committee.

Disclosure Standards

The Requestor also sought information regarding disclosure requirements. The Ordinance addresses the disclosure requirements for public servants as follows:

(a) Except as otherwise provided by applicable law, **a public servant who exercises significant authority over a pending matter shall disclose:**

(1) Any financial interest, direct or indirect, that he or she or an immediate family member has in any contract or matter pending before City Council;

(2) Any financial interest, direct or indirect, that he or she 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 he or she, 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. (Section 2-6-31, 1984 Detroit City Code.)

However, this provision is only triggered regarding a pending matter over which the public servant “exercises significant authority.” The Requestor indicates he exercises no authority regarding the award or administration of grants to Coordinated Access Model Governance Committee. Assuming this is true, he would have no disclosure requirements under the Ordinance.

IV. Conclusion

Based on the Requestor's representation that he has no direct or indirect involvement in decision making regarding the award or administration of grants to the Coordinated Access Model Governance Committee, he would appear to have no conflict of interest.

The Requestor must refrain from advocating on behalf of the Coordinated Access Model Governance Committee in any City forum and must avoid sharing confidential information with the Committee. In addition, he must refrain from participating in the negotiation or making of contracts or transactions between the City and the Committee. Finally, if he exercises significant authority regarding any transaction or interaction between the City and the Committee, the Requestor must comply with the Ordinance's disclosure requirements. With these restrictions in mind, and assuming his representations regarding non-involvement are complete and accurate, his service to the Committee is not barred by the Ordinance.

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