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Advisory Opinion #2019-23

Issued: May 22, 2020

Advisory Opinion #2019-23: It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2019-23. No conflict exist between the Requestor's employment and her [REDACTED] activities. However, the Requestor may engage in her [REDACTED] activities only during times for which she is not scheduled or expected to be performing work for the City. Requestor's [REDACTED] involvement does not present a conflict or incompatibility with her duties to the City.

Requestor has no requirement to file any disclosure relative to with [REDACTED]. None of the Disclosure Requirements of the Ethics Ordinance require her to file a disclosure because she does not exercise significant authority for her job with the City. However, if the Requestor ever receives, or expects to receive, payment from [REDACTED] she must disclose, and obtain approval from her Department head by completing a Request for Approval of outside Employment form and submitting it to Human Resources in accordance with the City's Outside Employment Policy.

Additionally, the Requestor is prohibited from acting as an agent, attorney, or representative of [REDACTED] in any matter that is pending before a City agency, unless 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 [REDACTED] for such representation, and the representation occurs only during the Requestor's vacation or departmental leave time. The Requestor is also advised to abstain from participating in any negotiations or making of any transactions between the City and [REDACTED]. With respect to the Michigan Contracts of Public Servants with Public Entities Act, the Requestor do not solicit any contract between the City and [REDACTED]. Furthermore, do not to disclose any confidential information or use City resources in relation to her activities for [REDACTED].

I. Procedural Background

Request for Advisory Opinion 2019-23 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on December 12, 2019. 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 maintains 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 March 02, 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 June 01, 2020.

At its meeting on April 21, 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, and requested additional information. On May 22, 2020, the Board heard a Supplemental Preliminary Analysis 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 indicated that she:

“...is the [REDACTED] [and the] organization in the past has solicited the City of Detroit [REDACTED] for sponsorship for our annual [REDACTED]. In the past I am very hands off as it relates to communication and soliciting because I am a city employee. I have enclosed [REDACTED]. Is there a conflict of interest? Can my organization continue its relationship with the City of Detroit?”

The questions presented to the Board are:

1. Is there a conflict between Requestor’s Detroit [REDACTED] and her participation with [REDACTED]
2. Does the Requestor need to file a disclosure because of her relationship with the [REDACTED] And
3. Is there are other ethical implications arising out of Requestor’s involvement with [REDACTED]

By this request, the public servant 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, -66, and -67 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.

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.

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.

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.

Sec. 2-5-66. Self-interested regulation and participation 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 the public servant or an immediate family member has a financial interest.

Sec. 2-5-67. Improper Use of Official Position Prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly use the public servant's official position in violation of applicable law, to improperly influence a decision of the Mayor, of the City Council, of the City Clerk, or of a member of a City authority, board, commission, committee, council or group, or other City agency.

IV. Additional Information Provided

Staff provided additional information for this Requests as follows.

The Detroit ██████████ in the ██████████ for ██████████ First ██████████. The ██████████ is the main source of the organization's revenue and funds the organization's scholarships and donations to other entities. Also, the Detroit ██████████ and the Department's ██████████ initiative are listed in the ██████████ section of the ██████████. ██████████ was a "██████████" of ██████████ in 2019, meaning that the ██████████ donated \$██████████ or more to ██████████. Also, the Requestor is not compensated in relation to her involvement with ██████████. Furthermore, a contractual relationship does not exist between the City and ██████████.

Additionally, the Requestor's City of Detroit job duties and responsibilities at the Detroit ██████████ show that she does not exercise significant authority as that term is defined in the Ethics Ordinance. The Requestor does not have the ability to make purchases, access the City's finances, select or negotiate contracts with vendors, or influence any major departmental policies or procedures.

Also, the Requestor reported that she does not share any Detroit confidential information with ██████████ and she does not utilize any City resources in her ██████████ work.

V. Application of Charter and Code to the Information Presented

Section 2-5-31 provides disclosure requirements that cover financial, filial, or property interests. Disclosure requirements pertain to public servants who "exercise significant authority." The Requestor does not "exercise significant authority" as that term is defined in the Ethics Ordinance. As such, Requestor has no requirement to file a disclosure.

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 term "confidential information":

[I]nformation 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.

The Requestor stated that she does not disclose to ██████████ any information that she obtains through her position with the City. The Requestor should continue to refrain from disclosing any confidential information while she is involved with ██████████

Pursuant to Section 2-5-63 of the Code, the Requestor is prohibited from "us[ing] City property in violation of City policies and procedures." The Requestor reported that she does not use City property for ██████████ matters. The Requestor should continue to abstain from using City property for purposes of ██████████

Section 2-5-64 of the Code generally prohibits public servants from engaging in employment or rendering services for entities other than the City when doing so would be "in conflict or incompatible with the proper discharge of the public servant's official duties for the City," or when doing so would be "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." The Requestor's participation in ██████████ does not present any reason to believe that her participation would be expected to impair her independence of judgment or action in the performance of her official duties for the City. The apparent goals of ██████████ do not present a conflict with the goals and purposes of the Detroit ██████████

In order to avoid a conflict with the proper discharge of the Requestor's official City duties, she should only engage in providing services for ██████████ during times when she is not performing work for the City. The Requestor may use her leave time to engage in services for ██████████

Because the Requestor does not receive any payment for her role in ██████████ the Requestor does not need to submit a completed Human Resources' *Request for Approval of Outside Employment* form. However, if the Requestor ever does or expects to receive payment for her role in ██████████ then she must ensure that she complies with the City's Outside Employment Policy by completing and submitting a "Request for Approval of Outside Employment" form to notify the Detroit ██████████ management of her involvement with the organization.

Considering Section 2-5-65 of the Code, the Requestor is prohibited from acting as an agent, attorney, or representative of ██████████ in any matter that is pending before a City agency unless any one of the three exceptions applies. The only exception that may apply would allow her to represent ██████████ in a matter that is pending before a voting body upon which the Requestor does not serve and the Requestor is not compensated by either the City or ██████████ for the

representation, and the representation occurs only during the Requestor's vacation or departmental leave time.

As to Section 2-5-66 of the Code, the Requestor is generally prohibited from participating in the negotiation or making of any contract or transaction between the City and a business entity in which she has a financial interest. Even though the Requestor claims to not receive payments from ██████████ she may still be considered to have a financial interest in ██████████ because she is one of only three people who own, operate, and manage the organization, thereby having an interest in the finances of the organization.

Therefore, the Requestor should avoid participation in any negotiations or making of any contract or transaction between the City and ██████████ including transactions involving the ██████████ advertisement and the Detroit ██████████ or donations by the Detroit ██████████ to ██████████. Accordingly, the Requestor should continue to take a "hands-off" approach to communications between the City and ██████████ and refrain from participation in such communications.

Section 2-5-67 of the Code prohibits public servants from improperly influencing the decisions of "the Mayor, of the City Council, of the City Clerk, or of a member of a City authority, board, commission, committee, council or group, or other City agency." The Commentary to Section 2-5-67 states that the section "prohibits a public servant from using the public servant's official position in violation of federal or state law, such as . . . the state law regulating conflicts of interest pertaining to public contracts involving public servants under the Michigan Contracts of Public Servants with Public Entities Act." Section 2 of the Michigan Contracts of Public Servants with Public Entities Act provides, with some exceptions, that "a public servant shall not be a party, directly or indirectly, to any contract between himself or herself and the public entity which he or she is an officer or employee," and also that "a public servant shall not directly or indirectly solicit any contract between the public entity of which he or she is an officer or employee and" the public servant's self, or "any firm, meaning a co-partnership or other unincorporated association, of which he or she is a partner, member, or employee."

The Requestor indicated, in the performance of her duties to the City, she is not involved with the selection or negotiation of contracts, and does not have the ability to influence any major departmental policies or procedures. As such, the Requestor's involvement with ██████████ is not likely to violate Section 2-5-67 of the Code while she continues working in her current position with the Detroit ██████████. However, the Requestor should be advised not to solicit any contract between the City and ██████████ as doing so would be a violation of the Michigan Contracts of Public Servants with Public Entities Act.

VI. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2019-23. No conflict exist between the Requestor's employment and her [REDACTED] activities. However, the Requestor may engage in her [REDACTED] activities only during times for which she is not scheduled or expected to be performing work for the City. Accordingly, the Requestor must only perform activities for [REDACTED] outside of her work hours for the City. The Requestor may use her leave time as necessary to perform tasks for [REDACTED] Requestor's [REDACTED] involvement does not present a conflict or incompatibility with her duties to the City.

Requestor has no requirement to file any disclosure relative to with [REDACTED] None of the Disclosure Requirements of the Ethics Ordinance require her to file a disclosure because she does not exercise significant authority for her job with the City. However, if the Requestor ever receives, or expects to receive, payment from [REDACTED] she must disclose, and obtain approval from her Department head by completing a *Request for Approval of Outside Employment* form and submitting it to Human Resources in accordance with the City's Outside Employment Policy.

Additionally, the Requestor is prohibited from acting as an agent, attorney, or representative of [REDACTED] in any matter that is pending before a City agency, unless 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 [REDACTED] for such representation, and the representation occurs only during the Requestor's vacation or departmental leave time. The Requestor is also advised to abstain from participating in any negotiations or making of any transactions between the City and [REDACTED] With respect to the Michigan Contracts of Public Servants with Public Entities Act, the Requestor do not solicit any contract between the City and [REDACTED] Furthermore, do not to disclose any confidential information or use City resources in relation to her activities for [REDACTED]

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