

Advisory Opinion # 2021-15
Issued: May 28, 2021

Advisory Opinion #2021-15: 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 2021-15. The Requestor is not in violation of the disclosure requirements set forth in Section 2-5-31 of the Ethics Ordinance. However, because the [REDACTED] and the [REDACTED] are not separate and independent entities, the Requestor would be in violation of Section 2-5-68 if she accepts payment from the [REDACTED].

I. Procedural Background

Request for Advisory Opinion 2021-15 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on May 5, 2021. In accordance with Section 2-106.1, the Request was submitted by a current public servant as defined by Section 2-5-3 of the Detroit Ethics Ordinance (the “Ordinance”).

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 August 4, 2021. Section 2-5-124(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 November 3, 2021.

At its meeting on May 28, 2021, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-5-121 of the Ordinance. The Board reviewed a Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board decided to issue this advisory opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

The Requestor was appointed by Mayor Mike Duggan to be the [REDACTED] of the [REDACTED]. As [REDACTED], she works with artists, cultural organizations, philanthropic funders, and entrepreneurs to advocate for, promote, and develop arts and culture throughout the City of Detroit (the “City”). The Requestor also [REDACTED], which exists to accept tax-deductible donations to the City’s arts programs and treasures. The Requestor plans to seek support from community-minded foundations, CEOs, and business-owners who have historically supported the arts, as wells as Detroit residents.

Additionally, the Requestor has worked as [REDACTED] for various [REDACTED], is a leading voice on issues involving children, education, race, and good government and has won numerous national, state, and local honors. In continuation of her creative endeavors, the Requestor authored a book titled [REDACTED] which was published by [REDACTED]. During a phone interview conducted

by this Board's investigator, the Requestor indicated that she was approached by [REDACTED], the [REDACTED] for [REDACTED] about partnering with [REDACTED]. Specifically, the [REDACTED] would purchase the Requestor's [REDACTED] and distribute it to young girls across the country.

[REDACTED] currently does business with the City, as it is restoring the [REDACTED], which is located in the City's Corktown neighborhood. The [REDACTED] development is subject to the City's Community Benefits Ordinance because it is more than \$75 million in value and it is receiving more than \$1 million dollars in property tax abatements from the City. The City also has a relationship with the [REDACTED], as it is the Presenting Sponsor of the [REDACTED] on Belle Isle, which [REDACTED]. The Requestor, however, has indicated that the [REDACTED] has not contributed to the City's [REDACTED].

The [REDACTED] is described as the "corporate foundation and philanthropic arm" of [REDACTED]. The [REDACTED] website expressly states that "[REDACTED] and [REDACTED] are completely separate entities from [REDACTED] in New York. Ford has no control of the [REDACTED] grant-making policies or decisions." Consistent with the [REDACTED] relationship to [REDACTED], the website does not make the same distinction with regard to the [REDACTED].

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 Sections 2-106.1 and 2-106.2 of the 2012 Detroit City Charter, as well as Sections 2-5-31 and 2-5-68 of 2019 Detroit City Code. The relevant provisions of the Code state as follows:

Section 2-5-31. - Disclosure of interests by public servants.

- (a) Except as otherwise provided for by applicable law, a public servant who exercises significant authority over a pending matter shall disclose:
 - (1) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before City Council
 - (2) Any financial interest, direct or indirect, that the public servant 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 the public servant, 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.

- (b) All disclosures that are required under Subsection (a) of this section shall be made, in writing, on a form that is created by the Law Department and sworn to in the presence of a notary public. After completion, the form shall be filed with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

(Code 1984, § 2-6-31; Ord. No. 18-12, § 1(2-6-31), eff. 8-31-2012)

Section 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 exemption from the City.

(Code 1984, § 2-6-69; Ord. No. 18-12, § 1(2-6-69), eff. 8-31-2012)

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

The disclosure requirement of Section 2-5-31 is, in part, predicated on the Requestor, or an immediate family member, having a financial interest in a contract or matter that is pending before City Council or an agency of the City. This Request, however, pertains to the [REDACTED] purchasing Requestor's [REDACTED] and distributing it to young girls across the country. Based on the facts provided in the Request, there is no financial interest in a contract or matter that is pending before the City Council or a City agency. This Request also does not provide any facts indicating that the Requestor, or an immediate family member, has an interest 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. Accordingly, there is no violation of the Ordinance's disclosure requirements.

However, as [REDACTED] of [REDACTED], the Requestor exercises significant authority¹ over decisions regarding the City's investments in arts and culture. Therefore, she is prohibited from accepting payment from an entity that is receiving tax abatements, credits, or exemption from the City. As set forth above, the Requestor will supply the [REDACTED] with [REDACTED] in exchange for payment. The [REDACTED] is the "corporate foundation and philanthropic arm" of [REDACTED], which is currently receiving tax abatements from the City. Thus, the Requestor is prohibited from partnering with and receiving payments from the [REDACTED] as it is connected and legally related to [REDACTED]. While [REDACTED] website expressly states that the [REDACTED] is separate from [REDACTED], the

¹ "Exercises significant authority means 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." DETROIT, MICH. CODE § 2-5-3 (2019).

██████████ expressly describes itself as part of ██████████. Therefore, since the ██████████ does not operate independently of ██████████, the Requestor's acceptance of any payment from the ██████████ would violate Section 2-5-68 of the Ethics Ordinance.

V. 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 2021-15. Based on the facts provided, there is no violation of the Ethics Ordinance's disclosure requirements. However, because the ██████████ and ██████████ are one and same, the Requestor would be in violation of Section 2-5-68 if she accepts any payment from the ██████████.