

City of Detroit Board of Ethics

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Advisory Opinion #2019-21
Issued: April 21, 2020

Advisory Opinion #2019-21: The Board of Ethics concludes the Request for Advisory Opinion 2019-21 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the Request. The Requestor may serve on an advisory council upon which her sibling represents the Chief of Police. No Standards of Conduct or Disclosure Requirements have been violated. The Requestor's sibling does not meet the definition of immediate family and therefore Requestor has no requirement to disclose.

I. Procedural Background

Request for Advisory Opinion 2019-18 (the "Request") is dated November 22, 2019, and was sent to the Board of Ethics (the "Board") by electronic communication and received on the same date. 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 waived 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 February 21, 2020. 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 May 22, 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 and heard a Preliminary Analysis from legal council. On the same day, 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. Facts Alleged In the Request

In summation, the Requestor seeks an opinion on whether it is an ethics violation for her to serve on an advisory board upon which her sibling serves. As the Inspector General, Atty. Ellen Ha, is required to serve on the City of Detroit Risk Management Council pursuant to

Section 9-701 of the 2012 Detroit City Charter (Charter). The Chief of Police is also required to serve on this council, which is an advisory body to the Mayor. The Chief of Police is represented at the meeting by Requestor's brother, who is the Legal Advisor to the Chief of Police. 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 2-5-31 and -32 of the 2019 Detroit City Code.

It states as follows:

Sec. 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)

Commentary— This provision implements the directive of Section 2-106.2 of the Charter that this article shall provide for the disclosure of any financial interest, which a public servant, or the public servant's immediate family member, has in any contract or in any real or personal property, that is the subject of a governmental decision by the City or any agency of the City over which the public servant exercises significant authority in the performance of the public servant's duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.301 et seq.

Sec. 2-5-32. - Disclosure of immediate family member's employment or application.

(a) Except as otherwise provided for by applicable law, a public servant who exercises significant authority shall disclose the identity of any immediate family member employed by the City or who is making application to the City for employment.

(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.

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

As a public servant, the Requestor is subject to the relevant sections of the Ethics Ordinance cited above. The analysis is as follows.

The Charter and the Ethics Ordinance define "immediate family member" as "a public servant's spouse, domestic partner, individual who lives in the public servant's household or an individual claimed by a public servant or a public servant's spouse as a dependent under the United States Internal Revenue Code at 26 USC 1 et seq." The Requestor's brother does not fit the definition of immediate family member as defined by the Charter and Ethics Ordinance. Therefore, the Disclosure Requirements and Standards of Conduct regarding "immediate family members are not applicable to the Requestor in relation to her brother.

The Ethics Ordinance, at Section 2-5-3 of the Code, provides a definition for "relative" that includes brothers and sisters of a public servant. However, where the term "relative" appears in the Disclosure Requirements or Standards of Conduct of the Ethics Ordinance or in the Charter has no application to this issue. Therefore, the information provided with the Request does not present any violation of the Disclosure Requirements or Standards of Conduct provided by the Ethics Ordinance or the Charter.

V. Conclusion

The Board of Ethics concludes the Request for Advisory Opinion 2019-21 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the Request. The Requestor may serve on an advisory council upon which her sibling represents the Chief of Police. No Standards of Conduct or Disclosure Requirements have been violated. The Requestor's sibling does not meet the definition of immediate family and therefore Requestor has no requirement to disclose.

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Dated: May 15, 2020