



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics General Counsel Opinion No. 2020-503

June 5, 2020

Sent via email

Melody Wright
Melody.Wright@phila.gov

Re: Application of Post-Employment Rules to Work with Philadelphia-Based Consulting/Lobbying Firm

Dear Ms. Wright:

You have requested a public advisory opinion regarding the extent to which City and State Ethics rules will apply to you after you separate from City service in June of 2020.

As discussed in more detail below:

- a. For one year after leaving City service, you may not represent a client for pay in any matters involving, at a minimum, the Philadelphia Water Department. This restriction may extend to other departments.
- b. For two years after leaving City service, you may not become financially interested in any official action you took while working for the City.
- c. At no time after leaving City service may you assist another person, with or without compensation, in any transaction involving the City in which you participated while working for the City.
- d. Your ability to apply for certain City grants is limited.

I. Jurisdiction

The Board of Ethics has jurisdiction to administer and enforce all Philadelphia Home Rule Charter and City Code provisions pertaining to ethical matters, including the post-employment rules found in the City's Ethics Code (Philadelphia Code Chapter 20-600). Home Rule Charter Section 4-1100 and Code Chapter 20-600 authorize the Board to render advisory opinions concerning a City officer's or employee's proposed future conduct.

Home Rule Charter Section 4-1100 also gives the Board "concurrent authority" with the Law Department to advise City officials on the application of State law. Our advice on State law, however, does not provide protection from possible enforcement by the State Ethics Commission. For guidance on the State Ethics Act that would provide such protection, I recommend that you contact either the State Ethics Commission or the Law Department.

II. Background

You are an employee of the Philadelphia Water Department, where you serve as the Assistant Deputy Commissioner in Government and Public Affairs. You act as an advisor, advocate, and strategist while representing the Water Department at the municipal, state, and federal level. For example, you helped develop a billing assistance program and worked on legislation that enabled a contract for advanced metering infrastructure. You noted, however, that despite your title and responsibilities, you are technically on the payroll of the Managing Director's Office. You are the Principal and Owner of a consulting and lobbying firm you recently established. Once you leave City employment, you expect your firm will provide the following services:

- a. Business development and engagement for private and public sector entities;
- b. Connecting clients to City employees and government officials;
- c. Lobbying and legislative interpretation;
- d. Organizational restructuring/re-envisioning with an immediate emphasis on the impact of COVID-19; and
- e. Regulatory compliance and community outreach

III. Relevant Law and Discussion

When you leave City employment, you will be subject to post-employment restrictions under the State Ethics Act and the City's Ethics Code.

A. One Year Prohibition - State Ethics Act

Under Section 1103(g) of the State Ethics Act, former public employees are prohibited from being paid to represent someone before their "former governmental body." This restriction applies for one year after leaving City service. Under the State Ethics Act representation includes, but is not limited to, personal appearances, negotiations, lobbying and submitting bid or contract proposals which would be signed by you or contain your name. Importantly, this restriction also extends to participation in phone calls. For example, if you have a construction client who is interested in bidding on a project with the Water Department during this one-year timeframe, you could not represent the client in that transaction.

That said, based on information from the State Ethics Commission, it is not clear if your former governmental body is the Water Department, the Managing Director's Office as a whole, or the Infrastructure and Transportation group within the Managing Director's Office. For guidance on this question, I recommend that you contact either the Law Department or the State Ethics Commission.

B. Two Year Prohibition – City Ethics Code

Philadelphia Code Section 20-607(c) prohibits a City officer or employee from becoming "financially interested" in official action taken "during [their] term of office or employment and until two (2) years have elapsed" since leaving City service. The Code defines official action as "an act or omission taken by an officer or employee in his or her official capacity that requires discretion and is not ministerial in nature." *See* Code § 20-601(17). For example, if you were involved in the RFP process for a vendor who was awarded a contract with the Water Department, you could not, for two years after leaving City service, receive any payment out of that contract. This restriction also extends to your firm, so you cannot have any money flow to your business as a result of official actions you took at the Water Department.

C. Permanent Prohibition – City Code

Philadelphia Code Section 20-603(1) permanently bans a former City officer or employee from assisting “another person, with or without compensation, in any transaction involving the City in which [the officer or employee] at any time participated during their City service or employment.” This rule would prohibit you from providing assistance to clients regarding any transactions with which you were personally involved while working for the City.

As defined in the City Code, a transaction involving the City is “anything that may be subject to City action, involve the City as a party, or involve a direct proprietary interest of the City such as contracts, leases, judgments, and legislation.” *See* Code § 20-601(27). For example, after leaving City service, you could not draft testimony or talking points for a client to present at a hearing on legislation you worked on while you were a City employee.

D. Restrictions on Gifts/Lobbying/Conflicts of Interest

You specifically asked us whether you may apply for grants with the City, such as business or start-up grants. For one year after leaving City service, you cannot apply for grants administered or issued by the Water Department. For two years after leaving City Service, you cannot receive funding from any grants or programs that you helped administer or develop. At no time may you assist someone with a grant application on which you worked on while with the City.

You also inquired about guidelines for lobbying and government relations as a former City employee. All three of the post-employment restrictions described above apply to any lobbying activity that you engage in on behalf of your firm or a client. Specifically, you cannot lobby PWD for one year after leaving City Service. Nor for two years could you be paid for any services, including lobbying, out of a City contract with which you were involved while working for the City. Finally, you cannot *ever* lobby for or against a specific matter in which you participated in while working for the City.

Finally, to the extent that your work with the City and your work with your firm overlap prior to your separation from City service, both City and State conflicts of interest rules will require you to recuse yourself from any official action that would affect your firm. The City Ethics Code will also require you to file a disclosure and disqualification letter in such a situation. You can find a [sample disclosure and disqualification letter](#) on our website. That said, based on the facts you provided, it does not appear that your work at the Water Department is likely to intersect with your firm at present.

IV. Conclusion

Thank you for your concern about compliance with the City's Ethics Code and for seeking advice. Advisory opinions are fact-specific, and this Opinion is predicated on the facts you have provided. Requestors of advisory opinions are entitled to act in reasonable reliance on opinions issued to them and not be subject to penalties under the laws within the Board's jurisdiction, unless they have omitted or misstated material facts in their requests. Code § 20- 606(1)(d)(ii); Board Reg. 4 ¶ 4.12.

Since you requested a public opinion, this Opinion will be made public, including by posting on the Board's website. Please let me know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

s/Michael Cooke

Michael J. Cooke, Esq.
General Counsel

cc: Michael H. Reed, Esq., Chair
J. Shane Creamer, Esq., Executive Director