



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2024-502

August 26, 2024

Re: Attorney referral fees

Dear City Employee:

You have requested a non-public opinion explaining whether the ethics laws allow you to accept attorney referral fees when you direct potential clients to attorneys or law firms. As explained below, you cannot accept referral fees if:

- the underlying legal matter is a transaction involving the City;
- the potential client contacted you in your City role; or
- the referral is based on information only available because of your City role.

In situations where you can accept a referral fee, you must still comply with the conflicts of interest, financial disclosure, and confidentiality rules outlined below.

I. Jurisdiction

The Board of Ethics administers, enforces, and interprets all Philadelphia Home Rule Charter and Code provisions pertaining to ethical matters, including the City's Ethics Code (Philadelphia Code Chapter 20-600) and certain provisions of the Home Rule Charter. Home Rule Charter Section 4-1100 and Code Chapter 20-600 authorize the Board to render advisory opinions concerning a City officer's proposed future conduct. [Board Regulation No. 4](#) describes the procedures related to seeking an advisory opinion and for requesting reconsideration or appeal to the Board of an advisory opinion issued by me.

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. My guidance 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, you should contact either the State Ethics Commission or the City’s Law Department.

II. Background

You are an employee of City Council. You are also an attorney licensed to practice law in Pennsylvania. From time to time, individuals or constituents ask you for legal assistance and you refer them to other attorneys who can help with the matter. You are seeking to better understand the rules of ethics that govern the acceptance of a referral fee from other attorneys or law firms.

III. Relevant Law and Discussion

A. Representation in transactions involving the City

City Code Section 20-602(1)(a) prohibits City officers and employees from representing others as an agent or attorney, whether paid or unpaid, in transactions involving the City. Transactions involving the City include applications, decisions, and contracts in which the City takes action, is a party, or has a proprietary interest. Code § 20-601(27). Section 20-602(1)(b) states that:

No member of Council or other City officer or employee shall accept any fee from anyone for referring any matter to another person where the member of Council or other City officer or employee would be barred from assisting or representing them under this ordinance.

Accordingly, you are prohibited from representing clients in any transactions involving the City. This restriction applies regardless of whether the transactions are related to your office or branch of City government. You are also prohibited from collecting referral fees in any matters in which you could not act as an attorney under the representation rule. We encourage you to reach out with any questions about whether specific transactions involve the City such that they are subject to this restriction.

B. Conflicts of interest

For referrals that are not related to a transaction involving the City, you must still consider whether accepting a fee or having a referral agreement creates a conflict of interest. Philadelphia Code Section 20-607 and [Board Regulation No. 5 \(Conflicts of Interest\)](#) prohibit a City officer or employee from taking official action that would affect the financial interest of:

- the officer or employee;
- a close family member; or
- a for-profit business of which the officer or employee is a member.

Regulation No. 5, Paragraph 5.3.

A person has a financial interest in matters that have a potential impact on their income, compensation, value of assets, wealth, employment prospects, or economic opportunities. Reg. 5, Para. 5.5; *see also* [Board Opinion 2019-002](#) at 3. Official action includes “any non-ministerial act or omission by a City officer or employee: [i]n the course of discharging their duties as a City officer or employee; or [u]sing their City position or title, or City resources available by virtue of their City position (whether or not authorized).” Reg. 5, Para. 5.8. If a conflict arises under City law, the employee must disclose the conflict and disqualify themselves from official action. *See* Reg. 5, Subparts E & F.

Here, you have a financial interest in potential referral fees. As a result, you cannot take official action that would affect your opportunity to earn such fees. Based on your current City role, there are two likely scenarios in which you would have a conflict: individual referrals and ongoing financial relationships with attorneys or firms to which you refer work. As explained below, these situations will require distinct approaches to managing conflicts.¹

1. Individual referrals

Whether a conflict of interest arises with respect to a specific referral depends primarily on how you learned of the matter being referred. Some referrals may come to you through personal contacts, such as family members or former colleagues from your time in private practice. Other referrals, however, may come to you through City channels, such as constituents seeking assistance with a State agency. The collection of referral fees from those who seek your assistance in your City role creates an inherent and unresolvable conflict of interest.

¹ As noted in General Counsel Opinion 2009-507, the conflicts of interest provisions of the State Ethics Act would seem to lead to the same result. GC Op. 2009-507 at 5.

At the center of the City’s conflict of interest rule is the idea that City officers and employees cannot use their City authority for their own financial benefit. Thus, to the extent that your City duties include connecting constituents with legal representation, any resulting referrals would be official actions. Making legal referrals is not ministerial, as it requires discretion and analysis to both understand the legal problem presented and determine the appropriate attorney or firm for the referral. You would therefore be prohibited from accepting a referral fee or other compensation beyond your City salary for such referrals. See [General Counsel Op. 2009-507](#) at 3.

Even if referrals are not considered part of your City duties, you cannot use information acquired through your City position to generate paid referrals. As a result, you cannot earn referral fees from contacts made as part of your City position or from other information, resources, or equipment related to your City position.² GC Op. 2009-507 (adopted by [Board Op. 2013-005](#) at 4). This restricts not only traditional referral fees, but also any type of compensation for a referral. *Id.* (attorney’s offer of discounted legal fees in settlement in exchange for referrals from City employee created a conflict).

Thus, where individuals or organizations seek your assistance in your City role, including via your City phone or email, you have a conflict of interest. Such conflicts cannot be cured through disclosure and disqualification, because you are already involved in the request in your official role. Therefore, accepting a referral fee would create an unresolvable conflict. Accordingly, you can make a referral only if you decline any potential fees or other financial benefit. See Board Op. 2013-005 at 4 (permitting referrals by City official where no fee is involved).

2. Ongoing referral arrangements with attorneys or law firms

If you have an agreement with specific attorneys or firms to refer business in exchange for fees, a different type of conflict may arise. While an arrangement for referral fees would not automatically create a conflict of interest, you will need to be alert for situations where such attorneys or firms represent clients in dealings with your City office.

To the extent you have an ongoing arrangement for referral fees, and particularly if an attorney or firm owes you referral fees for pending matters, you will have a financial interest in the potential or outstanding fees. Regulation No. 5, Paragraph 5.13(a) explains that a City employee who is an independent contractor “is disqualified from any official action that would affect their relationship with any business with which they have a contract, including ... the contracting business’ ability to pay the City officer or employee ... the willingness to continue the contractual relationship; or [] the opportunity for future contracts.”

² City Code Section 20-609 also prohibits City employees from using confidential information about the property, government, or affairs of the City to advance the financial interest of themselves or others. Thus, you cannot use confidential information to facilitate referrals.

Whether you are in a position to affect the payment or amount of referral fees through official action will depend on the specific circumstances. For example, if an attorney who owes you referral fees asks you who to contact in a City agency, providing such information would not be sufficient to affect your financial interest. In contrast, if the same attorney asks you to convince the Councilmember to support a hotly contested zoning variance sought by her biggest client, you would have a conflict of interest.

Unlike the individual referrals obtained through City work, these conflicts are resolvable through disclosure and disqualification. A [sample disclosure and disqualification letter](#) is available on our website, and my office is happy to provide guidance on the disclosure process.

C. Statements of financial interest

You are required by the State Ethics Act to disclose certain financial information on a Statement of Financial Interests. Among other required disclosures, you will need to disclose the source of any gross income in excess of \$1,300. This means that if your referral income from a particular attorney or firm meets this threshold, you will need to disclose that attorney or firm on your Statement of Financial Interests. You can find additional information about the required disclosures in the [State form instructions](#).

IV. Conclusion

Based on the facts you provided, you may not collect referral fees if:

- the underlying legal matter is a transaction involving the City;
- the potential client contacted you in your City role; or
- the referral is based on information only available because of your City role.

Where a referral does not involve a City transaction and is unrelated to your City role, you must still be alert for situations where you have an ongoing financial relationship with attorneys or firms that may represent clients in dealings with your City office. Sources of referral fees may need to be disclosed in your annual Statement of Financial Interests.

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 non-public opinion, the original Opinion will not be made public. As required by the City Code, a version of the Opinion that has been redacted to conceal facts that are reasonably likely to identify you is being made public. Please let me know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

/s/ Jordana L. Greenwald

Jordana L. Greenwald
General Counsel

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