



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2022-505

November 16, 2022

Re: Application of Ethics Rules to a City Employee Seeking Post-City Employment where the Employee (1) Awarded City Contracts to the Prospective Employer and (2) Performed Work Related to the Prospective Employer's City Contracts

Dear Requestor:

You are considering accepting a new position with a private entity. As a City employee, you helped award contracts to this entity. You also worked on various contracts the entity has with the City. You have requested a non-public advisory opinion regarding how City and State ethics rules apply to you if you were to accept a paid position with this entity.

As discussed in more detail below:

- a. While a City employee, you are prohibited from applying for or accepting a job that would be funded by a City contract.
- b. While a City employee, you are prohibited from taking any official action that would affect the financial interests of any potential employer.
- c. For two years after leaving City service, you may not become financially interested in any official action you took while working for the City.
- d. You are permanently prohibited from assisting any new employer on matters in which you participated while working for the City.
- e. For one year after leaving City service, you may not represent a third party (including your new employer) for pay in any matters involving your former governmental body.

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. 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, you should contact either the State Ethics Commission or the City's Law Department.

II. Background

You are a City employee. Your job duties involve, among other things, working with other City offices and departments on various matters. From time to time, you serve on selection committees for outside contractors.

One of these contractors is an entity (the "Firm") that you worked for prior to your City employment. The Firm has contracts with multiple City offices and departments. You were part of the selection process for some of these contracts, including certain contracts with your City department. In addition to helping to award these contracts to the Firm, your job duties required you (to varying degrees) to work with the Firm regarding these contracts and various other matters.

Earlier this year, in response to your request for informal advice, we provided general guidance about how the City's ethics rules apply during a job search. Our guidance discussed City Charter Section 10-102 (Interest in Contracts) as well as the application of City and State conflict of interest rules in the job-search context. Consistent with that guidance, you filed a disclosure and disqualification letter with the Board regarding your potential employment with the Firm. Since that time, you have not worked on any matters involving the Firm and have disqualified yourself from any future work involving this prospective employer.

After filing your disclosure and disqualification letter, you applied for and were offered a position at the Firm. To your knowledge, the position offered by the Firm will not involve any interactions with your current City department or any other City

departments. You have confirmed with the Firm that you will not be working on any City-related contracts, nor will you be paid with funds stemming from City contracts. Additionally, you will not be working on any of the same City matters you worked on as a City employee (including those involving the Firm) or any of the contracts you helped award to the Firm.

Arrangements are still tentative, but you may be assigned to an office of the Firm where other employees of the Firm are working on the same City contracts you helped award or on City matters in which you were previously involved. Additionally, the office may include employees of the Firm who are working on various projects involving the City, including your current City department.

III. Relevant Law and Discussion

A. Interest in a City contract

Home Rule Charter Section 10-102 prohibits you from being financially interested in any City contract, even if that contract is unrelated to your City job duties. Section 10-102 also prohibits you from soliciting an interest in a City contract. As such, while you are a City employee, you are prohibited from applying for or accepting a job that would be funded by a City contract. *See* [Board Op. 2019-003](#) at 5.

Based on the information you provided, the offered position with the Firm will neither involve working on City contracts nor will you be paid using City funds. So long as that remains true, Section 10-102 would not prohibit you from accepting this position.

B. Conflict of interest arising from prospective employer

Under both City and State law,¹ you will have a conflict of interest with regards to a prospective employer if you are able to take official action that would affect the financial interest of that employer. *See* Board Op. 2019-003 at 3; SEC Advice of Counsel 11-514, State Ethics Comm'n (Mar. 18, 2011). In such situations, both laws prohibit you from taking any official action affecting the prospective employer. City Law also requires you to disclose the conflict. *See* City Code Section 20-608.

Earlier this year, you filed a disclosure and disqualification letter regarding your potential employment with the Firm and you have not worked on any matters involving the Firm since then. You must continue to disqualify yourself from taking any official action regarding the Firm during your remaining City service.

¹ While only “public employees” (as defined by the State Ethics Act) are subject to the State’s Conflict of Interest Rule, our records indicate you are indeed such a “public employee.” *See* 65 Pa. C.S. § 1102.

C. Financial interest in prior official action

Section 20-607(3) of the Ethics Code prohibits a City officer or employee from becoming “financially interested” in official action taken “during his [or her] term of office or employment and until two (2) years have elapsed” since leaving City service. Whether accepting the job with the Firm would violate this rule depends on the context and circumstances of the offer.

Section 20-607(3) would prohibit you from accepting the Firm’s job offer if that offer was connected to your prior official actions as a City employee. *See* [Board Op. 2021-001](#) at 3. The Board has explained that “connected” means “the specific official action cannot be a substantial basis for the offer of employment,” however, the “mere existence of a prior official action is not sufficient to preclude a subsequent offer of employment.” *Id.*

As you explained, you interacted with the Firm on numerous occasions while working for the City. If official actions you took during these prior interactions were a “substantial basis” for the Firm’s job offer, Section 20-607(3) would prohibit you from accepting the position. Based on the information you shared with me, I see no reason to believe that your offer of employment was connected to your official actions.

There is nothing to suggest any specific official actions you took as a City employee were a substantial basis for the Firm’s job offer. The offered position does not involve any City-related work, much less any work related to contracts or other matters you previously handled in your City role. This suggests a level of separation between your prior official actions affecting the Firm and their job offer. The fact that you neither applied for nor were offered a position with the Firm until after all your connections with the Firm in your City role were severed pursuant to your disclosure and disqualification letter further demonstrates a lack of connection between your job offer and the work you did involving the Firm. Your employment history with the Firm further suggests that your selection for this position was unrelated to any prior official action in your City role.

While I conclude that Section 20-607(3) does not limit your ability to accept the job offer from the Firm, please note that this rule also prohibits you – both now and for two years after you leave City service – from obtaining a financial interest in contracts you previously awarded to the Firm. Thus, for the first two years after your City employment ends, you must ensure that you neither work on nor are paid with funds from any City contract you helped award the Firm. This includes any of the Firm’s contracts with your current City department that you helped award. To the extent other employees of the Firm in your office work on such contracts, you must additionally ensure that you are in no way assisting or otherwise involved with that work.

D. Assisting another person on a matter in which you participated while a City employee

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 any third party (including the Firm) regarding any transactions with which you were personally involved while working for the City.

Importantly, this provision applies only to specific transactions in which you were involved. For example, if you accept the job with the Firm, you cannot work on a 2022 litigation matter for the Firm if, while a City employee, you worked on that same matter. In contrast, it would not prohibit you from assisting the Firm on matters you never worked on as a City employee even if the subject of such matters was similar to projects you worked on in your City role.²

As such, you must ensure that you never work – for the Firm or anyone else – on any transactions you were involved in during your City tenure. This prohibition would include assisting coworkers of the Firm on such matters.

E. Prohibition on representing another person before your former governmental body

Section 1103(g) of the State Ethics Act prohibits a former public employee from being paid to represent someone before their “former governmental body.” Your current City department is one of several departments supervised by the Managing Director. The State Ethics Commission has opined that one’s governmental body is not limited to the particular department or subdivision where they had influence or control, but rather encompasses the entire body by which they were employed. *See* Advice of Counsel No. 90-006. Based on prior guidance from the State Ethics Commission, it is our understanding that your former governmental body would include not just your current City department, but also all other departments that report to the Managing Director. *See* Advice of Counsel No. 20-529 (Gould).

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 and email exchanges. Regarding the Firm, you state that you do not believe any future employment with them would entail you representing the company in front of your current City department or any office or department that reports

² Note that other post-employment rules, such as the State’s one-year rule (discussed below), may still restrict your ability to work for the Firm on City-related matters.

to the Managing Director. This means that, in my opinion, your proposed work for the Firm would not involve paid representation in front of your former governmental body.

Please keep in mind, however, that our advice on the State Ethics Act does not provide protection from possible enforcement by the State Ethics Commission. For definitive guidance on this question, you should contact either the Law Department or the State Ethics Commission. If you would like to do so, I can provide you with the appropriate contact information.

III. Conclusion

Based on the facts you provided, and for the reasons detailed above, it is my opinion that neither State nor City law would prohibit you from accepting employment with the Firm. While you remain in City service, you must continue to disqualify yourself from any official action that would financially impact the Firm.

After you leave City service, you may not:

- for two years, become financially interested in any official action you took;
- for one year, represent the Firm before your current City department or any office that reports to the Managing Director; and
- ever assist the Firm in transactions you were involved in during your City service.

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
Acting General Counsel

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