

City of Detroit Board of Ethics

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Advisory Opinion 2018-19

Issued: February 19, 2019

Advisory Opinion 2018-19: The Board of Ethics concludes the Request for Advisory Opinion 2018-19 in accordance with Sec. 2-6-104(b)(3) and declines to issue an advisory opinion where the Board determines that the request concerns past or current conduct, which is more appropriately addressed by the filing of a complaint or by the contracting of an investigation.

I. Procedural Background

Requestor filed this Request for Advisory Opinion 2018-19 (the “Request”) on December 6, 2018. Requestor falls under the definition of public servant as defined Section 2-6-3 of the Detroit Ethics Ordinance (the “Ordinance”). However, procedurally, his inquiry is not about his conduct and fails to align with Sec. 2-6-101. The Requestor did not waive confidentiality with respect to identity.

At its meeting on April 16, 2019, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. At this meeting, the Board reviewed a Privileged and Confidential Preliminary Analysis of the Request and, 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

The Requestor wrote:

As [REDACTED] of [REDACTED], may I stop employees, specifically, employees in the [REDACTED] (including those employees who are the face of the department) [from] purchasing and /or selling property. The concern is that these particular employees my (sp) have inside knowledge of earmarked development sites.

By this request, Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter. The Requester queried whether he can address employees who are using confidential information for personal gain.

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 2-6-62, Section 2-6-67, and Section 2-6-68 of the Ethics Ordinance, which state as follows:

Sec. 2-6-31. 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 he or she or an immediate family member has in any contract or matter pending before city council;
- (2) Any financial interest, direct or indirect, that he or she 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 he or she, 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.

Sec. 2-6-62. Improper use or disclosure of confidential information prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly use or disclose to third parties confidential information, which is gained by reason of his or her official duties, concerns the property, government or affairs of the city or any office, department or agency thereof, and is not available to members of the public.

Sec. 2-6-65. - Incompatible employment or rendering services prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly engage in or accept employment, or knowingly render services, for a private or public interest where such employment or service is in conflict or incompatible with the proper discharge of the public servant's official duties for the city, or where such employment or service is reasonably expected to impair the public servant's independence of judgment or action in the performance of his or her official duties for the city.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 18-12, § 1, 7-31-12)

Sec. 2-6-66. Representation of private person, business or organization prohibited; exceptions.

A public servant shall not act as an agent, attorney, or representative for another person, business or organization in any matter that is pending before a city agency, except that:

- (1) A public servant may represent another person, business, or organization before a city agency where such representation is a required part of the public servant's official duties; or
- (2) A public servant who is an uncompensated member of a city board, commission, or other voting body may act as an agent, attorney, or representative for another person, business or organization in a manner that is pending before a city agency, other than the board, commission, or other voting body on which he or she is a member; or
- (3) A public servant who is compensated by the city may act as an agent, attorney or representative for another person, business, or organization in a matter that is pending before a city board, commission or other voting body, other than the board, commission or other voting body on which he or she serves as an appointee or as an employee, or under a personal services contract, as long as he or she does so:
 - a. Without compensation; and
 - b. On his or her leave time; and
 - c. For appointees, in accordance with Chapter 13, Article V, of this Code; or
 - d. For non-union employees, in accordance with Chapter 13, Article V, of this Code and the City's Civil Service Rules; or
 - e. For union employees, in accordance with his or her respective union contract and the city's civil service rules; or
 - f. For individuals who provide services to the City of Detroit pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

Sec. 2-6-67. Self-interested regulation prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly vote, or **knowingly participate in the negotiation or making of any City contract, or any other type of transaction** with any business entity in which he or she or an immediate family member has a financial interest.

IV. Application of the Charter to the Facts Presented

On its face, the Request is improper because it seeks advice about another employee's behavior. However, a manager/supervisor can address employees when that manager observes a potential ethics violation or any other violation of city rules and regulations. The manager has numerous options including directing the employee to remediate the behavior, register the employee for ethics training, and/or file a complaint with the Board of Ethics against the employee.

V. Conclusion

The Board of Ethics' decision for Request for Advisory Opinion 2018-19 is in accordance with Sec. 2-6-104(b)(3) and declines to issue an advisory opinion where the Board determines that the request concerns past or current conduct, which is more appropriately addressed by the filing of a complaint or by the contracting of an investigation.

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