

City of Detroit Board of Ethics

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Advisory Opinion #2018-08
Issued: September 18, 2018

Advisory Opinion #2018-08: The Ethics Ordinance does not permit the Requestor to direct staff to assist a Community Advisory Council however a staff may volunteer during their personal time to assist a Community Advisory Council so long as they adhered to the exceptions contained in Sec. 2-6-66 of the Ethics Ordinance. Extreme caution should be used to avoid the perception that "volunteer" activities are sanctioned by or authorized by the City or its staff.

I. Procedural Background

Request for Advisory Opinion 2018-08 (the "Request") is dated July 26, 2018, and was sent to the Board of Ethics (the "Board") by electronic communication and received June 21, 2018. 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 with respect to identity. Also the Public Servant signed and submitted the Request in writing as required by the Ethics Ordinance. The Public Servant was directed by a Council Member to seek an opinion from the Board of Ethics.

At its meeting on September 18, 2018, 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 Preliminary Analysis of the Request. On October 24, 2018, 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

With the Request, David Whitaker presented a Memorandum which stated:

In light of the Charter provision, Section 9.103, prohibiting the Community Advisory Councils (CAC) from receiving any appropriations of City funds, is it permissible for me to allow my staff that supports the City Planning Commission to provide advice and general assistance to the CAC? The pertinent part of Section 9-103 reads as follows: "Community Advisory Councils shall receive no appropriations from city funds, but may accept donations or grants in accordance with state, federal or local law."

The questions to be answered are (1) whether Mr. Whitaker may direct staff to assist a CAC; and (2) whether a staff member may, operating in a volunteer capacity, assist a CAC and be in compliance with the Ordinance."

By this request, Mr. Whitaker seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter.

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 Section 2-6-62, 2-6-65, and 2-6-66 of the Ethics Ordinance. It states as follows:

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.

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

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.

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.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 43-06, § 1, 11-17-06)

IV. Application of the Charter to the Facts Presented

As applied to the first question: whether the Requestor may direct his staff to assist a CAC. He would be in violation of the Ethics Ordinance. If Mr. Whitaker were to direct his staff to provide assistance to the CAC, he would be in direct conflict with Section 9-103 of the Charter because it clearly states that there shall be no appropriation of city funds. Mr. Whitaker has pointed this out in the Request. Section 9-103 clearly prohibits appropriations to a CAC as well as the ancillary expenditure of "City resources" in the form of supplies, staff time, etc. to a CAC. Staff or other resources fall into the prohibition of this section.

Additionally, the CAC is an outside entity. For the Legislative Policy Department (LPD) staff to assist a CAC would violate Sec. 2-6-66 also unless LPD staff volunteered on their own time and without using confidential information.

This leads into the second questions to be addressed: whether a staff member may volunteer to assist a CAC.

The Commentary to Sec. 2-6-66 recognizes the inherently high risk for the presence of a conflict of interest in situations where a public servant receives compensation from the city and simultaneously advocates for an outside entity before the same voting body that employs the public servant. (CACs are linked to City Council, not only by district but, by virtue of their community connection and the issues addressed. There is a recognized interest in permitting a public servant who receives compensation from the city to voluntarily serve the community without compensation by appearing before a city agency on behalf of a third party. Such a policy serves, in part, to protect the public servant's rights to freedom of speech and freedom of association. For these reasons. Sec. 2-6-66 is intended to eliminate the potential for creating such a conflict. Accordingly, it expressly permits a public servant to engage in uncompensated volunteer service to the community within the applicable legal and regulatory guidelines. However, any volunteer activities undertaken pursuant to Sec. 2-6-66(3) must strictly adhere to the exceptions set forth in (a) through (f), as applicable. Also, in the present situation, the perception that such volunteer service or advice is "sanctioned" by the City would be very high.

Additionally, because of the Requestor's work and the Legislative Policy Divisions' work, it leads us to an analysis of Sec. 2-6-62. Improper use of or disclosure of confidential information. As a public servant employed by Legislative Policy Division or City Planning Commission, a staff member would have access to information that an individual associated with a CAC would not have. CAC personnel would not have the same access to information that the Requestor or his staff requires.

In other words, the "volunteer's" expertise is via their City employment and part of their official duties is supporting the work of the City Planning Commission, the Legislative Policy Division and, therefore, City Council. Their volunteer duties would no longer be independent of their City duties.

V. Conclusion

The Board of Ethics concludes the Request for Advisory Opinion 2018-08 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the request. The Requestor, as a public servant, may not direct Legislative Policy Division or City Planning Commission staff to assist a Community Advisory Council because that would constitute a conflict under Sec. 2-6-65 of the Ordinance. Additionally, he cannot permit staff representation of a CAC without violation of Sec. 2-6-66.

Staff, independently of Requestor's direction, could "volunteer" for a Community Advisory Council if they adhered to the exceptions contained in Sec. 2-6-66. However, even with strict adherence to the exceptions, extreme caution should be used to avoid volunteer activities that cause the sharing of confidential information or that are sanctioned or authorized by the City or its staff. Therefore, Requestor cannot direct staff to assist a Community Advisory Council but a staff member may volunteer during their personal time to assist a Community Advisory Council adhering to the parameters of the exceptions outlined in the Ordinance.

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