



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public Board Opinion No. 2022-005

April 20, 2022

**Re: Application of City’s Post-Employment Restrictions to Former City Employee
Regarding Future Work for Government Entity**

Dear Requestor:

You have requested a non-public advisory opinion asking whether the City’s Ethics Code permits you to accept an offer of employment with a government entity and, if so, the extent to which the post-employment restrictions in the Ethics Code will apply to you in that position.

As discussed in more detail below:

- a. The City’s Ethics Code does not prohibit you from accepting the offer of employment you have received from the government entity.
- b. Because the proposed future employer would be a government entity, the City’s Ethics Code will not prohibit you from assisting this entity with transactions involving the City in which you participated while working for the City.

I. Jurisdiction

The Board of Ethics administers, enforces, and interprets all Philadelphia Home Rule Charter and Code provisions pertaining to ethical matters, including restrictions in the City’s Ethics Code (Philadelphia Code Chapter 20-600) that apply to former City employees. 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 of an advisory opinion issued by the Board.

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. That said, the Board’s understanding is that you have requested and received

advice directly from the State Ethics Commission. As such, the Board will not address the State Ethics Act in this Opinion.¹

II. Background

You are a former City employee. You recently resigned from your City position and are working at a private local institution. You have been offered a position at a specific facility ("Facility #1") of the government entity.

You have described this offer as "tentative," that is, not a firm or "final" offer. You have explained that the government entity could rescind this "tentative" offer at any time.

While employed by the City, you performed work involving both Facility #1 and a separate facility of the same government entity ("Facility #2"). Your understanding is that these two facilities, while both administered by the government entity, operate effectively as separate entities performing primarily different functions and having different personnel.

While you were still a City employee, you accompanied a coworker of your former City department on a work-related training assignment at Facility #2. While you were there, an employee of Facility #2, who had previously worked at your former City department, joined you and your coworker for lunch. During lunch, you mentioned that you were planning to leave City employment and had applied for a new job. The Facility #2 employee told you that multiple facilities of the government entity around the country were looking to hire experienced employees. She said that the government entity was about to advertise several such positions and asked you if you would be interested in applying. You asked the Facility #2 employee to inform you if "something interesting" regarding this job search process arose.

After the events described above, as part of the early stages of a separate work assignment at Facility #1, you requested various, preliminary documents from that facility. Whilst awaiting a response, the Facility #2 employee told you that the government entity had advertised the job openings you had discussed with her including a listing for a position at Facility #1.

¹ Section 1103(g) of the State Ethics Act prohibits a former public employee from being paid to represent someone before their "former governmental body" for one-year after leaving City service. Representation includes, but is not limited to, attending meetings, signing documents with your name on them, and emailing points of contact.

Shortly thereafter, an employee of Facility #1 provided to you the documents you had requested. This employee also told you about the job opening at Facility #1. You subsequently applied for the position at Facility #1. In order to avoid a conflict of interest, you asked your supervisor to remove you from the Facility #1 project which they agreed to.

After submitting your application, you participated in an hour-long interview held over the telephone with a panel of five employees of Facility #1, including the Facility #1 employee who mentioned the job opening to you. You do not recall this employee who mentioned the job opening to you asking you any questions and you do not know if they had any input into the hiring decision. So far as you know, the Facility #2 employee who mentioned the job opening to you did not participate in the hiring process.

III. Relevant Law and Discussion

As a former City employee, two provisions of the City's Ethics Code are relevant to your question: Code Section 20-607(3) and Code Section 20-603. We will address each in turn.

A. Code Section 20-607(3)

Code Section 20-607(3) provides that no former City employee shall become financially interested in any official action they took until two years have elapsed since their separation from City service. An "official action," as defined in the City Code, is any "act or omission taken by an officer or employee in his or her official capacity that requires discretion and is not ministerial in nature." Code § 20-601(17). A "financial interest" is "an interest involving money or its equivalent or an interest involving any right, power or privilege that has economic value." Code §20-601(9). A person has a financial interest in matters that have a potential impact on their income, compensation, value of assets, wealth, employment prospects, or business prospects. A financial interest may arise from an ongoing, present financial relationship. *See* Board Ops. 2019-002; 2012-001.

In Board Opinion 2021-001, we held that under Code Section 20-607(3) "a current² City employee may not accept an offer of employment if it is connected to prior official action taken by that employee." Bd. Op. 2021-001 at 3. We explained the term "connected" means that "the specific official action cannot be a substantial basis for the offer of employment" and that the "mere existence of a prior official action is not sufficient to preclude a subsequent offer of employment." *Id.* A factor relevant to determining whether a City employee's official action was a substantial basis for an offer of employment is whether the possibility of employment was ever raised when the City employee was performing their official actions. *Id.*

² Although Board Opinion 2021-001 concerned a current City employee, its reasoning and holding apply to former City employees as well.

Based on this precedent, we must determine whether the specific, official actions you took with regard to either Facility #1 or Facility #2 were a substantial basis for your offer of employment at Facility #1. If they were, you will be prohibited from accepting the position at Facility #1 until two years after your separation from City service.

Based on the information you have provided, we conclude that your official actions with regard to these two facilities were not a substantial basis for your offer of employment by Facility #1. The work you performed at the two facilities, while constituting official action, was nonetheless routine and brief. Although an employee of Facility #1 alerted you to the job opening and participated in the interview, none of the information we have suggests that your preliminary work on the inspection was a factor in the government entity's decision to hire you.

It is no doubt true that your prior work for the City made you an attractive candidate for the position at Facility #1. We find, however, that neither prior interaction with a future employer while working for the City, nor the fact such an employer may value the experience you gained while working for the City will, on their own, give rise to the prohibition under Code Section 20-607(3). Accordingly, Code Section 20-607(3) will not prohibit you from accepting the pending offer of employment from the government entity.

B. Code Section 20-603

Code Section 20-603 states:

No person who has served for compensation as a member of Council, City officer or employee shall assist, at any time subsequent to his City service or employment, *another person*, with or without compensation, in any transaction involving the City in which he at any time participated during his City service or employment.

As emphasized in the text above, the restriction only applies when former City employees are assisting another "person." The term "person" is defined at Section 20-601(20) of the Ethics Code as: "[a] business, individual, corporation, non-profit, union, association, firm, partnership, committee, political committee, club, or other organization or group of persons."

Notably, this definition at Section 20-601(20) does not include "government entity" or any similar phrase. The Ethics Code separately defines "government entity" as: "[a]ny agency, office, department, board, commission, authority, or other entity that is part of the United States or a State, local, or foreign government." Code Section 20-601(11).

In Board Opinion 2021-003, we addressed the question of whether the term "person" as used in the Ethics Code Section 20-602 should be read to include a government entity. Based on the plain language of Section 20-601(20), the relevant legislative history, comparable language in the State Ethics Act, and various authorities analyzing the term "person" and "governmental body," we concluded that Section 20-602 did not apply to a City employee representing a governmental entity in transactions involving the City. *See* Bd. Op. 2021-003 at 4.

We see no reason to reach a different conclusion with regard to Section 20-603. As such, we hold that the term “person” as used in Section 20-603 does not include a governmental entity. As such, Code Section 20-603 will not prohibit you from assisting the government entity with any transactions involving the City that you previously worked on as a City employee.

We note that our holding in this case is based on the fact that you will be an employee of the government entity in question. The result would likely be different if you were to provide services to the government entity as a contractor or as an employee of a private company or firm. In such a case, we would likely find that the “person” you were assisting was not just the government entity but the firm or company employing you and therefore within the scope of the restriction.

IV. Conclusion

As discussed above:

- a. The City’s Ethics Code does not prohibit you from accepting the offer of employment you have received from the government entity.
- b. Because the government entity is a governmental entity, the City’s Ethics Code will not prohibit you from assisting the government entity with transactions involving the City in which you participated while working for the City.

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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. § 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 Ethics Code, a version of the Opinion that has been redacted to conceal facts that are reasonably likely to identify you is being made public. If you have any questions, please contact General Counsel staff.

BY THE PHILADELPHIA BOARD OF ETHICS

/s/ Michael H. Reed, Esq.

Michael H. Reed, Esq., Chair
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