



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public Board Opinion No. 2022-001

February 10, 2022

Re: Application of City Ethics Rules to Non-Profit Outside Employment of City Official

Dear Requestor:

You have requested a non-public advisory opinion on behalf of a City employee regarding the extent to which the City’s conflicts of interest rules disqualify them from official action affecting a university (the “University”) due to their employment as a part-time employee of one of the University’s academic institutes (the “Institute”). As discussed in greater detail below, the City Employee has a financial interest in their employment under City law. As such, they must disqualify themselves from any official action that would affect their compensation or employment by the University or would have a significant and substantial impact on the University.¹

I. Jurisdiction

The Board of Ethics is charged with administering and enforcing all Philadelphia Home Rule Charter and City Code provisions pertaining to ethical matters, including the conflicts of interest, representation, and confidentiality rules found in the City’s Ethics Code (Philadelphia Code Chapter 20-600). *See* Charter Section 4-1100. The Charter and the Ethics Code authorize the Board to render advisory opinions concerning a City officer’s or employee’s proposed future conduct. Board Regulation No. 4 describes the procedures related to advisory opinions.

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. We understand that you have already received formal guidance from the Chief Counsel of the State Ethics Commission on the extent to which the City Employee’s employment with the University will give rise to a conflict of interest under the State Ethics Act. As such, we do not address the application of State law in this Opinion.

¹ The assertions herein about the authority of the Trustees of the University, the structure of the overall University organization, the relationships among and between the components of the University’s academic and healthcare systems, and the City Employee’s employment status are based on our own research and analysis. If you believe there are material inaccuracies in the facts upon which this opinion is based, please so advise us immediately.

II. Background

The City Employee serves as a high-ranking City official. They also work (for pay) at the Institute. It is your understanding that the City Employee is considered a part-time University employee.

The City Employee oversees various financial functions of the City. The City Employee's responsibilities include overseeing City entities involved with tax matters. The City Employee is also involved in City spending decisions and is required to personally approve certain expenditures. The City Employee is also a member of a City-based taxation policy group. One of the issues the working group will likely consider is how to increase tax revenues from tax-exempt landowners. Options under discussion include payments in lieu of taxes ("PILOTs").

The University is a nonprofit organization that is also a large private landowner and employer. The Trustees of the University (the "Trustees") is a Pennsylvania nonprofit corporation and it oversees both the academic component of the University ("University Academic System") and the healthcare component ("University Healthcare System").

Matters that may come before the City Employee involving the University or University-related entities include extraordinary contracts, tax disputes, and policy discussions or decisions related to universities or other nonprofits. The City Employee may also be involved in City hiring decisions involving students or graduates of the Institute or other University programs.

III. Relevant Law and its Application

a. Conflicts of Interest

Both City and State law restrict official action where a conflict of interest exists. As noted above, you have already received formal advice from the State Ethics Commission regarding the application of the State's conflicts of interest rule to the City Employee's position at the University. As a result, we address only the application of the City's conflicts of interest rules.

i. Applicable legal standards

In prior opinions, the Board has found that Philadelphia Code Section 20-607 prohibits a City employee from taking official action on any matter in which either the employee, a close family member, a for-profit business of which the employee is a member, or a fellow member of such business has a financial interest. *See* Board Op. [2021-002](#) at 3; Board Op. [2019-002](#) at 3 (citing Board Ops. [2012-001](#); [2009-003](#)). 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. Board Op. [2021-002](#) at 3 (citing Board Op. [2019-002](#) at 3). An official action 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\(17\)](#). When a conflict arises, a City officer or employee must disclose that conflict and disqualify themselves from any action related to it. *See* [Code §20-608](#).

An employee of a for-profit business is a “member” of that business for purposes of Section 20-607. Board Op. [2010-002](#) at 7. In contrast, an employee of a nonprofit organization is not a “member” of a for-profit business by virtue of such employment. See [Code §20-601\(5\)](#) (defining “business” as including various legal entities “organized for profit”). It does not follow, however, that no conflict of interest can arise from employment by a nonprofit organization.

Notably, we have previously held that a prospective employment relationship, while not making the prospective employee a “member” of a business, nonetheless creates a financial interest for that individual. See Board Op. [2019-003](#) at 3. While Board Opinion 2019-003 concerned employment with a for-profit entity, compensation and benefits associated with employment are no less of a financial interest for an individual when their source is a nonprofit organization. Accordingly, we find that a City officer or employee who is employed by a nonprofit organization has a personal financial interest in that employment.

Having so found, the essential question becomes, under what circumstances would a City officer’s or employee’s official action affect the attendant financial interest? We have not examined this specific question in prior Board opinions, but in assessing other personal financial interests of City officers and employees, we have looked for a nexus between the financial interest and the official action. For example, in Board Opinion [2012-001](#), we found that a City officer who was an independent contractor of a for-profit business was not a “member” of the business, but had a personal financial interest in that contractual relationship. As such, while the City officer was not prohibited from taking official action that would affect the firm generally, they were prohibited from taking official action that would affect their income from the firm. In Board Opinion [2009-003](#), we found that a City officer was prohibited from taking official action involving a firm in which their family member was a partner only if the financial impact of that action would affect the family member’s compensation from or employment with the firm.

Whether a City officer’s or employee’s nonprofit employment gives rise to a conflict should similarly focus on an actual or anticipated link between their official action and their employment. As a result, we hold that a City officer or employee has a conflict of interest under Code Section 20-607(1) if they are able to take official action that would affect their compensation or employment by the nonprofit, such as the nonprofit employer’s ability to pay the officer or employee, the value of the compensation or benefits provided, or the willingness to hire or retain the City officer or employee. This threshold may also be met – without the need to delve into the nonprofit’s finances or decision making – if the official action would have a significant and substantial impact on the employer.

Lastly, we have previously held, in the context of legislative action, that some actions have such a broad impact that they do not create a conflict of interest for an individual member of Philadelphia City Council. Specifically, we held that a Councilmember could vote on legislation of general application even if such legislation would affect a financial interest otherwise covered by Section 20-607. Board Op. [2019-002](#). We have not previously addressed whether a similar exception should apply outside the legislative context. We now hold that official action by a City officer or employee that affects their financial interest in the same manner as those of the general public or a substantial segment thereof does not create a conflict of interest so long as the impact on the individual official's financial interests is not substantially disproportionate as compared to a member of the general public or the relevant substantial segment thereof.

ii. Scope of conflicts arising from employment interest

A financial interest arising from employment in a large nonprofit organization does not automatically create a conflict as to every entity affiliated with that organization. As discussed above, a conflict of interest will only arise if the City officer's or employee's action will affect their compensation or employment by the nonprofit. Accordingly, there must be some relationship between the entity affected by the official action and the City officer or employee such that we can reasonably infer an attendant impact on the employment relationship.

While the City Employee's position is with the Institute, which operates as part of a specific school of the University (the "School"), they are a part-time employee of the University. The School is the largest (by student population) of the multiple schools within the University. All schools within the University are ultimately accountable to the Trustees. An official action that would have a significant and substantial impact at any level in this continuum – the Trustees, the University Academic System as a whole, the School, or any component of the School – could be reasonably anticipated to affect the City Employee's compensation or employment status at the University.

As noted above, the City Employee is an employee of the University Academic System and the Trustees are ultimately responsible for the operations of both the University Academic System and the University Healthcare System. While these components operate separately on a day-to-day basis, we cannot conclude that, for purposes of Section 20-607(1), an official action with a significant and substantial impact on the University Healthcare System would have no repercussions for the University Academic System.² It is reasonable to expect that the University Academic System would be affected by an official action that has a significant and substantial impact on the University Healthcare System. As a result, an official action by the City Employee that significantly and substantially impacts the University Healthcare System would give rise to a conflict of interest.

² We note that whether a particular business unit within a larger organizational structure may be an "employer" for the purpose of conflicts of interest under Section 20-607(1) is fact specific. Accordingly, an organization, such as a corporate conglomerate, with a different practical or legal structure could lead to a different result.

iii. Assessing and collecting taxes

The City employee helps oversee City entities that deal with City tax matters. The routine issuance of tax bills or collection of tax payments by these City entities would not give rise to a conflict of interest for the City Employee. If, however, the City Employee is called upon to, or seeks to, exercise their professional expertise and discretion with regard to a tax issue related to the University specifically, that would be a different matter. Given that the University is a large employer in the City, it is difficult to imagine a situation in which the amount of taxes assessed to or paid by the University would not have a significant and substantial impact on the organization. As a result, the City Employee would need to disqualify themselves from any personal participation in the assessment or collection of taxes for the University.

iv. Tax disputes

Tax disputes involving the University would generally involve the exercise of the City Employee's discretion and judgment. Whether a particular dispute would have a significant and substantial impact on the University depends on the amounts and entities involved. For example, a small-dollar discrepancy quickly addressed through negotiations may not impact the University enough to reasonably infer that the City Employee's compensation or employment could be affected. In contrast, a dispute that involves large sums of money, affects numerous University entities, or that leads to litigation would significantly and substantially affect the University such that the City Employee would be required to disqualify themselves from involvement in that matter.

v. Changes to tax rates and policies

The City Employee's role in the taxation policy group, or other involvement in considering, developing, or implementing changes to the City's tax structure, necessarily involves the exercise of their discretion and judgment. These policies could change the University's legal status for tax purposes or the amount they are obliged to pay the City and would tend to have a significant and substantial impact on the University.

We stress that official action includes not just the ultimate decision, but also the deliberations, advocacy, and analysis leading up to a decision. *See* Board Op. [2021-001](#) at 6. While preliminary or exploratory discussions about revenue policy may seem innocuous, they are still an opportunity for the City Employee to influence City policy or for the University to influence the City Employee's position. As such, the City Employee must disqualify themselves from participation in such discussions or exchanges to the extent that the policies under consideration would affect the University and are not matters of general application as discussed below.

A tax policy change applicable to all employers regardless of whether they are for-profit or nonprofit would, given the vast number of employers in the City, be a matter of general application and would therefore not give rise to a conflict of interest. In contrast, changes to tax rates or revenue policies specific to nonprofit landowners, or some smaller subset of nonprofits, such as higher education institutions or holders of more than a certain value in property, would affect a much smaller segment of the general population. As a result, while the University might not be the only institution affected by such changes, the impact is not so broad as to fit this exception to the conflicts rules.

vi. Property assessments

Given that the University is a large landowner in the City, assessments of the value of their properties could theoretically have an outsize impact. While the University is exempt from property taxes, the property assessment is a key benchmark for evaluating how much revenue the City loses because of this exemption. It is also likely the starting point for calculating or negotiating PILOTs, which are commonly based on a percentage of what the nonprofit would owe in property taxes if it were not exempt. Considering this key role in quantifying the University's nonprofit exemption, property assessments for land and structures owned by the University would have a significant and substantial impact on the University's financial interests. As such, the City Employee must disqualify themselves from any personal involvement in the assessment of properties or land owned by the University.

vii. Approving specific contracts

Under City law, contracts that meet certain size thresholds and other criteria require the City Employee's approval would, by the specific nature of such contracts, have a significant and substantial impact on the contractor. Approval of such contracts cannot reasonably be considered ministerial. As a result, the City Employee would need to disqualify themselves from review or approval of extraordinary contracts with the University or any of its components.

viii. Hiring

The City Employee's involvement in hiring the University or the Institute graduates to City positions seems unlikely to affect their employment at the University. Whether or not they are a paid employee, the City Employee may choose to favor those with the Institute (or other University) degrees based on their familiarity with the program. This would be no different than the potential preferences exhibited by any University graduate or employee. Absent a financial incentive from the University, selecting (or not selecting) University graduates would not affect the City Employee's financial interests. Rather, the financial interest affected would be that of the candidates themselves. As a result, the City Employee would not need to disqualify themselves from hiring decisions involving candidates from the Institute or the University.

b. Representation

Philadelphia Code [Section 20-602\(1\)\(a\)](#) prohibits a City employee from assisting another person by representing them “directly or indirectly as [an] agent or attorney, whether or not for compensation, in any transaction involving the City.” While it would not be typical for the City Employee to represent the University in transactions involving the City in their role as an employee at the Institute, such representation would be prohibited.

c. Confidential Information

Philadelphia Code [Section 20-609](#) prohibits City officers and employees from disclosing confidential information for the financial benefit of themselves or another person. Thus, the City Employee cannot share confidential information with University officials for their or the University’s financial benefit.

d. Financial Disclosure

Code [Section 20-610\(1\)\(b\)](#) requires the City Employee to file an annual Statement of Financial Interests. Assuming the amount of compensation from the University is \$500 or more, the City Employee is required to disclose the University as a source of income. If the total compensation from the University exceeds \$5,000 in a calendar year, the City Employee must disclose the total amount of income from the University.³

IV. Conclusion

The City Employee has a financial interest in their paid part-time employment with the University. As a result, they must comply with the disclosure and disqualification procedures of Philadelphia Code Section 20-608 with respect to any official action that would have a significant and substantial impact on the University or that would affect their compensation or employment by the University, unless that action would similarly impact the general population or a substantial segment thereof. the City Employee should submit a revised disclosure and disqualification letter describing each specific matter from which they are disqualifying themselves, as indicated above. Board staff is available to assist them with that process.

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³ The State Ethics Act requires the City Employee to file a similar, separate Statement of Financial Interests on which they must disclose any source of income of more than \$1,300 per calendar year.

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
Sanjuanita González, Esq., Member
Brian J. McCormick, Jr., Esq., Member
JoAnne A. Epps, Esq., Member

Board Vice-Chair Judge Phyllis W. Beck (Ret.) did not participate in the consideration or approval of this Opinion