



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public Board Opinion No. 2022-004

April 20, 2022

Re: Application of Conflict of Interest Rules to City Official whose Family Member is Employed by An Entity that Does Business with the City

Dear Requestor:

You requested a non-public advisory opinion regarding the extent to which the City’s conflict of interest rules will prohibit you from engaging in official action related to your family member’s corporate employer. As discussed in greater detail below, you will have a conflict of interest under the City’s Ethics Code if you are able to take official action that would either affect your family member’s compensation or employment or would have a significant and substantial impact on their employer. You will also have a conflict of interest under the City’s Ethics Code if you are able to take official action that would have a significant and substantial impact on the parent companies of your family member’s employer.

I. Jurisdiction

The Board of Ethics administers and enforces all Philadelphia Home Rule Charter and City Code provisions pertaining to ethical matters, including the conflicts of interest and confidentiality rules found in the City’s Ethics Code (Philadelphia Code Chapter 20-600). Charter Section 4-1100 and Code Chapter 20-600 authorize the Board to render advisory opinions concerning a City officer or employee’s proposed future conduct. Board Regulation No. 4 describes the procedures related to advisory opinions, including for requesting reconsideration or appeal of an advisory opinion issued by the Board.

Home Rule Charter Section 4-1100 grants the Board “concurrent authority” with the Law Department to advise City officials on the application of the State Ethics Act. Our advice on State law, however, does not provide protection from possible enforcement by the State Ethics Commission. We do not address the application of the State Ethics Act in this opinion.

II. Background

You are a City employee. You help manage various aspects of the City's banking, investment, and financial functions. The City holds contracts with several firms that provide services related to your duties. As part of your job duties, you help select these firms via the City's competitive bidding process. Selected firms are placed into a pool from which they are chosen for particular work based on the City's specific needs and the performance of the firms.

Your family member's employer is one of the firms currently in the pool. The firm for which your family member works was recently sold to Parent Company #1.

The corporate relationships that are relevant to this opinion may be summarized as follows:

1. Parent Company #1 is a wholly owned subsidiary of Parent Company #2, which in turn is a wholly owned subsidiary of Parent Company #3.
2. Parent Company #2 and a different subsidiary of Parent Company #3 ("Subsidiary # 1") either hold contracts with or provide services to the City.
3. Parent Company #3 has dozens of subsidiaries besides Parent Company #2 and Subsidiary #1. Based on public records, it appears that Parent Company #3 and Parent Company #2 are managed by the same board of directors and managing committees. All three entities share the same website. According to Parent Company #3's latest 2021 Annual Report, it relies on dividends from its subsidiaries for its liquidity needs and the payment of most of those dividends is limited by various laws and regulations.
4. According to information your family member's employer and Parent Company #3 provided to you, your family member's employer is a wholly owned subsidiary and division of Parent Company #1. While it operates separately to some degree, it is considered a division of Parent Company #1 and employees of the two entities appear to work closely with each other.
5. Aside from Parent Company #1, your family member's employer's business lines and day-to-day management are separate from other subsidiaries of Parent Company #3.
6. Subsidiaries of Parent Company #3 do not share profits. As per Federal regulations, your family member's employer cannot access City information held by other subsidiaries.

You have shared that your City office holds regular meetings with each of the firms selected via the process discussed above, including your family member's employer. During these meetings, your office receives updates from the firms and discuss performance, outcomes, and potential future work. Lastly, although your family member's employer has been sold, the contract its former parent company holds with the City includes a referral agreement whereby the City may choose to engage your family member's employer as an extension of work with its former parent company.

III. Relevant Law and Discussion

a. Conflicts of Interest

Both City and State law restrict official action where a conflict of interest exists. We address only the application of the City's conflicts of interest rules.

i. Applicable legal standards

The Board has found that Philadelphia Code Section 20-607 prohibits a City employee from taking official action on any matter that would affect the employee's financial interests or that of a close family member of the employee¹, a for-profit business of which the employee is a member; or a fellow member of the for-profit business. *See, e.g.*, Board Op. 2021-002 at 3. As defined in the Code, official action is an act or omission taken by an employee in their official capacity that requires discretion and is not ministerial in nature. Code §20-601(17). A financial interest arises in matters that have a potential impact on an employee's income, compensation, value of assets, wealth, employment prospects, or business prospects. Board Op. 2021-002 at 3 (citing Board Op. 2019-002 at 3).

Whenever a City employee has a conflict of interest with regard to a particular matter, they must submit a letter, as described by Code Section 20-608, in which they identify and describe the conflict and disqualify themselves from any official action related thereto. Please note that action you must disqualify yourself from is not just final action, but also any preliminary discussion, review, or consideration. *See* Board Opinion 2012-001 at 6.

We have issued three Board Opinions concerning conflicts of interest involving a family member. In [Board Opinion 2007-002](#), the requestor asked whether "it would be permissible for a City official to appoint a close relative to an unpaid position in the City." We found that because the position would be unpaid, the relative would not have a financial interest in the appointment and it would therefore not be prohibited by Section 20-607. *See* Bd. Op. 2007-002 at 1. We cautioned, however, that the appointment would create "an appearance of impropriety." *Id.*

¹ The family members covered by Code Section 20-607 are parent, spouse, Life Partner, child, brother, sister, or like relative-in-law.

In [Board Opinion 2009-003](#), the requestor, who was a member of a City board, asked whether they could take action on a matter involving a law firm in which their relative in-law was a partner. There, we found that Section 20-607(2) would only require disclosure and disqualification “from any decision that would have a financial impact on the law firm only where the financial impact specifically extends to the requestor’s relative in-law.” Bd. Op. 2009-003 at 3. We advised that “in any matter in which an applicant before the [requestor’s] board is to be represented by the law firm, the requestor must, at a minimum, request the advice of this Board as to whether there is a conflict...” *Id.* at 8-9.

More recently, in [Board Opinion 2021-002](#), we responded to an inquiry from a City employee whose spouse sought to enter into contracts with the City. On the matter of conflicts of interest, we stated that the City employee could not take any action with respect to the spouse’s business or any contract the spouse’s business applied for with the City. Bd. Op. 2021-002 at 4. Any ability for the employee to take official action related to the spouse’s company would necessitate a disclosure and disqualification. *Id.*

While not a matter involving a conflict through a relative, [Board Opinion 2022-001](#) built on the general premise of Board Opinion 2009-003 to find that a City employee will have a conflict of interest “if they are able to take official action that would affect their compensation or employment by [a] 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.” Bd. Op. 2022-001 at 4. The Board further found that 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.” *Id.*

ii. Scope of Conflict

We find that the reasoning of Board Opinion 2021-002 applies when considering how Code Section 20-607 will apply to potential conflicts arising from a family member’s employment. Accordingly, we find that a conflict of interest will arise for you for any action that could affect your family member’s compensation or employment. This threshold will be met if your official action would have a significant and substantial impact on your family member’s employer. We further find that granting, extending, or terminating a contract to your family member’s employer would have a significant and substantial impact, as would choosing to assign the firm work under an existing contract. You should also take care not to take any action with regard to any other firm in the pool or with regard to selection criteria generally that would benefit your family member’s employer.

As we noted in Board Opinion 2021-001, however, 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.” Bd. Op. 2022-001 at 4. The same is no less true for a financial interest arising from employment with one component of a large for-profit corporate conglomerate. A conflict will only arise if the relationship between the entity affected by the official action and your spouse is such that we can reasonably infer an attendant impact on the employment relationship. *Id.*

1. Former Parent Company

As noted above, your family member's employer was recently sold to Parent Company #1. A conflict of interest will only arise under Code Section 20-607 as a result of a current or ongoing financial interest. As such, as a general matter, you do not have a conflict with regard to the former parent company of your family member's employer. You would have a conflict of interest, however, with regard to any decision to refer any business to your family member's employer pursuant to the referral clause in the City's contract with the firm's former parent company.

2. Parent Company #1

Given the close relationship your family member's employer has with Parent Company #1, as described on page 2, above, we find that a conflict of interest will arise for you for any action that would have a significant and substantial impact on Parent Company #1.

3. Parent Company #2 and Parent Company #3

While your family member's employer is not as closely related to Parent Company #2 and Parent Company #3 as it is to Parent Company #1, ultimately, it is wholly owned by them. Moreover, Parent Company #2 and Parent Company #3 appear to be managed by the same leadership and share many resources and structures. Notably, profits from Parent Company #3's subsidiaries such as your family member's employer and Parent Company #1 flow up to Parent Company #3 through Parent Company #2. Accordingly, we find that a conflict of interest will arise for you for any action that would have a significant and substantial impact on Parent Company #2 or Parent Company #3.

4. Other Subsidiaries

As noted above, Parent Company #3 has dozens of subsidiaries. For example, Subsidiary #1 is a wholly owned subsidiary of Parent Company #3 but is a separate corporate entity on a separate branch of the corporate tree from your family member's employer and Parent Company #1. We find that corporate affiliates other than Parent Company #1, Parent Company #2 and Parent Company #3 will not give rise to a conflict of interest for you. We further find that subsidiaries of Parent Company #1 will not give rise to a conflict of interest for you so long as they are separate corporate entities and do not have substantial operational or managerial overlap with Parent Company #1 and your family member's employer.

iii. Quarterly Information Meetings

As discussed on page 3, above, your office holds quarterly informational meetings with firms that are part of the eligible pool of vendors. While you do not make contractual decisions at these meetings, they involve, among other things, discussions of a firm's progress and performance. Because official action includes not just final decisions, but also preliminary deliberations, you should not participate in quarterly meetings concerning your family member's employer, Parent Company #1, Parent Company #2, or Parent Company #3.

b. 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. As such, you should not share confidential information with your family member.

IV. Conclusion

As explained in more detail above, you are advised that you will have a conflict of interest under the City's Ethics Code if you are able to take official action that would either affect your family member's compensation or employment or would have a significant and substantial impact on your family member's employer. You will also have a conflict of interest under the City's Ethics Code if you are able to take official action that would have a significant and substantial impact on Parent Company #1, Parent Company #2, or Parent Company #3. If necessary, you must submit a revised disclosure and disqualification letter to ensure that it covers all matters with regard to which you have a conflict of interest. Board staff is available to assist you with that process.

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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

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