

City of Detroit Board of Ethics

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REDACTED

Advisory Opinion #2020-02
Issued: April 21, 2020

Advisory Opinion #2020-02: The Board of Ethics concludes the Request for Advisory Opinion 2020-02 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the Request. The Ethics Ordinance prohibits Requestor from accepting employment with [REDACTED] until a period of one year has passed from the date her employment ended with the City. The Ethics Ordinance prohibits the Requestor from accepting the job because it involves the sharing of confidential information. Also, the Ethics Ordinance prohibits Requestor from receiving compensation for any work or any other matter that she worked on or acquired knowledge about while working for the City. And finally, the Ethics Ordinance prohibits Requestor from accepting work with [REDACTED] because the Requestor was involved in the award or management of the contract while she was a public servant.

I. Procedural Background

Request for Advisory Opinion 2020-02 (the “Request”) is dated January 17, 2020, and was sent to the Board of Ethics (the “Board”) by electronic communication and received on January 21, 2020. 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 maintains confidentiality in this matter.

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code (Code), the 91-day period for review of this request will conclude on April 21, 2020. Section 2-5-124(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on July 21, 2020.

At its meeting on April 21, 2020, the Board determined that after the Requestor’s signature is placed on the initiating document, the Request will meet the basic requirements for a Request for

Advisory Opinion under Section 2-6-101 of the Ordinance. The Requestor's signature was confirmed on the Request on the same day. The Board heard a Preliminary Analysis from legal council on the same day, 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

In summation, the question presented to the Board is whether the Requestor, who is a former public servant, may work for a nonprofit organization that has a contract with the City if the Requestor has been involved with the project to which the contract pertains. By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 Detroit City Code.

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 2-5-71 of the 2019 Detroit City Code. It states as follows:

Sec. 2-5-71. - One year post-employment prohibition.

(a) Subject to state law, for one year after employment with the City, a public servant shall not lobby or appear before the City Council or any City department, agency, board, commission or body, or receive compensation for any services in connection with any matter in which the public servant was directly concerned, personally participated, actively considered or acquired knowledge while working for the City.

(b) Subject to state law, for one year after employment with the City, a public servant shall not accept employment with any person who, or entity which, did business with the City during the former public servant's tenure where the public servant was in any way involved in the award or management of the contract, or the employment would require the sharing of confidential information.

(Code 1984, § 2-6-72; Ord. No. 18-12, § 1(2-6-72), eff. 8-31-2012)

IV. Application of the Charter and Code to the Facts Presented

The Requestor formerly worked as a [REDACTED] for the City's [REDACTED]. Therefore, the Requestor is a former public servant as that term is defined in Section 2-105 of the 2012 Detroit City Charter (Charter) and the Ethics Ordinance at Section 2-5-3 of the Code. Accordingly, the Requestor's conduct is regulated by the Ethics Ordinance. The analysis is as follows.

According to the Request, while the Requestor worked for the City, she led the early design and development of a project, and was significantly involved prior to the contract's execution. Engaging in those activities demonstrates that the Requestor was directly concerned with, personally participated in, and acquired knowledge regarding the project. As such, Section 2-5-71 (a) generally prohibits the public servants from "receiv[ing] compensation for any services in connection with" the project for a year following the end of the Requestor's employment with the City.

The Request states that Requestor has a pending job offer and not a volunteer opportunity. Therefore, it is presumed that she will receive compensation from the entity offering the job. Because the Requestor's employment with the City ended on [REDACTED], 2019, the prohibition against receiving compensation for providing services in connection with the project remains in effect until [REDACTED] 2020. Therefore, Section 2-5-71(a) of the Code prohibits the Requestor from receiving compensation from [REDACTED] for any work related to the project until one year from the date that her employment with the City ends.

Furthermore, in regard to Section 2-5-71(b) of the Code, for one year after the Requestor's employment with the City ended, she is prohibited from accepting employment with an organization that did business with the City during the [Requestor's] tenure where [she was in any way involved in the award or management of the contract or the employment would require the sharing of confidential information." As provided for by the information in the Request, [REDACTED] collaborated as a partner with the City's [REDACTED], and has a contract with the City. The details of the Request state that Requestor was involved with work on the project, and that she was tasked with [REDACTED] prior to the contract being finalized. By conducting that review, the Requestor was involved, in some way, with the award of the contract, [REDACTED] to the contract. Therefore, because the Requestor was involved in some way with the award of the contract while she was a public servant, she is prohibited from accepting employment with [REDACTED] until one year from the date that her employment with the City ended.

Also, considering that [REDACTED] receives information related to the project from the City pursuant to a contract, [REDACTED]'s work on the project likely involves confidential information. It should be noted that Section 2-5-71(b) of the Code establishes a prohibition against former public servants accepting employment that "would require the sharing of confidential information" for one year after the public servant's employment with the City ends. The Request states that the job being offered to the Requestor would involve management of the project. In order to effectively manage the project, the Requestor will probably need to share information concerning the project. Requestor would likely have to share confidential information. Therefore, until one year has passed from the date that the Requestor's employment with the City ended, she is prohibited from accepting employment with [REDACTED] that would involve the sharing of confidential information.

V. Conclusion

The Board of Ethics concludes the Request for Advisory Opinion 2020-02 in accordance with Sec. 2-6-104(b)(4) and issues this advisory opinion in response to the Request. The Ethics Ordinance prohibits Requestor from accepting employment with [REDACTED] until a period of one year has passed from the date her employment ended with the City. The Ethics Ordinance prohibits the Requestor from accepting the job because it involves the sharing of confidential information. Also, the Ethics Ordinance prohibits Requestor from receiving compensation for any work or any other matter that she worked on or acquired knowledge about while working for the City. And finally, the Ethics Ordinance prohibits Requestor from accepting work with [REDACTED] because the Requestor was involved in the award or management of the contract while she was a public servant.

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