

City of Detroit Board of Ethics

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Advisory Opinion #2020-08
Issued: July 21, 2020

Advisory Opinion #2020-08: It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2020-08. The Requestor may participate as a paid archery instructor for a Palmer Park summer camp that is hosted by his archery team if he only engages in archery instruction for the summer camp during times when he is not required to be performing work for the City, and he receives the proper approval from the head of the DPRD on his "Request for Approval of Outside Employment" form.

I. Procedural Background

Request for Advisory Opinion 2020-08 (the "Request") was sent to the Board of Ethics (the "Board") by electronic communication and received on February 18, 2020. In accordance with Sec. 2-6.101, the Request was submitted by a current public servant as defined by Section 2-5-3 of the Detroit Ethics Ordinance (the "Ordinance"). The Public Servant waives 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 May 19, 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 August 18, 2020.

At its meeting on May 19, 2020, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance and allowed extension. The Board heard a Preliminary Analysis from legal counsel on July 21, 2020, and after consideration and discussion of the issues presented, the Board voted, decided to issue this Advisory Opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

The Requestor works for Detroit Parks and Recreation Department as an Environmental Educator, part time. He states that he is also a certified archery instructor. His archery team wants to host a summer camp at Palmer Park and he seeks an advisory opinion to avoid a conflict of interest. "How do I avoid a conflict of interest when off the clock - to be an instructor (paid Instructor) for the summer camp?" 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 2-5-62, -63, -64, -65, and -66 of the 2019 Detroit City Code. It states as follows:

Sec. 2-5-62. - 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 the public servant's 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.

(Code 1984, § 2-6-62; Ord. No. 18-12, § 1(2-6-62), eff. 8-31-2012)

Sec. 2-5-63. - Improper use of City property prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly use City property in violation of City policies and procedures.

(Code 1984, § 2-6-63; Ord. No. 18-12, § 1(2-6-63), eff. 8-31-2012)

Sec. 2-5-64. - 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 the public servant's official duties for the City.

(Code 1984, § 2-6-65; Ord. No. 22-00, § 1(2-6-65), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-65), eff. 8-31-2012)

Sec. 2-5-65. - 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;

(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 the public servant 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 the public servant serves as an appointee or as an employee, or under a personal services contract, as long as the public servant does so:

a. Without compensation; **and**

b. On the public servant's leave time; **and**

c. For appointees, in accordance with Chapter 35, Article III, Division 2, of this Code, *Vacation, Sick, Departmental, Funeral, and Jury Leave*; **or**

d. For non-union employees, in accordance with Chapter 35, Article III, Division 2, of this Code, *Vacation, Sick, Departmental, Funeral, and Jury Leave*, and the City's Civil Service Rules; **or**

e. For union employees, in accordance with the employee's respective union contract and the City's Civil Service Rules; **or**

f. For individuals who provide services to the City pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

(Code 1984, § 2-6-66; Ord. No. 22-00, § 1(2-6-66), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-66), eff. 12-15-2006)

Sec. 2-5-66. - Self-interested regulation and participation prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly vote, or knowingly participate in the negotiation or making of any City contract, or any other type of transaction with any business entity in which the public servant or an immediate family member has a financial interest.

(Code 1984, § 2-6-67; Ord. No. 22-00, § 1(2-6-67), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-67), eff. 8-31-2012)

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

Beginning with disclosure requirements, Section 2-5-62, nothing presented in the Request states or assumes that Requestor receives confidential information. However, he needs to be aware that in the course of his summer camp activities, he may not share City information with the public or to any third party who he has not been authorized to give confidential information.

Regarding Section 2-5-63, generally, the Requestor is prohibited from "us[ing] City property in violation of City policies and procedures. The Request stated that he and his team sought to use Palmer Park for the summer camp. Potentially, this may include the use of City equipment and/or inventory, etc. The Requestor must review the relevant policies and procedures for gaining the use of the park as well as any City owned equipment or inventory and gain the proper authorization.

Section 2-5-64 is the most important section for this Request. This section determines whether the Requestor may be paid as an archery instructor at a summer camp hosted at Palmer Park by his archery team even though he works part-time for the City of Detroit.

It generally prohibits public servants from knowingly engaging in employment or rendering service for a third party entity if the employment or service is "in conflict or incompatible with the proper discharge of the public servant's official duties for the City," or if the employment or service is "reasonably expected to impair the public servant's independence of judgment or action in the performance of the public servant's official duties for the City."

To avoid any conflict with the proper discharge of the Requestor's official duties for the City, the Requestor can only engage in his work as an archery instructor during times when he is not expected to be performing work for the City. The Requestor appears to understand this because he states that he will work when he is "off the clock."

The Requestor said he will be compensated and as such must comply with the City of Detroit's Outside Employment Policy, which requires an employee to notify and gain approval from their department/agency head for any current or future outside employment. The Human Resources department has the applicable form and Requestor needs authorization before beginning the outside employment.

With regard to Section 2-5-65, the Requestor would be prohibited from acting as an agent, attorney, or representative of his archery team in any matter that is pending a decision by a City agency unless any of the three provided exceptions applies. Because the Requestor is not an uncompensated member of a City board, commission, or other voting body, only two of the three exceptions could potentially apply to the Requestor. One of the exceptions would allow the Requestor to represent his archery team in a matter that is awaiting a decision by a City agency if "such representation is a required part of the public servant's official duties." However, the Requestor has presented no facts that suggest he could be required to represent any other businesses or organizations as part of his official duties for the City, especially his archery team.

The other exception that may apply to the Requestor would require him to be uncompensated by the City or his archery team for the representation and the representation would only occur during

Requestor's vacation or departmental leave time. As such, if the archery team's ability to host the archery summer camp at Palmer Park is subject to a decision by a City board, commission, or other voting body, the Requestor shall not act as the archery team's agent or representative in that matter unless he is permitted to do so by an exception to Section 2-5-65 of the Code. And he meets no exception.

Section 2-5-66 generally prohibits public servants from any participation in the negotiation or making of any type of transaction between the City and a business entity in which the public servant or an immediate family member of the public servant has a financial interest.

Because the Requestor expects to be paid for providing archery instructions at the summer camp, he has a financial interest in his archery team hosting the summer camp at Palmer Park. Also, because the archery team will require payment to provide services related to the summer camp, including archery instruction, it is considered a "business entity" for purposes of the Ethics Ordinance. Therefore, because the Requestor has a financial interest in his archery team, he should avoid any participation in any type of transaction or negotiation between the City and his archery team. Another member of the team must conduct the transaction or negotiation and the Requestor must have no participation in it.

Additionally, none of the facts or circumstances described in the Request provide any reason to expect that Requestor's work as an archery instructor for a Palmer Park summer camp will impair his independence of judgment or action in the performance of his duties as an Environmental Educator. However, the Requestor should review the Ethics Ordinance and take other precautions described in this Preliminary Analysis in order to avoid possible violations of other sections of the Ethics Ordinance.

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2020-08. The Requestor may participate as a paid archery instructor for a Palmer Park summer camp that is hosted by his archery team if he only engages in archery instruction for the summer camp during times when he is not required to be performing work for the City, and he receives the proper approval from the head of the DPRD on his "Request for Approval of Outside Employment" form. Additionally, the Requestor must follow applicable policies and procedures governing the use of Palmer Park and any equipment or other City property to avoid potential ethics violations that include the improper use of City property.

Furthermore, the Requestor is prohibited from acting as a representative of his archery team in transaction with the City that is pending a decision by a City agency, unless the matter is pending a decision by a voting body on which the Requestor does not serve, the Requestor is not compensated by any party for the representation, and the representation occurs only during the Requestor's vacation or departmental leave time. The Requestor is also prohibited from disclosing or using any confidential information during his summer camp instruction.

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Dated: August 26, 2020