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Advisory Opinion #2020-13

Issued: September 15, 2020

Advisory Opinion #2020-13: 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 2020-13. The Requestor should either disclose her interest in the house according to Section 2-5-31(b) the Code, or, if she disagrees with this disclosing, she should file another request for an advisory opinion with more details about her job duties and responsibilities. The Requestor should not use any City property for the rehabilitation project, including any computer she uses for her City position, unless she first reviews and follows the policies or procedures for use. The Requestor must not engage in the rehabilitation project activities during working hours, and must recuse herself from participating in City decision making related to the project, including decisions relevant to permits. Regarding the documentary production, the Requestor must not use or disclose any confidential information in her projects. Additionally, the Requestor must not engage in activities related to the rehabilitation or the documentary during working hours. By following this advice, the Requestor may conduct the rehabilitation project as a project manager and allow the documentary production of a documentary with no violation.

I. Procedural Background

Request for Advisory Opinion 2020-13 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on August 26, 2020. In accordance with Sec. 2-5-121, the Request was submitted by a public servant as defined by Section 2-5-3 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 November 25, 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 February 24, 2021.

At its meeting on September 15, 2020, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-5-121 of the Ordinance. The Board heard a Preliminary Analysis from legal counsel on the same day, and after consideration and discussion request that the staff perform additional fact finding. At its meeting on October 20, 2020, the Board heard a Supplemental Preliminary Analysis from legal counsel, and after consideration and discussion of the issues presented, the Board decided to issue this Advisory Opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

The Requestor is a public servant who is employed by the City as a [REDACTED]

[REDACTED] employee in [REDACTED]

[REDACTED]. The Requestor states:

I just recently purchased a home in Detroit that needs a total rehab for personal use. I am a licensed contractor.

Would there be a conflict of interest if I personally served as a project manager for this rehabilitation project? I would of course only work on it during non-working hours. All electrical, plumbing & mechanical building permits would be obtained by the respective licensed professional. Also, there is interest in producing a documentary of this process (female contractor renovating houses in Detroit) would that be a problem?

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 2-5-31, -62, -63, and -64 of the 2019 Detroit City Code. It states as follows:

Sec. 2-5-31. - Disclosure of interests by public servants.

(a) Except as otherwise provided for by applicable law, a public servant who exercises significant authority over a pending matter shall disclose:

- (1) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before City Council;
- (2) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before or within any office, department, or agency of the City; and
- (3) Any interest that the public servant, or an immediate family member has in real or personal property that is subject to a decision by the City regarding

purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or a development agreement.

(b) All disclosures that are required under Subsection (a) of this section shall be made, in writing, on a form that is created by the Law Department and sworn to in the presence of a notary public. After completion, the form shall be filed with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

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

Commentary— This provision implements the directive of [Section 2-106.2](#) of the Charter that this article shall provide for the disclosure of any financial interest, which a public servant, or the public servant's immediate family member, has in any contract or in any real or personal property, that is the subject of a governmental decision by the City or any agency of the City over which the public servant exercises significant authority in the performance of the public servant's duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.301 *et seq.*

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)

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

In the Ethics Ordinance, disclosure requirements are based on “exercising significant authority.” Section 2-5-3 of the Ethics Ordinance defines the phrase “exercises significant authority” as “having the ability to influence the outcome of a decision on behalf of the City government in the course of the performance of a public servant’s duties and responsibilities.” Sec. 2-5-31 tells us if the Requestor exercises significant authority, then she must disclose her interest in her house if it is subject to a decision by any department or agency of the City, including any decision for permits needed for her rehabilitation project. No information about Requestor’s duties or responsibilities as [REDACTED] were in the Request. Without information about Requestor’s job duties or responsibilities, no determination can be made about whether she exercises significant authority. Yet, the Requestor may still disclose her interest in the property, even if she doesn’t exercise significant authority. If the Requestor discloses, she will avoid a potential violation of Section 2-5-31 for her rehabilitation project. And she is prohibited from using or disclosing such information to third parties, including for purposes of the potential documentary.

Section 2-5-62 generally prohibits public servants from knowingly using confidential information outside the scope of the public servant’s official duties, or disclosing confidential information to third parties. The Ethics Ordinance defines confidential information as

information that has been obtained by a public servant in the course of acting as a public servant, that is not available to members of the public pursuant to the Michigan Freedom of Information Act, . . . or pursuant to other law, regulation, policy or procedure recognized by law, and that the public servant is unauthorized to disclose.

The Requestor provided no information about her job duties and responsibilities [REDACTED]. Without it, we are unable to ascertain whether she receives confidential information in the course of her work. Any information that the Requestor has obtained in the course of acting as a public servant, that is not available to the public, and that she has not been authorized to disclose, is confidential information. The Requestor is prohibited from using or disclosing confidential information to third party entities, including for a potential documentary.

When considering Sec. 2-5-63, the Requestor shall not “use City property in violation of City policies and procedures.” The Requestor provides no detail about whether she will use City property during her rehabilitation project or the documentary production. However, if she does, the Requestor must check the City’s policies and procedures that are applicable to that City property and receive proper authorizations.

Finally, Section 2-5-64 of the Code generally prohibits public servants from knowingly rendering service for a private interest if such service “is in conflict or incompatible with the proper discharge of the public servant’s official duties for the City,” or if the 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.” The Requestor stated that she

would participate in the rehabilitation project during non-working hours. Because the Requestor provided no job duties or responsibilities, we are unable to determine whether any of the Requestor's rehabilitation project activities or documentary production may impair her independence of judgment or action in the course of performing her official duties for the City. However, the Requestor can avoid violating Section 2-5-64 if she discloses her interest in the house to her supervisor and head of her department (which would happen if she discloses to the Board of Ethics) and recuses herself from making any decision [REDACTED] regarding the rehabilitation project or the documentary production, including decisions of whether or not to approve any [REDACTED].

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 2020-13. The Requestor should either disclose her interest in the house according to Section 2-5-31(b) the Code, or, if she disagrees with this disclosing, she should file another request for an advisory opinion with more details about her job duties and responsibilities.

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Dated: November 20, 2020