

# City of Memphis Board of Ethics

March 7, 2012

## Advisory Ethics Opinion No. 12-03

This opinion responds to a specific question presented, particularly whether certain behavior is permissible pursuant to the City of Memphis Code of Ethics, Ordinance 5206. It does not address any other applicable policy, local, state or federal laws. The Board of Ethics' jurisdiction is limited to the applicability of the City of Memphis Code of Ethics, Ordinance 5206, as amended. This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

### Question

Whether it is permissible for board members of the Memphis & Shelby County Music Commission ("Commission") to bring their personal music related projects to the Commission for sponsorship or underwriting costs for their projects?

### Background

The Memphis & Shelby County Music Commission is a joint commission created by the Shelby County Board of Commissioners and the City Council of Memphis and is composed of twenty (20) members, 10 of which are appointed by the Mayor of Shelby County, and ten appointed by the Mayor of the City of Memphis, subject to approval of the respective legislative bodies. Funding for the Commission is divided equally among Shelby County and the City of Memphis. The purpose of the Commission is to preserve, foster, and promote Memphis music locally, nationally and throughout the world. The Commission strengthens and advances Memphis Music through education, networking, advocacy, and professional and industry development.

### Analysis

The City of Memphis Code of Ethics, City Ordinance No. 5206, as amended, provides, in part, as follows:

#### **Section 1. Applicability.**

This chapter is the code of ethics for personnel of the City. It applies to all full-time and part-time elected or appointed officers and employees, whether compensated or not, including those of any separate board, **commission**, committee, authority, corporation, or other instrumentality appointed or **created by the City**. The term "City" includes these separate entities. (emphasis added.)

The City of Memphis Code of Ethics applies to appointed officers of any board or commission that was created by the City. Although the Commission was created jointly by

Shelby County and the City of Memphis, the ordinance does not limit its applicability to commissions created *solely* by the City. Accordingly, it is my opinion that because the Commission was, in fact, created by the City, the Code of Ethics applies to board members appointed by the City.<sup>1</sup>

The City of Memphis Code of Ethics provides in pertinent part as follows:

**Section 3. Disclosure of personal interest by officer with vote.**

An officer with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and so it appears in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the officer's vote on the measure. In addition, the officer may recuse himself from voting on the measure.

**Section 2. Definition of "personal interest."**

..."Personal interest" means: (1) (a)ny financial, ownership, or employment interest in the subject of a vote by a board or commission of the City...(2) (a)ny financial, ownership, or employment interest in a matter to be regulated or supervised; or (3) (a)ny such financial, ownership, or employment interest of the officer's ...spouse, parent(s), stepparent(s), grandparent(s), sibling(s), child(ren), or stepchild(ren).

Should a board member of the Commission bring his/her personal music related projects, for which he/she has a personal interest (*any* financial, ownership or employment interest), then at the very least said board member shall disclose his/her personal interest that would lead a reasonable person to infer that it affects the officer's vote on the measure. In addition to this, it would be good practice for that board member to recuse himself/herself from voting on that particular matter.

The ordinance further provides:

**Section 6. Use of Information.**

(b) An officer... may not use or disclose information obtained in his officer capacity... with the intent to result in financial gain for himself or any other person or entity.

**Section 6. Use of City time, facilities, etc.**

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<sup>1</sup> Although it is likely that Shelby County's Code of Ethics may also be applicable, especially to members appointed by it, this opinion does not address this nor does it analyze Shelby County's Code of Ethics in any manner.

(a) An officer... may not use or authorize the use of the time, facilities, equipment, or supplies of the City for private gain or advantage to himself.

(b) An officer... may not use or authorize the use of the time, facilities, equipment, or supplies of the City for private gain or advantage to any private person or entity...

**Section 8. Use of position or authority.**

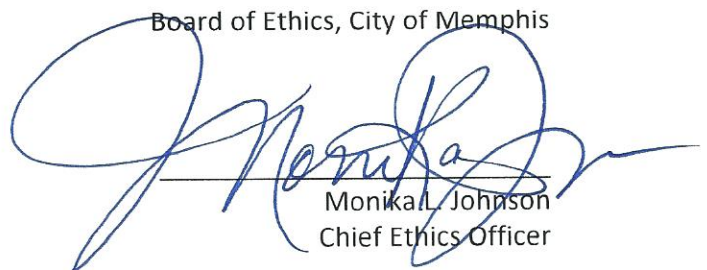
(b) An officer... may not use or attempt to use his position to secure any privilege or exemption for himself or others that is not authorized by the charter, general law, or ordinance or policy of the City.

In addition to disclosing matters for which there is a personal interest, board members of the Commission should ensure that they are not using information which is obtained by virtue of their position on the board. Board members of the Commission are also prohibited from using City time, facilities, equipment or supplies for private gain or advantage to himself/herself or any private person or entity. Lastly, board members are prohibited from using his/her position to secure any special privilege or exemption for himself/herself.

**Conclusion**

Based upon the foregoing, it is my opinion that as long as there are no other state statutes or federal laws which would prohibit members of the board of the Memphis and Shelby County Music Commission from having a personal interest in music related projects which may be brought to the Commission, then a member may be involved in that project as long as: (1) he/she discloses said personal interest, and preferably refrains from voting on that matter; (2) the member is not profiting from information gained by virtue of his/her position on the board; (3) the member is not using City time, facilities, equipment or supplies for private gain or advantage to himself/herself or any private person or entity; and (4) there is no misuse or abuse of his/her position of authority by attempting to secure a special privilege or exemption for himself/herself.

Board of Ethics, City of Memphis

A large, stylized handwritten signature in blue ink, which appears to read 'Monika L. Johnson', is written over a horizontal line.

Monika L. Johnson  
Chief Ethics Officer

Requested by:

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