

City of Memphis Board of Ethics

June 7, 2023

Formal Ethics Opinion 2023-03

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, 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, pursuant to the City of Memphis Code of Ethics for City Officials, for a Memphis City Council employee who is assigned to work with various council members, to serve as a member of the board of directors for a non-profit organization which generally applies for grant opportunities through the Memphis City Council's grant program.

Opinion

The Code of Ethics, in pertinent part, defines a "personal interest" in a matter as "any financial, ownership, or employment interest in a matter to be regulated or supervised." At a minimum, the Code requires employees with a personal interest in a matter to disclose said interest. With regard to financial interests, Mayor Strickland's Executive Order No. 1-2016 provides in pertinent part that "No employee shall enter into or derive any benefit, directly or indirectly, from any contractual arrangement with the City or its agencies." Because the employee will serve as a volunteer for the non-profit without compensation, the proposed conduct is only permissible if the employee:

1. Discloses said position;
2. Refrains from working on matters involving the non-profit;
3. Does not use the information obtained as a result of her position of employment to secure a benefit for herself or the organization; and
4. Does not use her current City position to secure any privilege for herself or the non-profit organization.

Facts

An employee who serves as a Research Analyst in the Memphis City Council's office has recently been requested to serve as a director for Community Legal Services board. Community Legal Services is a non-profit organization. The employee will not be compensated for her service with the non-profit. In her capacity as Research Analyst for the City of Memphis, the employee is assigned to various elected City Council members. The member(s) to whom she is assigned to work changes annually.

Community Legal Services has applied for and received grants directly from Memphis City Council's grant program.

Analysis

Sec. 2-10-2 of the City of Memphis Code of Ethics for City Officials (hereinafter "City Code of Ethics") defines a "personal interest" as "any financial, ownership, or employment interest in a matter to be regulated." Sec. 2-10-4 of the City Code of Ethics further provides that:

An officer or employee who must exercise discretion relative to any matter, other than casting a vote, and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose ... the interest.

Although it does not appear that the employee has a financial or ownership interest in the non-profit organization, serving on the Board of Directors for this non-profit could lead a reasonable person to infer that it may affect the employee's judgment. Further, it is best to disclose her relationship because of the potential appearance of impropriety. Specifically, the Mayor's Executive Order, referenced above, provides that: **"Each employee shall avoid any action, whether or not specifically prohibited by statute or this Order, which would result in impropriety adversely affecting the confidence of the public in the integrity of the government."**

Accordingly, it is the opinion of this Board, that at a minimum, the Employee must disclose her potential relationship with the non-profit to her Supervisor, the City Council and the Human Resources Department.

Sec. 2-10-6 of the City Code of Ethics, prohibits an employee from the use of information obtained in his/her position of employment with the intent to result in financial gain for himself/herself or any other person or entity. Further, the Mayor's Executive Order provides that no employee shall "use, disclose or allow the use of official information which was obtained through or in connection with his or her City employment which has not been made available to the general public for the purpose of furthering the private interests or personal profit of any person ..." Therefore, the employee shall not use any information derived from her employment in an effort to secure a benefit for Community Legal Services.

Further, Sec. 2-10-8 of the City Code of Ethics prohibits the use of an employee's position or authority to secure a privilege for themselves or others.

Conclusion

Based on the foregoing, it is the opinion of this Board that the proposed conduct is permissible only if the employee discloses the relationship to her superiors, the City Council, the Human Resources Department, and the City Official(s) to whom she is assigned; and as long as the employee does not use information gained in her capacity as a City employee for the benefit of herself or others; and does not abuse her position of authority by attempting to secure a privilege for herself or others. Further, in her role as Legislative Research Analyst, the employee shall not work on matters involving the subject non-profit organization.


Board of Ethics, City of Memphis



Chairman, Judge Karen R. Williams

(By Unanimous Vote of the Board of Ethics on June 7, 2023)

Approved as to Form:



Monika Johnson, Chief Ethics Officer &
Secretary, Board of Ethics

Requested by:

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