

ED GAINNEY
MAYOR



LEANNE DAVIS
EXECUTIVE DIRECTOR

CITY OF PITTSBURGH
ETHICS HEARING BOARD
CITY-COUNTY BUILDING

OPINION OF THE BOARD
CONFIDENTIAL

July 23, 2024

To the Requester:

Name, Title

Via electronic mail

RE: 24-A-012 Confidential, DNC

Dear Requester:

Issue: You ask if there are ethical implications of the Mayor's police detail, who ordinarily accompanies him on trips, traveling with him to a political event such as the Democratic National Convention ("DNC") considering that their travel expenses are reimbursed by the City?

Short Answer: Reasonable and necessary actual expenses may be reimbursed for the performance of official duties. For a full response, we note that the police detail is prohibited from engaging in political activities while on City time, or with use of any City property, uniform, or other City resources.

Statement of Facts: Advice is issued based on the facts submitted, with no independent investigation. [City of Pittsburgh Code of Ordinances \("Code"\) § 197.13](#). It is the burden of each requesting party to truthfully disclose all material facts relevant to the inquiry. The facts as given are:

- You serve the City of Pittsburgh ("City") as its [job title].
- Through this role, you [engage in work duties that relate to actions of third parties].
- You wish to confirm [your actions as relates to third party conduct] would meet the expectations and requirements as set out in our City's Code of Conduct.
- The Mayor's police detail ordinarily accompanies him on trips.

- The police detail's travel expenses are generally reimbursed by the City.
- The Mayor and Chief of Staff plan to attend the DNC this August. It will be held in Chicago.
- The Mayor's police detail has identified a need to accompany him on this trip to Chicago.

Relevant Law: The State Ethics Act and our City Code contain conflict of interest restrictions, with our local laws containing additional provisions on political activity. [65 Pa.C.S. §§ 1103\(a\),\(d\), and 1102](#); [Code §§ 197.03\(a\),197.04](#); and [Home Rule Charter §§ 705 and 706](#). Several terms within these laws have statutory definitions. Relevant laws and definitions are listed at the end of this letter.

Legal Analysis

Standing: As a preliminary matter, the Board may only advise parties who are covered under the ethics laws and subject to enforcement. [Code § 197.13](#). Accordingly, the Board generally cannot opine on third party conduct. The Board has jurisdiction to “act with respect to those who induce, encourage, or aid anyone to violate any provision of this Code, give gifts to officials and employees or their relatives, or are otherwise covered by the provisions of this Code.” Code § 197.11(a); [Pittsburgh Press Co. v. Pittsburgh Comm'n on Hum. Rels.](#), 413 U.S. 376, 93 S. Ct. 2553, 37 L. Ed. 2d 669 (1973). In your position of [job title], you [engage in work duties that relate to actions of third parties]. As your inquiry relates to your individual conduct, which could function to assist the actions of [third party], you have standing to request this advice.

Political Activity, Use of Office: We initially acknowledge that this trip, unlike other prospective travel reimbursements, involves a political event. There are no facts presented that the police detail plans to speak at the event, nor engage in any other political activity.

For a full response, we note that our Charter prohibits "engaging in political activity during working hours and at all times in city offices" and that public officials and all City employees must not use "any City facilities, property, staff or information obtained in the course of his or her employment for personal use other than would be generally available to the public at large." [Home Rule Charter §§ 705 and 706](#), and [Code § 197.04](#).

Finally, to conclude our discussion on political activity, we note the State Ethics Commission reviews policies and legislation beyond the Ethics Act “to the extent that it impacts upon [their] determination under [the conflict of interests law] as to whether financial gain is compensation other than provided for by law.” [Pugh](#), Order 86-136 at page 22; [Code § 195](#). In this regard, we note that the Hatch Act discusses political activity restrictions. [5 U.S.C.A. § 1501 et seq.](#) Our City employees whose “principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a federal agency,” are subject to the prohibitions specified in [5 U.S.C.S. § 1502](#), and may not:

- “1. Use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
2. Or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or
3. If the salary of the employee is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency, be a candidate for elective office.”

5 U.S.C.A. § 1501-1502. Again, there are no facts present to indicate the police detail would be engaging in any conduct other than their assignment, and we note these restrictions merely for the purpose of providing a more complete response.

Conflicts of Interest, Coverage: Statutory conflicts of interest involve the use of one’s position to benefit themselves, their family, or a business or property with which they or their family is associated. [65 Pa.C.S. §§ 1103\(a\),\(d\), and 1102](#); [Code § 197.03\(a\)](#). While some ethics laws apply to all employees, conflicts restrictions apply only to certain positions, those that meet the criteria for the legally defined “public employee” status under the State Ethics Act.

Public employees include supervisors who can create or recommend a greater than insignificant economic impact on the interests of subordinate employees. [65 Pa.C.S. § 1102](#). Similarly, public employees include police officers assigned to civil-code enforcement, and entrusted with duties such as inspecting, auditing, or regulating. [Bruni, Advice 20-516](#); [Peffley, Opinion 80-055](#). Conversely, a police officer assigned a traditional detail is generally not a “public employee.” [65 Pa.C.S. § 1102](#); § 51 Pa. Code 11.1; [Peffley, Opinion 80-055](#) (“A ‘police officer’ is someone authorized or empowered to perform functions considered critical to public safety including the detection and investigation of serious crimes and the apprehension and arrest of offenders.” [internal citations omitted]).

Here, based on the provided facts, the described police detail appears to be a police officer “charged with the general duty of maintaining peace and order.” [Peffley, Opinion 80-055](#). Accordingly, we find it likely that the security detail assigned does not meet the legally defined criteria of “public employee” status and consequently the security detail is most likely not subject to conflict of interest restrictions under the state law or under our Code. If, however, the security detail involves supervisors covered under the ethics laws as public employees, the question before us remains as to the security detail’s prospective conduct, and whether the use of the authority of their position would create an unlawful private gain – whether in regard to the travel opportunity itself or in reimbursement.

Conflicts of Interest, Travel Opportunity Here, the facts presented relate to the police detail’s receipt of travel and lodging to perform their assigned duties during a trip. The use of office in being afforded the travel opportunity itself does not appear at issue here. Providing

security is a work duty, to protect and serve as assigned. Based on common knowledge of public safety operations, the security detail deployed would not have sole discretion over their own assignments.

Conflicts of Interest, Reimbursement The remaining issue involves appropriate reimbursement. Receipt of business-related travel reimbursements are not an unlawful private pecuniary gain so long as the costs reimbursed by the City are reasonable and necessary actual costs relating to the performance of one's authorized duties. Rehmeyer, Advice 07-522.

Here, the police detail will be acting in their official capacity as they are requested to provide security, and accordingly their expenses are appropriately reimbursed so long as the trip is not extended for personal use nor involving costs in excess of what is reasonable and necessary given the circumstances. O'Malley, Order 1737 (finding a conflicts of interest violation occurred when "O'Malley used the authority of his office by extending Authority travel for reasons not associated with Authority business, and received wages and expenses or charges were paid by the Authority resulting in private pecuniary benefit"); Hutcheson, Order 1780 (p-card used to pay wife's registration fee for a conference that she was not eligible to attend and to pay for a rental car for personal travel after the conference ended); Tucker, Order 1815 and Meyer, Order 1818 (Authority board members charged Authority for personal expenses for themselves or Tucker's girlfriend for travel, food, entertainment, and other items not related to official Authority business while attending conferences, including extended stays); cf. Payne, Order 1302.

In summary, the police detail is likely not covered by conflict of interest rules. If they hold supervisory roles and therefore covered under conflict restrictions, there is no factual basis to conclude that a conflict of interest could or would occur in regard to the police detail performing assigned duties, nor in regard to their work-related reimbursement for travel, so long as such reimbursements are for reasonable and necessary actual costs incurred in executing official duties.

We do not address prospective conduct of the Mayor and Chief of Staff, as this question, and necessary details related thereto, are not before this Board.

Reliance: This advice is based on the facts summarized in this opinion letter. Code §§ 197.13 and 197.16(a). Please contact our staff if these facts are inaccurate or incomplete – or if the facts change in the future. Advice can be appealed or amended. Code § 197.13.

The Ethics Hearing Board works from the City's Code of Conduct, which adopts the entirety of the State Ethics Act, along with portions of the City Code and Home Rule Charter. Code § 197.01. The State Ethics Commission is the authority on the Act. If the State Ethics Commission provides a more restrictive view than this writing, the State's position will govern. 65 Pa.C.S. §§ 1107, and 1109. In complement, the Board and its staff adopt or exceed State Ethics Commission interpretations of the Act. 65 Pa.C.S. § 1111.

Conclusion: Ethics rules permit the police detail to be reimbursed for all reasonable and necessary actual work-related travel expenses. For a full response, we advise that the police detail may not use public funds, staff, and other City resources for personal or political activity.

Thank you again for contacting us regarding this inquiry,

Sincerely,

Maryann Herman

Maryann Herman, Chair

Relevant Governmental Ethics Provisions:

State Ethics Commission Regulation: § 51 Pa. Code 13.1(a) General provisions. -- An advice or an opinion may be requested by a public official or public employee as to his own conduct or by the authorized representative of the person, his present employer, or appointing authority of the person through majority action of the appointing authority, if applicable.

Code § 197.13 (a) Upon the written request of **any person covered under this Code**, the Ethics Hearing Board must render, within thirty (30) days after the date of its next regular meeting, a written advisory opinion with respect to the interpretation or application of this Code with respect to future actions only. (emphasis added)

Code § 197.11 (a) POWERS AND DUTIES OF THE BOARD. The Ethics Hearing Board may only act with respect to current and former officials and employees (and those who, although acting under contract, appear to act as government officials and employees), consultants, applicants, candidates, contributors to campaigns for City elected office, and persons and entities who do or seek business with the City (including the owners and officers of such entities, and subcontractors). The Ethics Hearing Board may also act with respect to those who induce, encourage, or aid anyone to violate any provision of this Code, give gifts to officials and employees or their relatives, or are otherwise covered by the provisions of this Code.

65 Pa.C.S. § 1103 (a) Conflict of interest.--No public official or public employee shall engage in conduct that constitutes a conflict of interest.

65 Pa.C.S. § 1102 (a) "Conflict" or "conflict of interest." Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his

immediate family or a business with which he or a member of his immediate family is associated.

Code § 197.03 (a) - CONFLICT OF INTEREST. No public official or public employee shall exert influence with respect to property or a business with which he or a member of his or her direct family is associated.

State Ethics Act § 1102 (a) "Public employee." (also at Code § 197.02)

Any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with regard to:

- (1) contracting or procurement;
- (2) administering or monitoring grants or subsidies;
- (3) planning or zoning;
- (4) inspecting, licensing, regulating or auditing any person; or
- (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.

The term shall not include individuals who are employed by this Commonwealth or any political subdivision thereof in teaching as distinguished from administrative duties.

Code § 197.04 CITY EMPLOYEE. Any individual employed by the City of Pittsburgh in any capacity. A City employee may or may not also be a public employee as that term is defined in the State Statute.

Code § 197.04 USE OF AUTHORITY AND PUBLIC PROPERTY.

- (d) No public official or City employee shall use or allow to be used any City facilities, property, staff or information obtained in the course of his or her employment for personal use other than would be generally available to the public at large.

Home Rule Charter § 705: Employees of the City are prohibited from engaging in political activity during working hours and at all times in city offices. City employees may not hold an elected public office wherein they would receive an annual salary, unless a leave of absence is taken without pay. Certain described classes of city employees and officers may be required, by ordinance, to take a leave of absence without pay while a candidate for elected public office. City employees shall not be permitted to accept any gift or thing of value in connection with their employment other than their salary, nor be compelled to contribute to any fund other than that required by law. No solicitation shall be made of a city employee for any purpose during working hours. Nothing contained in this section shall affect the right of city employees to support a political party, to vote as they choose, to hold party office or to express publicly and privately their opinions on political subjects and to attend political meetings.

Home Rule Charter § 706: No elected official, officer or employee shall in any manner receive benefit from the profits or emoluments of any contract, job work or service for the City, or accept any service or thing of value directly or indirectly upon more favorable terms than those granted to the public generally, from any person, firm or corporation having dealings with the City. No elected official, officer, or employee shall solicit or receive any compensation, gratuity or other thing for any act done in the course of public work. This section shall be broadly construed and strictly enforced. Any violation of this section shall cause the offending official, officer, or employee to forfeit office or employment.

State Ethics Commission Regulation: § 51 Pa. Code 11.1 Definitions “Public employee” --

(v) Persons in the following positions are generally not considered public employees:

- (A) City clerks, other clerical staff, road masters, secretaries, police officers, maintenance workers, construction workers, equipment operators and recreation directors.
- (B) Law clerks, court criers, court reporters, probation officers, security guards and writ servers.
- (C) School teachers and clerks of the schools.