



CITY OF PITTSBURGH

Ethics Hearing Board

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Alex Matthews

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Via electronic and first-class mail

June 6, 2019

Re: Request for Advisory Opinion on City employee engaging in using training and certification gained during employment

Dear [REDACTED]

This responds to your correspondence to the City of Pittsburgh Ethics Hearing Board ("Board"). You submitted a request for an advisory opinion on April 1, 2019. The Board subsequently requested clarification as to the nature of your inquiry. You responded to the Board's request on April 15, 2019.

In responding to your request, the Board has evaluated the City of Pittsburgh Code of Conduct ("Ethics Code") Sections 197.02, 197.04(c)-(d), as well as Section 706 of the Home Rule Charter.

Issue:

It is the Board's understanding you are asking if it is a violation of Section(s) 197.04(c)-(d) of the Ethics Code or Section 706 of the Home Rule Charter for a City of Pittsburgh ("City") employee to learn about setting up a business if this business would use training and certification obtained during the course of employment with the City for private pecuniary gain after retirement from City employment. It is also the Board's understanding that you do not intend to operate your business until after your employment with the City of Pittsburgh ends.

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Stated Facts:

It is initially noted that pursuant to Section 197.13 of the Ethics Code, advisory opinions are issued based upon the facts that you, the requester, have submitted. In issuing the advisory opinion, this Board does not engage in an independent investigation of the facts, nor does it speculate as to facts that have not been submitted. It is the burden of the requester to truthfully disclose all of the material facts relevant to the inquiry.

You serve the City as a Police Officer for the Pittsburgh Bureau of Police. You have provided materials with your request for an advisory opinion related to the field of polygraph examination. It appears that you have conducted polygraph examinations through your official work duties, and are interested in providing these services upon retirement.

In the materials provided with your request for an advisory opinion, you state:

- "To clarify the concern about my having established [REDACTED], I do not have any intention of accepting clients or contracts for investigative work while still employed by the Pittsburgh Bureau of Police."
- "I am not seeking business."
- "My intent is to learn about owing (*sic*) my own business in the interim so that I will be able to proceed in soliciting business upon my retirement for the Pittsburgh Bureau of Police and move forward to apply for a Private Detective License at that time."

You seek guidance as to whether the Ethics Code and/or the Home Rule Charter would impose any prohibitions or restrictions upon you with regard to engaging in private business activities related to your official duties upon retirement.

Discussion:

The following sections of the Ethics Code are relevant to your inquiry:

Section 197.02 "Definitions" provides:

(c) "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.

(j) "Public Employee." 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; or,

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(5) Any other activity where the official's action has an economic impact of greater than a de minimis nature

Sections 197.04 (c) and (d) provide:

(c) No public official or City employee shall use or permit the use of his or her official title, insignia or position in connection with any private business from which the public official or City employee receives compensation.

(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.

The following section(s) of the Home Rule Charter of the City of Pittsburgh, Pennsylvania are relevant to your inquiry:

Section 706, "Prohibitions in General" provides:

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.

The definition of City employee includes "[a]ny individual employed by the City of Pittsburgh in any capacity." Therefore, the position of police officer is considered to be a "City employee" in this instance.

Section(s) 197.04(c)-(d) of the Ethics Code as well as Section 706 of the Home Rule Charter provide provisions that prohibit City employees from using their official position to obtain personal financial gain that would not otherwise be available to them but for the holding of their official position. As long as there is no business conducted and there is no benefit from your activities in learning about setting up this business while you are employed with the City, you would not be in violation of Section 197.04(c)-(d) of the Ethics Code or Section 706 of the Home Rule Charter.

Based on the facts presented, this advisory opinion only relates to Section(s) 197.04(c)-(d) of the Ethics Code and Section 706 of the Home Rule Charter. No position is being expressed regarding the effect and application of other provisions of the Ethics Code or Home Rule Charter. The Board also expresses no opinion regarding other statutes, codes, ordinances, regulations or other rules of conduct, including but not limited to any policies of the Pittsburgh

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Bureau of Police, Section 197.20 of the Ethics Code allows for the Pittsburgh Bureau of Police to create more restrictive policies or procedures than is expressed in this advisory opinion.

You may rely on this advisory opinion only to the extent that the disclosure of facts and circumstances provided in your request are accurate and complete. Under Section 197.13(c), this advisory opinion is binding upon the Board in any subsequent proceeding concerning the person or entity that requested the opinion, or to which the advisory opinion referred.

If you disagree with this advisory opinion, or if you have any reason to challenge the same, you may ask the Board for reconsideration. Any request for reconsideration must be in writing and received by the Board within thirty days of the last date this advisory opinion is signed below. The request must describe how you believe the Board has erred in its application of the relevant law and/or facts. The conclusion contained in this advisory opinion will remain in full force and effect unless and until it is amended or revoked.

This advisory opinion is a public record and will be indexed and maintained on file by the Board and will also be available on the Board's website after: (a) 31 days of the date of this letter or (b) the disposition of a timely request for reconsideration, if such a request is received.

This advisory opinion has been reviewed by the Board and approved by the Board's signatories below during its meeting on the 23 day of May, 2019.

On behalf of the Board:

Patrick Bigley
Patrick Bigley

5.28.19
Date

Sean Coleman
Sean Coleman

6/5/19
Date

Lynn Davannort
Lynn Davannort

6/5/19
Date

Mel Harrington
Melanie Harrington

6/5/19
Date

Jessette Ho
Jessette Ho

6/5/19
Date

Alex Matthews
Alex Matthews

5-28-19
Date