

Stephan W. Fogleman, Chair
Donna M. Davis, Vice-Chair
Melodie Hengerer
Arnold Sampson
Vacant



Director: Jeffrey Hochstetler

BALTIMORE CITY BOARD OF ETHICS

Baltimore City Board of Ethics
Ethics Opinion 22-001
(February 14, 2022)

The Baltimore City Board of Ethics (“Board”) received a request for an advisory opinion from a City employee (“Employee”). *See* City Code, Article 8, Subtitle 4 (providing for advisory opinion requests).¹ The Employee asks whether the Ethics Law’s post-employment restriction would prohibit her from leaving City service and accepting a position with an employer (“Employer”) that currently has an agreement with the City. *See* § 6-22. The Employer’s agreement with the City is administered by the Employee’s agency, among other City agencies. According to the Employee, her City duties do not currently overlap with the Employer and she has nothing to do with the Employer’s contract with the City. Moreover, the Employee claims she is not significantly involved in the kind of work she would be performing if she accepted a position with the Employer.

For the reasons that follow, the Board advises that the Ethics Law’s post-employment restriction does not bar the Employee’s proposed employment with the Employer.

Legal Standard

The Ethics Law’s post-employment restriction provides that “[a]fter leaving office or terminating employment, a former public servant may not assist or represent a party, other than the City, in a case, contract, or other specific matter for compensation if: 1) the matter involves City government; and 2) the former public servant significantly participated in the same matter as a public servant.” § 6-22.

Background

The Employee’s Current City Role

The Employee began her current employment with the City in 2021 to work on a program (“Program”). Her responsibilities primarily include working with various community partners by providing technical assistance. According to the Employee, although the Employer has a City contract related to the Program, she does not have any responsibilities related to the Employer’s contract and does not significantly interact with the Employer.

Before taking the City position, the Employee had worked as a contractor for the Employer, where she provided technical assistance related to two City programs. After taking the City position, the Employee became dissatisfied by the job because it did not provide the kinds of responsibilities

¹ Unless otherwise indicated, all citations are to the Baltimore City Public Ethics Law, contained in Article 8 of the City Code.

she had hoped. She reached out to former colleagues with the Employer, let them know of her dissatisfaction, and informed them that she would be on the lookout for a different job. Recently, one of these former colleagues sent the Employee a posting for a data research position with the Employer, for which the Employee applied.

The Employer's Contract with the City

The Employer, based at an academic institution, entered into a time-limited contract (Contract) with the City in 2020. The Contract is administered by the Employee's agency, as well as other City agencies that are involved with the Program.

The agreement calls for the Employer to provide both technical assistance and data research services related to the Program, among other duties. According to another City employee who is responsible for coordinating efforts across Program partners, the Employer is primarily involved in data research services, which means the Employer mostly works with agencies other than the Employee's agency.

The Employee's Proposed Future Position with the Employer

According to the position description for the Employer's data research job positing, a successful applicant would have strong technical skills and would work on research projects in support of the Program, as well as non-City projects. The job duties would primarily involve data collection and analysis.

Analysis

The primary legal question is whether the Employee, in departing City service and accepting the Employer's position, would be assisting the Employer in the same "case, contract, or other specific matter" in which she had "significantly participated" while employed by the City. *See* § 6-22. If the answer is yes, then the Employee would be prohibited from taking the position. The answer depends on the level of particularity with which we define the specific City matters on which the Employee has worked, so as to determine whether they are the "same" matters on which she will work in her proposed new role with the Employer.

As this Board has explained in the recent past,

[a]s a general matter, the post-employment restriction does not prohibit a former public servant from going to work for someone that does business with their former agency or with the City more broadly. *See* State Ethics Commission Opinion 91-2 (Mar. 7, 1991). Rather, the postemployment restriction is concerned about whether the new employment involves the same matters in which the former public servant was involved during their time with the City, and whether that involvement was significant. *See* State Ethics Commission Opinion 97-13 (Nov. 18, 1997).

Ethics Opinion 21-001 (Feb. 11, 2021). *See also* State Ethics Opinion 97-11 (Aug. 27, 1997) (explaining that the State's substantially similar post-employment restriction "looks to

identification of particular matters in which the individual was involved in any significant way in the context of their State service, and forbids assistance or participation as to these on behalf of another party”).

When identifying the “particular” matters on which a former employee worked, the State Ethics Commission has “generally followed the definition as any proceeding, application, submission, request for ruling, or other determination, contract, claim, case or other such particular matter.” State Ethics Op. 89-11 (Sep. 8, 1989). *See also* State Ethics Op. 90-12 (Aug. 7, 1990) (considering “factors such as whether the parties are the same, whether the factual situation of the matters is the same, whether the nature of the government interest is the same, and the extent to which the [former public servant] would have been involved as an official in defining the terms or parameters of the activity in which private involvement is proposed.”). This somewhat narrow construction of the post-employment provision “balance[s] an individual employee's rights to seek employment outside the Government and the effect on the Government's ability to attract qualified personnel if post-employment rules are so restrictive that [Government] service becomes unattractive and unusable in subsequent career plans.” State Ethics Op. 82-17 (May 10, 1982). Although such a reading might “allow post-government activities that could raise appearance problems . . . this application is consistent with the intent and spirit of the Ethics Law.” *Id.*

On one hand, then, the State Ethics Commission has applied the State’s substantially similar post-employment restriction to bar a former State employee from working for a vendor in implementing the same contract on which the employee had significant evaluation and monitoring responsibilities while employed by the State. *See* State Ethics Op. 89-11. Similarly, the City Ethics Board has recently advised that a former management official within City government must refrain from working for their new private employer on a specific City contract in which the official had been significantly involved while employed by the City.

On the other hand, the State Ethics Commission found that the State’s post-employment restriction did not apply where a former State employee did not have significant involvement in a particular State contract, even though the employee had been substantially involved in activities relating to the subject matter of the contract, including working with relevant data and data systems. State Ethics Op. 82-17.

Here, the Program does not, itself, appear to be a specific or particular matter. That is, it is not a specific contract, case, grant, or procurement. Rather, the Program is an umbrella project that encompasses many different organizations—both internal and external to the City—and many different projects and tasks. At a general level, the Employee clearly participates in the Program as part of her City duties. But the Employee’s primary role has been to organize and engage with relevant community partners. She claims she does not primarily, or even secondarily, perform data collection or analysis, or any other data-related research; data collection and analysis is the role the Employer plays within the Program and the role the Employee would be playing if she accepts the Employer’s data research position. Moreover, the Employee has not been involved in negotiating or administrating the Employer’s Contract with the City.

Under the totality of these circumstances, it does not appear that the Employee has significantly participated in the same City matters she would be working on if she accepts the Employer’s data

research position. Accordingly, the Board advises that the Ethics Law's post-employment restriction in Section 6-22 would not prohibit the Employee from accepting the position. Nonetheless, the Employee should clearly articulate to the Employer the City matters in which she significantly participated while a City employee, and explain that she may not work on these same matters. Finally, the Employee should not hesitate to contact Board staff in the future if additional questions arise as to the application of Section 6-22 to her new duties.

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