



CITY OF ATLANTA

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Formal Advisory Opinion 2006-1 Use of Confidential Information

Opinion Summary

A city employee may not use confidential city information acquired in an official capacity to advance the employee's or another person's financial or personal interests.

Question Presented

When is it a violation of the City's Code of Ethics for a city employee to use city records?

Facts

The Ethics Officer has received inquiries concerning whether certain practices of city employees violate the Code of Ethics.

- A plumber calls up a city resident with a backed-up sewer and asks if she needs a plumber. The resident later determines that the caller is a city employee and files a complaint with the City.
- A city employee does routine maintenance work on city equipment. He attends the city's public auction and bids on the surplus equipment that the City is selling.
- A city employee is assigned a city vehicle and drives it on a daily basis as part of her job. The City decides to declare the vehicle surplus equipment and sell it at the city's public action. The employee wants to purchase the same vehicle at the auction.

Discussion

The City's Code of Ethics prohibits city employees from placing their own personal or financial interests above the city's best interests. Section 2-819 specifically prohibits employees from using confidential information acquired in their official capacity to advance their own financial interests. It states: "No official or employee shall disclose confidential information concerning the property, governing operations, policies or affairs of the city . . . nor shall such official or employee use such confidential information acquired in an official

capacity to advance the financial interest or personal interest of the official, employee or others in any instance where such would conflict with the best interest of the city.”

The Code of Ethics defines the term “confidential information” as “information which has been obtained in the course of holding public office, employment, an independent contract or otherwise acting as an official or employee, and which information is not available to members of the public under state law or other law or regulation and which the official or employee is not authorized to disclose.” Read literally, this definition could create problems because it makes information confidential only when it is not subject to the Open Records Act.

The Board, however, interprets this provision to mean that information can be confidential for a specific time, even it is eventually available to the public under the Open Records Act. For example, the city’s daily work records showing the water customers who have been advised to hire a private plumber are confidential records since the city by policy and practice does not make those records readily available each evening to the general public.

Reviewing the inquiries received, the Board concludes that all three examples violate, or would violate, the ethical standard against the use of the confidential information. In each instance, the employee is using information acquired while performing job duties, the information is not readily available at the time to the general public, the information is being used to further the employee’s own financial interests, and the employee’s action conflicts with the best interests of the city.

- The city employee used departmental records that were not available at the time to the general public to solicit plumbing work for his private company. This use conflicted with the city’s best interest by raising suspicions in the city resident’s mind about the privacy of the city’s records and the city’s assessment that it did not cause, and could not fix, the sewer problem.
- Employees who drive city vehicles or perform maintenance work on city equipment acquire special knowledge about the vehicle or equipment that is not available to the public through an inspection or review of its maintenance history. It would create the appearance of impropriety and a potential conflict of interest for employees to purchase vehicles that they drive or equipment that they service as part of their official duties.

Because these employees are attempting to use inside information that they gained while performing their city job, they are prohibited from using that same information to either solicit business for a private company or purchase surplus city equipment at a city auction.

Adopted January 19, 2006

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