



City of Atlanta Board of Ethics
Formal Advisory Opinion 2010-1
Potential Conflicts of Interest Related to the Chief Operating Officer

Opinion Summary

A city employee has a financial and personal interest in a company in which he is an officer and partner and from which he has taken a one-year, unpaid leave of absence to work for the City. Based on that financial interest, the employee should not participate in contracts or decisions when he knows or with reasonable investigation should know that the city contract or decision involves an active client of his former firm. Applying this rule to the specific facts, he should not be involved on behalf of the City in any direct negotiations or discussions with a national airline that is, or recently was, a client of the firm; he may meet with airport personnel to discuss budget issues that directly or indirectly affect the airport's tenants and contractors.

Questions Presented

1. When is a city employee disqualified from participating in decisions related to the clients of a company in which he has a financial interest?
2. What effort is required to meet the standard "know or with reasonable investigation should know" in section 2-812 on participation in contracts and section 2-813 on disclosure of interests?
3. Is it a conflict of interest for the Chief Operating Officer to be involved in budget decisions related to the airport when those decisions may have a direct or indirect impact on a company that is a client of the firm from which he is on an unpaid leave of absence?

Facts

The City's new Chief Operating Officer (COO) is an officer and equity partner in Bain & Company, a consulting firm. He has taken an unpaid leave of absence from the private firm to work for the City of Atlanta for one year. His duties as COO include reviewing and signing contracts on behalf of the City and may involve contract negotiations with companies that have major city contracts.

As an employee and partner of Bain, the COO will receive deferred compensation this year for work he performed in 2009. He will not receive any salary or be engaged in any operational decisions for the private firm while working for the City in 2010. He plans to return to the firm in 2011. Bain does not do any paid consulting work for the City, and has agreed to forego seeking or doing business with the City during Mayor Kasim Reed's term of office.

While with Bain, the COO signed a contract in which he agreed to keep confidential the identity of the firm's clients. The standard employment or consulting contract between Bain and its clients states: "Bain will not disclose to any third party either the fact that you are a client of Bain or any details of the work we perform for you without your prior approval." The firm does not share its client list internally with its partners, and the COO does not have direct knowledge of the firm's client base. He knows the firm has approximately 900 clients; and the identity of his personal clients, none of whom do business with the City; and the identity of a few publicly known clients of the firm who do business with the City, including Delta Air Lines.

Shortly after his appointment, the COO sought advice concerning whether he was disqualified from participating in matters involving Bain's clients and specifically whether he could participate in discussions with Delta about the Department of Aviation's budget. The Ethics Officer issued an informal advisory letter advising against direct discussions and negotiations with the airline. In the interest of transparency and out of an abundance of caution, the COO now asks the Board of Ethics to address when he has a conflict of interest that disqualifies him from participating in a matter and raises an additional question about the effect of any conflict on his duties to be involved in budget discussions related to the airport.

Discussion

An employee, officer, and partner on a one-year, unpaid leave of absence from a company has both a financial and personal interest in that company.

The City's Code of Ethics addresses conflicts of interest based on a financial or personal interest. A financial interest is any interest that yields a monetary or material benefit to officials or employees, an employer other than the City, and an immediate family member. A personal interest means any interest arising from relationships with immediate family or from business, partnership, or corporate associations, whether or not any financial interest is involved. Applying these definitions, the COO has a financial interest in Bain & Company based on the deferred compensation he received in 2010 for work performed last year, and he has a personal interest based on his position as an officer and equity partner in the company and the fact that he plans to return to his job with Bain in 2011.

Employees are disqualified from making decisions or participating in contracts in which they have a direct or indirect financial or personal interest.

Section 2-813 on disclosure of interests prohibits officials and employees from participating in decisions in which they know or with reasonable investigation should know that they have a direct or indirect financial or personal interest. If they have such an interest, they should not vote, discuss, decide, participate, or seek to influence others on the matter and must disclose their interest on an online Conflict of Interest Disclosure Report. See FAO 2008-2 (Disclosure of Conflicts of Interest).

In addition, there is a specific code provision governing conflicts related to contracts. Section 2-812 is written broadly to ban any direct or indirect involvement at any stage in the decision-making process when officials or employees know or with reasonable investigation should know that there is a financial interest possessed by the employee, an immediate family member, an employer, a prospective employer, or a business other than a public agency in which the official or an immediate family member serves as an officer, director, stockholder, creditor, trustee, partner, or employee. This section prohibits the official or employee from participating directly or indirectly in any contract, subcontract, solicitation, or proposal by preparing any part of the specifications or requests for proposals, influencing the content of any specification, rendering advice, or seeking to influence the votes or decisions of others.

The COO does not know of any matter or contract pending before him or the City in which he, his immediate family, his personal clients, or Bain & Company has a direct financial interest. Because none of these entities is currently doing business with the City, seeking city business, or seeking official action from the City, any conflict is based on an indirect interest stemming from a business or contract relationship that a client or company has with Bain.

Employees cannot participate in a contract or decision when they know the matter involves a client of a company in which they have a financial interest.

Based on the COO's role as an employee, officer, and partner at Bain in 2009 and his stated intention of resuming these positions in 2011, there are restrictions on his participation in matters related to the company's clients. Section 2-812 prohibits him from participating in contracts, and section 2-813 prohibits him from participating in decisions related to Bain's clients while employed by the City. Since the COO knows that Delta Air Lines is or recently was a client of Bain, he should decline to participate in any negotiations, discussions, or review of matters related to Delta, such as any contract it has with the City, any official action that it seeks from the City, or any actions that the City seeks from it. His office needs to insulate him from the decision-making process by assigning another staff member to handle any matter related to Delta. See FAO 2003-2 (Potential Conflicts of Interest Related to the Atlanta Development Authority President).

Given this conflict, the COO asks whether he can act as the senior manager and decision maker on airport budget decisions that may have a direct or indirect impact on the facility that Delta uses. In other words, he wants to know whether he can participate in internal budget meetings with airport management and make decisions will affect Delta and other airport tenants. Regarding this question, there are competing policy interests. It is important that the COO be able to meet with the airport's senior management to discuss next year's budget and how to ensure that there is sufficient revenue to pay for projected expenses. Given that budget decisions are a core part of the COO's job; any budget decisions will affect all tenants at the airport, not just Delta; and any conflict is based on an indirect and remote interest, the Board concludes that any potential conflict of interest is too tangential to disqualify him from making decisions on behalf of the City related to the airport's budget.

Employees cannot participate in contracts or decisions when a reasonable investigation would uncover that it involves a client of a company in which they have a financial interest.

Besides known clients, the Code also prohibits an employee's participation when the employee "with reasonable investigation should know" that he has a direct or indirect financial or personal interest in a decision pending before him or his former firm has a financial or personal interest in a city contract. The Board of Ethics has never addressed what constitutes a reasonable investigation. As a proactive measure, the COO proposes that a conflicts check be conducted between active city vendors and active clients of Bain. Initially this process would involve comparing the list of 1,281 vendors who received at least \$10,000 from the City in 2009 to a list of Bain's active clients in the last three months of 2009 to identify any names that appear on both lists. The process would be repeated on a quarterly basis to determine if any additional companies do business with both the City and Bain. The Board believes that this proposed process would satisfy the code's requirement for a reasonable investigation.

Employees must disclose conflicts of interest on an online Conflict of Disclosure form.

The code provides that employees must recuse themselves and disclose when they have a conflict in a matter that comes before them or their agency. Section 2-813 requires them to file an online Conflicts of Interest Disclosure report in the Electronic Disclosure System describing

the specific matter, the nature of their interest, and the action taken to eliminate the conflict. See FAO 2008-2.

In summary, the COO has a potential conflict of interest based on his position as a partner, officer, and former employee that disqualifies him from participating in decisions related to the firm's clients. He should recuse himself when he knows or should know that a matter involving an active Bain client comes before the Executive Offices. Because he knows that Delta Air Lines is or recently was a firm client, he should not be involved in direct contract negotiations with that company. He may, however, participate in internal meetings related to the airport's budget and help make decisions that affect the airport's tenants and contractors, including Delta.

Adopted March 18, 2010

City of Atlanta Board of Ethics

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