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Formal Advisory Opinion 2004-2

Conflicts of Interest Related to a City Employee and Official Owning a Business that Provides City-Mandated Training for Taxicab Drivers

Opinion Summary

A city employee's ownership and participation in a company that provides training to taxi drivers conflicts with, and adversely affects, his official duties as policy analyst to the City Council public safety committee with jurisdiction over the taxicab industry. A city hearing officer's participation in a company providing taxi driver training conflicts with her official duties as a hearing officer to hear complaints brought against taxi drivers for violations of the code related to taxi drivers and vehicles for hire.

Questions Presented

1. Whether it is a conflict of interest for a city employee who works as a policy analyst for the City Council committee with jurisdiction over vehicles for hire to own and participate in a company that provides training for taxicab drivers.
2. Whether it is a conflict of interest for an individual appointed to serve as a city hearing officer on the Vehicles for Hire Hearing Panel to participate in a company that provides training for taxicab drivers.

Facts

Taxicab Driver Training

The City's Code of Ordinances requires all drivers of vehicles for hire to undergo driver training in the Atlanta ambassador education program. See Atlanta, Ga., Code § 162-40. The purpose of the training is to improve the level of customer service that taxi drivers give to citizens, workers, and visitors to the city. Code section 162-77(6) requires new applicants for a driver's permit to complete a driver training course administered by a company and approved by the Bureau of Taxicabs and Vehicles for Hire. Section 162-78(6) requires existing drivers to annually complete a training course to maintain their driver's permit. Although the annual training requirement has been part of the city's code since 1995, it was not enforced while the

city was involved in litigation by taxi drivers challenging several sections of the ordinance. See Ordinance 95-O-0817 § 9 (July 5, 1995).

After the litigation ended, the Bureau of Taxicabs and Vehicles for Hire initiated efforts to enforce the code's provisions on driver training by requiring the companies to administer the courses and to certify that the taxi drivers had successfully completed the annual training course. A university professor developed a training curriculum, a pilot training class was held in September 2003, and a three-day course was conducted in December 2003 to train instructors for both the new and annual driver training courses.

As a result of the December training session, the bureau approved 25 individuals from 10 taxicab companies and two third-party companies to serve as trainers. The list of approved trainers includes a city employee and a city hearing officer who are associated with The Hospitality Training Institute. The annual training requirement became effective on January 1, 2004. Depending on the company, the annual course costs \$35 to \$60 per driver for eight hours of instruction; the cost of the three-day new driver training course is not known.

On February 27, the Atlanta Independent Taxi Drivers Association sued the City of Atlanta, the Atlanta Police Department, and the taxicab bureau in superior court seeking the right of drivers to freely choose the company for their annual driver training course. After the lawsuit was filed, the city's Law Department requested a formal advisory opinion from the Board of Ethics on whether the employee's and hearing officer's participation in a company providing taxicab driver training is a conflict of interest under the Code of Ethics.

Approved Trainers

The city employee serves as policy analyst for the City Council's Public Safety and Legal Administration Committee. The public safety committee has jurisdiction over the police department, which includes the Bureau of Taxicabs and Vehicles for Hire. As an analyst, the employee attends committee meetings, drafts the agenda, reviews proposed legislation, and analyzes it. In addition, he attends the meetings and provides staff support for the Taxi Technical Advisory Group, which recommends legislation on the taxicab industry. Chaired by a city council member, the group is composed of the taxicab bureau director, airport ground transportation manager, two hospitality industry representatives, five taxicab company owners, four taxi industry representatives, and two attorneys for taxicab companies.

In 2003, the policy analyst formed a company to provide new driver training and annual training for taxi drivers and attended the December course for instructors. In January 2004, he asked for an informal advisory opinion from the Ethics Office about whether his participation in his new company created a conflict of interest. The ethics officer concluded on February 10 that it was a conflict of interest under the Code of Ethics for the employee to operate a business that provides training for taxi drivers while serving as the policy analyst for the council committee with jurisdiction over vehicles for hire. Unaware of the informal opinion, the taxicab bureau director on February 26 asked the Ethics Office if there is any ethical problem in the employee providing training.

The second individual is a former hearing officer on the Vehicles for Hire Hearing Panel, which is composed of six attorneys and ten civilians. Each week three hearing officers hear citations alleging violations of the vehicles for hire code and make recommendations about fines and penalties to the police chief. The panel heard 1,893 cases in 2003. The hearing officer's two-

year term was scheduled to end in June 2004, but she resigned from her position in February or March 2004.

Discussion

A primary purpose of the Code of Ethics is to prohibit city officials and employees from engaging in any business or having any financial interest that conflicts, or would create the justifiable impression of any conflict, with the official's or employee's official duties. Section 2-820 (a) specifically prohibits any employee from holding any investment in any financial, business, commercial, or other private transaction that creates a conflict with and adversely affects the official's or employee's official duties to the city's detriment. Section 2-820 (b) prohibits city officials and employees from engaging in private employment or rendering services for private interests when the employment or service is adverse to, and incompatible with, the proper discharge of the official's or employee's official duties.

Conflicts of Interest Related to Policy Analyst

The Board of Ethics concludes that it is a violation of the Code of Ethics for the same person to participate in a company that provides taxicab driver training while simultaneously serving as the staff analyst to the City Council committee with jurisdiction over the taxicab industry.

First, there is an actual conflict of interest whenever the public safety committee considers legislation affecting vehicles for hire, a heavily regulated industry. To illustrate, the Atlanta City Council adopted an ordinance last fall that authorized a 60-day moratorium on the annual training requirement found in section 162-78 (6). See Ordinance 03-O-1838 (Nov. 3, 2003). Initially introduced on October 20, the proposed legislation was referred to the Public Safety and Legal Administration Committee; the committee considered the ordinance on October 28 and recommended favorable action by the full council. As policy analyst for the public safety committee, the city employee would have been the staff person responsible for reviewing and analyzing the legislation. Should the committee consider similar legislation in the future, the analyst's private business interest in a company providing training would conflict with his official duties in advising the public safety committee members on legislation involving driver training.

Second, the policy analyst's dual roles in advising City Council members on taxicab legislation while providing training to taxi drivers on the city's rules and regulations create the appearance of impropriety. However effective his company or he might be in training drivers, there would always be the perception among his competitors, taxi drivers, and the public that taxicab companies were hiring or recommending him as a trainer because of his position on the council staff. This perception is only reinforced by the analyst's attendance as a city employee at the meetings of the Taxi Technical Advisory Group, which recommends legislation regulating the taxicab industry.

Despite the ethics officer's written opinion that the city employee could not participate in his proposed business activity under the City's Code of Ethics, the analyst did not end his efforts to engage in the business of training taxi drivers. As a result, a taxi driver association sued the city, alleging that the city policy analyst was engaged in self-dealing and that the city was protecting his financial interests. The Board finds that the employee's failure to voluntarily remove himself from the list of approved trainers has harmed the city's efforts to improve Atlanta's taxicab system and its relationship with the city's taxicab drivers.

Because the policy analyst's ownership and participation in a company that provides training to taxi drivers conflicts with and adversely affects his official duties to the city's detriment, the Board of Ethics finds that his continued investment in The Hospitality Training Institute is an incompatible interest under section 2-820 (a) of the Code of Ethics. Because his training of taxi drivers is adverse to and incompatible with the proper discharge of his official duties as policy analyst to the City Council public safety committee, his continuing efforts to remain on the city's approved list of trainers violates section 2-820 (b). The analyst cannot continue to advise the City Council on legislation related to the taxicab industry while engaged in a private business that contracts with taxicab companies and drivers to provide training required by the city.

Conflicts of Interest Related to Hearing Officer

Although the facts involving the hearing officer differ, the conclusion is the same: her personal and financial interests in providing taxi driver training are incompatible with her official duties as a city hearing officer. Because a hearing officer must be independent and impartial, it would be a conflict of interest for the same person to both train taxi drivers on code requirements and hear complaints brought against the drivers for violations of those requirements. Moreover, the two positions create the appearance of impropriety. Taxi drivers may feel pressured to attend the hearing officer's training courses to receive favorable treatment or to avoid unfavorable treatment from the officer during an administrative hearing. Had she failed to resign her position from the hearing panel, she would have been disqualified from hearing any complaint against a taxi driver for failing to successfully complete a driver training course or against a taxi driver who took the driving course from her or her company.

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