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Formal Advisory Opinion 2004-3 Restrictions on Representation after Leaving City Employment

Opinion Summary

Because the policy analyst was directly concerned and personally participated in the issue of new and annual taxi driver training by third-party companies while employed with the city, he is precluded for one year from appearing before any city agency or receiving compensation for any services rendered on behalf of his business in relation to that issue. Similarly, because the hearing officer personally participated and actively considered cases involving complaints that individual taxi drivers and companies had violated the city's regulations on vehicles for hire, she must wait a year from the date of her resignation before she can conduct taxi driver training courses.

Questions Presented

1. Whether a former city employee who served as policy analyst for the city council committee with jurisdiction over vehicles for hire and as staff for the Taxi Technical Advisory Group is precluded from owning and participating in a company that provides taxi driver training for one year after he leaves the city.
2. Whether a former hearing officer for the Vehicles for Hire Hearing Panel is precluded from providing new and annual taxi driver training for one year after she resigns from her position on the panel.

Facts

(1)

The City's Code of Ordinances requires taxicab drivers to receive both new and annual driver training. See Atlanta, Ga., Code §§ 162-77(6), 162-78(6). In early 2003, the new director of the Bureau of Taxicabs and Vehicles for Hire decided to end the city's direct role in providing training for new taxi drivers and to begin to enforce the annual training requirement that had been in the code since 1995. The driver training was among the issues discussed in meetings of the Taxi Technical Advisory Group, which met for seven months to review and recommend

changes in the city code related to the taxicab industry. Chaired by a city councilmember, the group was composed of representatives of the taxicab and hospitality industries, the taxicab bureau director, and the airport's ground transportation manager.

The City Council Public Safety and Legal Administration Committee has jurisdiction over the taxicab bureau and legislation regulating vehicles for hire. In October 2003, the committee considered and recommended favorable action on legislation instituting a 60-day moratorium on the annual training requirement. See Atlanta, Ga. 03O1838 (Nov. 3, 2004). In March 2004, an ordinance to allow third-party companies or non-taxicab companies to administer new and annual taxi driver training was introduced and referred to the committee. See Atlanta City Council Minutes (March 15, 2004).

In late 2003, the city employee who served as policy analyst for the public safety committee and as staff person for the taxi advisory group formed a company to provide new and annual driver training for taxicab drivers. He applied to the taxicab bureau to become an approved trainer and attended a three-day training session in December 2003. As a result, the bureau placed the policy analyst and his company, The Hospitality Training Institute, on its list of approved trainers.

In January 2004, the policy analyst asked the ethics office for an informal advisory opinion on whether his participation in a third-party company providing taxi driver training was a conflict of interest; he did not disclose in his request that he also served as staff for the taxi advisory group. Based solely on his work for the public safety committee, the ethics officer rendered an opinion concluding that the policy analyst's private investment was a conflict of interest and that he should divest himself of his ownership interest in the training institute. He did not cease his involvement in his private business, eliminate taxi driver training from its services, or remove himself from the list of city-approved trainers.

Subsequently, the Atlanta Independent Taxi Drivers Association sued the City of Atlanta over its decision to allow third-party companies to provide driver training. After the lawsuit was filed, the Law Department asked the Board of Ethics for a formal advisory opinion on whether it was a conflict of interest for the policy analyst to own and participate in a company providing training required by the city. The Board of Ethics ruled in March 2004 that the city employee's ownership and participation in the training company conflicted with, and adversely affected, his duties as policy analyst for the city council committee with jurisdiction over the taxicab industry. See Formal Advisory Opinion 2004-2 (March 18, 2004). Later that month, the employee resigned from his position with the city.

(2)

The taxicab bureau's initial list of approved trainers also includes a former city official who has served the city in two capacities. First, she taught the new taxi driver course three to four times a month from 1996 to 2003. The then-director of the taxicab bureau asked her to apply for the position, and the city paid her for her services. Second, she has served as an appointed member of the Vehicles for Hire Hearing Panel since 1997. As hearing officer, this official sat on three-member panels that considered cases brought by the bureau against taxi drivers and companies, decided whether the driver or company had violated the city's code, and recommended a penalty or fine to the Chief of Police for any violations found. The code's table of violations lists such issues as violating the dress code, failing safety requirements, failing to have insurance, and not taking the most direct route.

On December 19, 2003, the hearing officer signed a contract with The Hospitality Training Institute to provide training on behalf of the institute to taxi drivers and taxicab companies. She resigned her position as hearing officer in March 2004, but seeks to continue her work as a trainer. In its previous opinion, the Board of Ethics concluded that her participation as a trainer teaching taxi drivers about the city's taxicab regulations created a conflict of interest with her official duties as a hearing officer to decide complaints brought against taxi drivers and companies for violations of the code related to vehicles for hire. See FAO 2004-2.

Discussion

The City's Code of Ethics places limitations on certain activities of a former official or employee for one year following separation from city service or employment. Section 2-810 states:

No person who has served as an official or employee shall, for a period of one year after separation from such service or employment, appear before any agency or receive compensation for any services rendered on behalf of any person, business or association in relation to any case, proceeding, or application with respect to which such former official or employee was directly concerned or in which such official or employee personally participated during the period of such official's or employee's service or employment or which was under such official's or employee's active consideration or with respect to which knowledge or information was made available to such official or employee during the period of such official's or employee's service or employment.

The purpose of this provision is to prevent former city employees and officials from receiving favored treatment due to the contacts they made, relationships they developed, or special knowledge they acquired while serving the city. It is intended to maintain the public's confidence that former officials and employees will not derive a direct personal benefit from actions and decisions made while they were public employees.

The Board of Ethics has interpreted this provision as placing two general restrictions on the activities of former city officials and employees for one year. It prevents a former employee or official from appearing before or making presentations to the City of Atlanta, its officials, or its agencies about any matter in which the official or employee was involved. It also precludes a former employee or official from performing any services for compensation in connection with any matter in which the employee was directly concerned, personally participated, or had knowledge that was not publicly available. The one-year preclusion period begins on the first day following the severance of the individual's employment or service with the city.

Former Policy Analyst

Applying the language and purpose of this provision, the board concludes that the policy analyst is precluded for one year from owning and participating in a business that provides new and annual taxi driver training. First, the policy analyst was directly concerned and personally participated in meetings concerning taxi driver training and the role of third-party companies in providing that training. While serving as staff for the public safety committee, two ordinances addressing taxi driver training were referred to the committee. More significant, the policy analyst regularly attended and served as the staff person for the meetings of the taxi advisory group, a small group of industry experts and representatives who recommended legislative changes to improve the taxi industry. By his own admission, the policy analyst says that he learned about the business opportunity from the industry, the company owners encouraged him

to provide the training, and he marketed his service directly to the companies. Clearly he developed and nurtured these relationships with the industry while serving as staff to the taxi advisory group and city council committee.

Second, the analyst appeared before a city agency -- the taxicab bureau -- in relation to an application when he sought to become an approved trainer and attended the bureau's three-day training session. Had he waited until after his resignation, he clearly would have been prohibited from filing a request to become an approved trainer. The fact that he applied while still employed with the city should not allow him to escape the restrictions imposed by the code. Finally, the training institute is a business that will compensate the former employee for rendering services, as a trainer, manager, or owner, in relation to the classes that taxi drivers attend.

Although the policy analyst has argued that the restrictions on post-employment activities do not apply to him because driver training is not a "case, proceeding, or application," the board does not interpret that term so narrowly. Instead, the board has construed the term to mean any matter in which the employee, because of his job with the city, may have special contacts, influence, or knowledge that might provide an unfair advantage. There is substantial persuasive authority from appellate courts and ethics commissions in other states for this broader interpretation of the term. See, e.g., *State v. Shell*, 571 SW2d 798 (Mo. Ct. App. 1978). In addition, the board rejects the analyst's argument that he can provide training because his contract is with the taxicab companies, rather than the city. The code provision does not restrict activities based on the source of the payment; instead, it bans compensation for any services rendered about a matter in which the employee had personal involvement.

In conclusion, it is improper under the Code of Ethics for a city employee to serve as the staff person of committees considering ways to enforce a city ordinance on driver training and, at the same time, set up a private company to implement the city-required training. Because the policy analyst was directly concerned and personally participated in the issue of new and annual taxi driver training by third-party companies, he is precluded for one year from appearing before any city agency or receiving compensation for any services rendered on behalf of his business in relation to the issue.

Former Hearing Officer

For many of the same reasons, the plain language of section 2-810 prohibits the former hearing officer from appearing before the taxicab bureau or receiving compensation for taxi driver training for one year. While serving on the hearing panel, the hearing officer decided cases that the bureau brought against individual drivers and companies for violating the city's regulations on vehicles for hire. During the same period, she taught the driver training course to applicants for driver permits, explaining those same regulations to the new drivers. Whether educating or enforcing the city's rules, the subject matter of her work was the city's vehicles for hire code.

After the taxicab bureau changed the city's training system, the hearing office and former trainer had to apply to the bureau to become a city-approved trainer. She signed a contract with the training institute to be paid for the sessions conducted on its behalf. Because the Code of Ethics prohibits city officials from appearing before a city agency or receiving compensation for services related to any case or matter in which they were personally involved, the hearing officer must wait a year from the date of her resignation as a hearing officer before she can conduct taxi driver training courses.

Adopted April 21, 2004

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