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Formal Advisory Opinion 2006-3 Board Members Doing Business with City (Amended 2020)¹

Opinion Summary

A city board member is prohibited from doing business with the board on which the individual serves, except through a sealed competitive bid process; a board member may do business with other unrelated city agencies, but must disclose the contract, business, or financial interest on the annual city financial disclosure statement.

Question Presented

Under what circumstances may city board members or persons appointed by the City to another public board do business with the City of Atlanta?

Facts

1. An attorney who serves as the city's representative on a city-county authority board has performed legal work for the City of Atlanta's Law Department in the past and may perform legal work for it in the future. In addition, her law firm represents the City on several matters, but none of its work is related in any way to the authority. A question arises whether the attorney may perform legal work on behalf of the City of Atlanta while serving on the authority board.
2. A city board member, who is an attorney, is asked to represent the board chair in a lawsuit brought by a citizen against the chair in her official capacity for actions she took at a board meeting. The board plans to pay the board member for his legal representation of his fellow board member.
3. A contractor who serves as the city's representative on a public board wants to bid on a construction project for which the board is seeking bids.

¹ This opinion was amended to reflect the Ethic's Division's current interpretation of Atlanta Ethics Code Section 2-820(c).

Discussion

The Code of Ethics seeks to ensure that a public board's decisions are based solely on the city's best interest. See Atlanta, Ga., Code § 2-802. A conflict of interest occurs when a city official acting in his or her official capacity is involved in a decision or public action that affects the official's financial or personal interests. The code's provisions against conflicts of interest apply to city board members and persons appointed by the city to other public boards and authorities of the city, county, and state. See § 2-801.

Section 2-820 (c) states that no official or employee shall own stock in, be employed by, have a professional connection with, or have ownership in any business, company, or concern that does business with the City, "unless such business with the city is conducted through sealed competitive bidding or requests for proposal where such bids are opened and the awards are made at meetings open to the public." The City often contracts for professional services through a request for proposal process that does not involve a sealed competitive bid or the awarding of an RFP at a public meeting; the Department of Procurement's Standard Operating Procedures state that only the proponents' names for RFPs are read publicly. Therefore, the literal language of section 2-820 (c) would prohibit attorneys, accountants, human relations specialists, or other consultants from serving on a city board or as the city's representative to another public board whenever the individual or his or her firm does business with the City.

This broad rule would eliminate a huge pool of potential talent from serving on city boards. A review of the 2006 City Financial Disclosure Statements shows that there were 69 city board members and NPU officers who disclosed that they, their employer, or their company did business with the City in 2005. Of that number, only 11 stated that the business was awarded through a competitive bid process. Included among the others were board members who work for the city's law firms, architectural firms, state universities, county governments, and various non-profit organizations that receive grants.

Section 2-820 can be interpreted more narrowly and still ensure that there is not any direct conflict between a board member's official responsibilities and personal financial interests. As applied to city board members, who are typically citizen volunteers, the Board interprets the term "city" in section 2-820 (c) to mean the city board to which the official is appointed and any related city agency. This interpretation means that city board members are prohibited from doing business directly or indirectly with the city agency or board on which they serve as a city official, except through a sealed competitive bid process. When they do business with other unrelated boards or city departments, they are required to disclose the existence and nature of any business that their firm or they do with the City on their annual financial disclosure statement. Applying these rules to the three factual situations:

1. Both the attorney and her law firm may perform legal work for the City of Atlanta during the attorney's term on the authority board so long as their work is totally unrelated to that particular authority. The attorney would need to disclose on her annual financial disclosure statement the existence and nature of any business that she or her firm does with the City. If, however, the attorney or her law firm sought to do business with the authority, they could enter into a contract only if the work were awarded through a sealed competitive bid process. See §§ 2-812, 2-820.

2. Neither the attorney nor his firm would be able to undertake the legal representation on behalf of the board or its chair since the work was not awarded through a sealed competitive bid process.

3. The board member may bid on the construction project if, as typically occurs, it is awarded through a sealed competitive bid process.

That said, the Ethics Division may need to review on a case by case basis to determine whether the circumstances allow a city board member, or person appointed by the City to another public board, to do business with the City of Atlanta.

Adopted November 16, 2006

Amended June __, 2020

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