



**City of Atlanta Board of Ethics
Formal Advisory Opinion 2008-8
Representing Clients in Matters Adverse to the City**

Opinion Summary

City officials who serve as board members may not represent any person or private interest in any action or proceeding in conflict with the interests of the City or in litigation in which the City is involved. This ban on representation applies to the individual and does not prohibit the board member's law firm from representing clients in matters adverse to the City. To ensure that the board member is not involved in the matter, the firm needs to erect a firewall that insulates the official from any knowledge, discussion, consideration, or participation in the matter. On a related issue, the Code of Ethics does not prevent the city board member from receiving his or her proportional share of the proceeds that the firm derives from the claim or matter against the City. Based on this financial interest, the board member would be precluded from voting or participating in any city decision related to the matter.

Questions Presented

1. Can the law firm of a city board member pursue a legal claim against the City so long as the city official is not personally involved in the matter?
2. Can a city board member receive monies derivative from a lawsuit against the City, provided that the board member has had no involvement in the litigation?

Facts

A personal injury attorney who is a member of a small law firm is appointed to serve on a city board. The attorney's law firm is asked to represent a client in a civil lawsuit against the City of Atlanta. The board member will not be involved in the litigation. If the lawsuit is successful, the law firm's share of the damages award would be deposited into a firm account and distributed to the firm's partners, including the city board member, based on a predetermined partnership agreement. The board member requests a formal advisory opinion addressing whether members of his firm can represent persons in lawsuits against the City of Atlanta and, if so, whether he can receive monies derived from the lawsuit.

Applicable Law

Section 2-809 on representing private interest before courts provides, in part:

No official or employee shall represent any person or private interest [1] in any action or proceeding in conflict with the interests of the city, [2] in any litigation in which the city or any agency of the city is involved or is a party, or [3] any action or proceeding in the municipal courts and traffic courts of the city involving any charges or violations in which the complainant is the city or any agency of the city or any official or employee thereof pertaining to the official's or employee's official duties.

Section 2-808 further provides that no official may appear on behalf of private interests before any agency, except as a matter of public record in a court of law as provided by section 2-809. Section 2-801 defines an "official" to include any person appointed to any city agency.

Discussion

Representing Clients in Matters Adverse to the City

Citizens appointed to serve on city boards are officials governed by the Code of Ethics. See Atlanta, Ga., Code § 2-801. In a previous opinion, the Board interpreted the ban on appearances in section 2-808 as applying to the individuals serving on city boards, but not to other members of their firm. Specifically, the Board concluded that board members may not appear on behalf of private interests before the city agency that is regulated by the public board on which they serve. The opinion noted that the prohibition does not "preclude other firm members or company employees from appearing on behalf of private interests before the city agency. In that event, the city official should not be involved" in the matter and would need to publicly disclose the conflict as provided in section 2-813. See FAO 2006-4 (Board Members Appearing before Related City Agencies).

Similarly, the Board concludes that the ban on representation in section 2-809 applies to individual city officials and not to their firms. Thus, this prohibition precludes citizens who serve on city boards from representing any person or private interest in any action or proceeding in conflict with the interests of the City or in any litigation against the City or any of its agencies; it does not preclude the member's firm from representing clients in matters adverse to the City. If an official's firm intends to represent a person in a matter adverse to the City, the firm needs to create a firewall that insulates the official from any knowledge, discussion, consideration, or participation of the claim or lawsuit, similar to the procedure that the firm follows in other conflict of interest situations. In addition, the city official would be prohibited from voting or participating in any legislation or city decision involving the matter. See § 2-813.

Receiving Monies for Representation

The second question asks whether the city board member may share in any profits from the representation, an issue not considered in the previous formal advisory opinion. If the purpose of the representation provision is to prevent a city official from using his or her position to gain a special advantage in litigation against the City, then that purpose is met when the board member refuses any involvement in the matter. Allowing the official to share in any monetary award or fees given to the official's firm in a lawsuit against the City does not undermine the purpose of the prohibition. More importantly, actual receipt of a share of any fees would not change the fact that the board member has a financial interest in the litigation and is disqualified from voting or participating in any matter related to the claim. Finally, there may be some practical problems for firms in segregating expenses and proceeds related solely to lawsuits

against the City or appearances by firm members before city agencies, which may discourage individuals from agreeing to serve on a city board. For these reasons, the Board concludes that the Code of Ethics does not prohibit a city board member from receiving his or her proportional share of the proceeds that the firm derives from the claim or matter against the City.

Adopted November 20, 2008

City of Atlanta Board of Ethics

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