

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY



Office of Government Ethics

VIA EMAIL TO:

May 30, 2013

[Name]
Chair
Historic Preservation Review Board
[Email address]

Dear Chairperson:

This responds to your request for an Advisory Opinion regarding whether you can accept private work to perform services as a preservation architect for Building #102 on St. Elizabeths Hospital East campus, even though you are the Chair of the Historic Preservation Review Board (“HPRB”). In your private capacity, you work for a professional engineering and consulting services firm and have expertise in architectural preservation, which involves the preservation and restoration of historic buildings.

With respect to HPRB, in your email of May 11, 2013, and your subsequent telephone conversation with a member of my staff, you advised that you have been on the HPRB for approximately one year, and have been the Chair for approximately three months. Approximately six months ago, HPRB reviewed the District Department of Transportation (“DDOT”) concept for the main roads leading to the campus, which included a review of the utilities going to the St. Elizabeths Hospital campus. In addition, approximately one month ago, the HPRB reviewed and approved the concept for the temporary market pavilion, which is on a different part of the campus than Building #102.

As a member of HPRB, a board listed in D.C. Official Code § 1-523.01(e), you are both a public official and an employee as those terms are defined in the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 (2012 Supp.)) and, therefore, are subject to both the provisions of the Ethics Act and Chapter 18, Title 6B of the D.C. Municipal Regulations.¹ The Conflicts of Interest provisions of the Ethics Act state that:

No employee shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a

¹ Hereinafter, Title 6b of the D.C. Municipal Regulations will be referred to as the District Personnel Manual or DPM.

judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, or attempt to influence the outcome of a particular matter, in a manner that the employee knows is likely to have a direct and predictable effect on the employee's financial interests or the interests of a person closely affiliated with the employee. (D.C. Official Code § 1-1162.23(a)).

Based on the information you provided, you have not taken an action as a member and Chair of HPRB that benefits you or the private company for which you work financially. The review of the DDOT concept for roads and utilities concerned the entire St. Elizabeths Hospital campus and is unrelated to the preservation architectural work you propose to do for Building #102. The HPRB review and vote related to the temporary market pavilion concerned another part of the St. Elizabeths Hospital campus entirely and, again, is unrelated to the preservation architectural work you propose to do for Building #102.

The Conflicts of Interest provisions of the Ethics Act also prohibit you from acquiring an interest in a business that is directly related to your official duties or which might otherwise be involved in an official action taken or recommended by you, or which is related to matters over which you could wield any influence, official or otherwise. (D.C. Official Code § 1-1162.23(d)(2)(B)). Because Building #102 is owned by the District of Columbia government, you would not be acquiring an ownership or financial interest in the building itself. You are proposing to perform a service, for compensation, for the owner of the building, which is not prohibited by this section.

In addition, you are subject to the requirements of DPM § 1804, Outside Employment and Other Outside Activities. DPM §1804.1 states:

1804.1 An employee may not engage in any outside employment or other activity which is not compatible with the full and proper discharge of his or her duties and responsibilities as a government employee. Activities or actions which are not compatible with government employment include, but are not limited to, the following:

(a) Engaging in any outside employment, private business activity, or other interest which may interfere with the employee's ability to perform his or her job, or which may impair the efficient operation of the District of Columbia government.

This section of the DPM does not prohibit you from engaging in paid private preservation architectural work on Building #102. As you advise, though, at some point in the future, Building #102 will come before the HPRB for review and a vote. At that time, you will be required to fully recuse yourself from all participation in that matter as a member or Chair of the HPRB. This means that you must disclose the conflict, in writing, to the other HPRB members and fully remove yourself from any discussions and/or votes related to Building #102. I also take note of your representation that it is common for HPRB members to recuse themselves from HPRB matters on which they worked as a member of the private sector and that this does not interfere with HPRB's ability to perform its required functions. Therefore, I see nothing to suggest that your recusal in a matter relating to Building #102 will impair the efficient operation of District

government. In terms of your recusal, you also will be prohibited from representing your private employer's work or interests before HPRB or participating in any presentation to HPRB related to the work you and/or your private employer performed on Building #102.

As general guidance, you must not devote District government time or resources to work that you perform for your private employer on Building #102 (see, DPM § 1804.1(b)) and you cannot order other HPRB members or subordinate staff to work on matters related to your private employment responsibilities. (See, DPM § 1804.1(c)).

Based upon the information you provided, your proposed outside activity is permissible. When Building #102 comes before the HPRB, you will be required to inform the HPRB, in writing, that a conflict of interest has presented itself, and recuse yourself from all participation in the matter both as a member or Chair of HPRB.

Please be advised that this advice is provided to you pursuant to section 219 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 ("Ethics Act"), effective April 27, 2012, D.C. Law 19-124, D.C. Official Code § 1-1161.01 *et seq.*, which empowers me to provide such guidance. As a result, no enforcement action for violation of the District's Code of Conduct may be taken against you in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion. This advisory opinion only provides protection for prospective conduct, not past conduct.

Finally, you are advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that identifying information will not be disclosed unless and until you consent to such disclosure in writing, should you wish to do so.

Please let me know if you have any questions or wish to discuss this matter further. I may be reached at (202) 481-3411, or by email at darrin.sobin@dc.gov.

Sincerely,

_____/s/_____
DARRIN P. SOBIN
Director of Government Ethics
Board of Ethics and Government Accountability

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