

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



Office of Government Ethics

VIA EMAIL TO:

July 10, 2013

[Name]
Staff Assistant
[Agency]
[E-Mail address]

Dear Staff Assistant:

This responds to your request for advice concerning whether a proposed outside activity would be consistent with your ethical obligations as a government employee. Based upon the information provided via email on June 28, 2013, and your subsequent conversation with a member of my staff, as long as you ensure that you meet the requirements set forth below, your proposed outside activity is permissible.

You state that you are a Staff Assistant with a District of Columbia government agency and, as such, you work on audits of Advisory Neighborhood Commission (“ANC”) financial issues. This work includes reviewing the quarterly reports that ANCs submit to your agency and recommending the release of ANC funds based on your review of the quarterly reports. Additionally, you perform administrative tasks for your agency that are not related to ANCs, including making copies, binding reports, mailing reports, and other duties as assigned. That said, you state that ninety percent of your work duties concern ANC financial audits.

You state that as an outside activity, you have been elected to serve as an Officer for a Public Charter High School (“PCHS”). Specifically, you have been asked to serve as the PCHS’s Vice President. The PCHS is a non-profit corporation formed to operate a public charter high school in the District of Columbia.

You anticipate that your work as Vice President will involve providing guidance to the PCHS on policy adherence, budget, and human resources matters. You will not receive compensation for your services as Vice President. The Officers of the PCHS meet monthly, outside of your District government work hours.

In addition, if the President is absent, dies, becomes disabled, or is unable or refuses to act, you will assume the President’s duties, which include being the principal executive officer of the Corporation, overseeing the affairs of the Corporation, and presiding at all meetings of the Board.

The applicable provisions of the Code of Conduct that inform my decision are found in Chapter 18, Title 6B of the D.C. Municipal Regulations.¹ The pertinent portions of DPM 1804.1 state:

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:

. . . (d) Maintaining financial or economic interest in or serving (with or without compensation) as an officer or director of an outside entity if there is any likelihood that such entity might be involved in an official government action or decision taken or recommended by the employee;

. . . (h) Serving in a representative capacity or as an agent or attorney for any outside entity involving any matter before the District of Columbia.

In applying these sections of the DPM to your proposed outside activity, I conclude that you are prohibited from maintaining a financial or economic interest in, or serving as an officer of, an outside entity if there is any likelihood that the entity might be involved in an official government action or decision taken or recommended by you. Although you do not have a financial or economic interest in the PCHS, as Vice President you are an officer, and, therefore, DPM § 1804.1(d) applies. That said, because you work primarily on ANC financial issues, it is unlikely that you will be required, as an employee of your agency, to be involved, take, or recommend an official government action or decision regarding the PCHS. If you ensure that you do not violate this prohibition, DPM § 1804.1(d) is satisfied.

You state that the only foreseeable situation in which the PCHS would come before you in your position with your agency is if the City Council or a constituent requests a performance audit of the PCHS. A performance audit occurs only upon request and focuses on whether the entity is following financial rules, policies, and laws. If a performance audit of the PCHS is requested, you must fully and formally recuse yourself from the matter, using your agency's policy and mechanism for recusals and screening.² This includes recusal even from your non-audit administrative tasks for your agency, should they involve an audit of the PCHS. Understand that recusal includes fully removing yourself from access to files and information relating to the PCHS and from any discussions with auditors or other agency staff who are involved with the PCHS audit.

You also are prohibited from serving in a representative capacity or as an agent for any outside entity involving any matter before the District. Because the PCHS falls under the jurisdiction of the Office of the State Superintendent, a District government entity, you must ensure that you do not, in your position as Vice President, represent the PCHS before any District government agency or the Council of the District of Columbia

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

² Keep in mind that if your position with your agency changes and you are assigned to audit charter schools, recusal may no longer be an option because you may no longer be able to properly discharge your duties as a District government employee.

("Council"). Be advised that representing the PCHS before any District government agency or the Council includes signing any document on behalf of the PCHS or presenting on behalf of the PCHS. If you ensure that you do not violate this prohibition, DPM § 1804.1(h) is satisfied.

As general guidance, your position with the PCHS must not interfere with your ability to perform your District government job or impair the efficient operation of District government (See, DPM § 1804.1(a)), you must not devote District government time or resources to work that you perform for the PCHS (See, DPM § 1804.1(b)), you must not order subordinate agency staff to work on matters related to the PCHS (See, DPM § 1804.1(c)), and you must not divulge any official government information to the PCHS that is not available to the general public (See, DPM § 1804.1(f)).

Assuming your representations to be complete as to pertinent facts and entirely accurate, and further assuming that you would abide by the restrictions outlined above, I find that the restrictions on outside activity would not prevent you from pursuing this proposed outside activity.

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.

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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