

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

Office of Government Ethics



VIA EMAIL TO:

July 2, 2014

[REDACTED]
Department of Forensic Sciences
[REDACTED]

Dear [REDACTED]:

This responds to your request for advice concerning whether a proposed outside employment opportunity would be consistent with your ethical obligations as a government employee. Based upon the information you provided in your email of May 9, 2014, your conversation on the following day, and subsequent emails with a member of my staff, I conclude that your proposed outside employment is not permissible.

You state that you are the [REDACTED] for the District of Columbia Department of Forensic Sciences (“DFS”) and, as such, you conduct audits of the operations at DFS to assure that DFS is in compliance with national standards. You are a career executive in the field of forensic science and biometric systems. You began your career training with the Federal Bureau of Investigation (“FBI”) in the forensic discipline of Firearms Identification. You then moved on to the Metropolitan Police Department (“MPD”), where you were in charge of the forensic firearm and latent fingerprint disciplines, biometric facial recognition and fingerprint identification systems, the District of Columbia Automated Fingerprint Identification System (“AFIS”) server, and operations for criminal and civilian fingerprint processing. You then moved on to DFS, where you have served as the [REDACTED] since January, 2013.

You state that you have been approached with an opportunity for compensated outside employment with the American National Standards Institute-American Society of Quality (“ANSI-ASQ”) National Accreditation Board. ANSI-ASQ would provide you training to become an approved external inspector. As an external inspector, you would conduct audits of departments of forensic science outside of the District of Columbia, on your personal time. As an external inspector, you would perform the same services that you perform for the District of Columbia DFS as the [REDACTED], but you would perform those services for jurisdictions other than the District of Columbia.

The applicable provision of the Code of Conduct that informs my decision is found in Chapter 18, Title 6B of the D.C. Municipal Regulations.¹ DPM § 1800.3(n) reads:

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

*DPM § 1800.3(n) Employees shall not take actions **creating the appearance that they are violating the law or the ethical standards** set forth in this chapter. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.*

ANSI-ASQ is one of only three National Accreditation Boards that accredit departments of forensic science in the United States. ANSI-ASQ is currently under contract with DFS to perform DFS's required audits through 2017, and thus is considered a "prohibited source" as that term is defined in both the Ethics Act² and the DPM.³ You state that, although you serve as a [REDACTED], you have no role in the selection of the National Accreditation Board with which DFS chooses to contract. Despite the fact that you have no role in the selection, due to your position within DFS as [REDACTED], engaging in outside employment with a prohibited source such as ANSI-ASQ, in my view, creates the appearance that you would be violating the standards of the DPM. This view is supported by federal authority on the same issue.

The United States Office of Government Ethics ("OGE") opined in a legal advisory that a government employee, despite having no role "in procurement, in management, or in any discretionary position within [an] agency," can still create the appearance of a conflict by holding outside employment with a private entity that performs work for the employee's agency.⁴ In the legal advisory, OGE concurred with the finding of the employee's agency, that allowing an agency employee to hold outside employment with a company that performs work for the agency "caused unfavorable criticism and impaired the public confidence in the integrity of [the agency's] procurement process."⁵

The DPM uses the perspective of a reasonable person as the burden of proof necessary to establish the appearance of a violation of the standards in the DPM. In this instance, I believe a reasonable person would find that your proposed outside employment with ANSI-ASQ, an entity that contracts with DFS, creates, at the least, the appearance of a violation of the DPM. For this reason, your proposed outside employment is prohibited.

In addition to the prohibition concerning the appearance of a violation of the standards in the DPM, your proposed outside employment opportunity may also implicate DPM § 1807.2 which states:

*DPM § 1807.2 A District government employee may receive compensation for engaging in...**consultative activities**...that are not prohibited by law, regulation, or agency standards...*

² The Ethics Act defines "prohibited source" as any person that: (A) [h]as or is seeking to obtain contractual or other business or financial relations with the District government; (B) [c]onducts operations or activities that are subject to regulation by the District government; or (C) [h]as an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities. D.C. Official Code § 1-1161.01(46).

³ The DPM defines "prohibited source" as any person or entity who: (1) [i]s seeking official action by the employee's agency; (2) [d]oes business or seeks to do business with the employee's agency; (3) [c]onducts activities regulated by the employee's agency; (4) [h]as interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or (5) [i]s an organization in which a majority of its members are described in subparagraphs (1) through (4) of this subsection. DPM § 1803.4(b).

⁴ U.S. Office of Government Ethics Legal Advisory, 82x4, Letter to a Private Attorney dated March 10, 1982.

⁵ Id.

And DPM § 1807.4, which states:

*DPM § 1807.4 If the employee receives compensation or anything of monetary value for engaging in an activity under Subsection 1807.2 of this section, **the subject matter shall not be devoted substantially to the responsibilities, programs, or operations of his or her agency**, to his or her official duties or responsibilities, or to information obtained from his or her government employment.*

Your proposed outside employment opportunity, serving as an external auditor for ANSI-ASQ, would constitute engaging in the consultative activities referenced in DPM 1807.2. Because you would be compensated for these consultative activities, the subject matter of these activities must not be devoted substantially to the responsibilities, programs, or operations of your agency, as prohibited by DPM § 1807.4.

In your situation, because you essentially serve as DFS' internal auditor, to receive compensation for consulting as an external auditor for outside jurisdictions would clearly require you to engage in activities that are devoted substantially to the operations of your agency. Although these provisions would also likely prohibit your proposed outside employment activity, we have no reason to explore them in this opinion because, as discussed above, your proposed outside employment opportunity is already prohibited by DPM § 1800.3(n).

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. This advice is binding.

If you disagree with my conclusions herein, you may appeal this decision to the three-member Board of Ethics for reconsideration pursuant to D.C. Official Code § 1-1162.19.

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 your identity 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,



DARRIN P. SOBIN
Director of Government Ethics
Board of Ethics and Government Accountability

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