

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

Office of Government Ethics



VIA EMAIL TO:

March 23, 2015

Ms. Barbara Nophlin
Board Member
D.C. Public Charter School Board
nophlinb@gmail.com

Dear Ms. Nophlin:

This responds to your request for advice dated March 1, 2015, concerning:

1. Whether a conflict of interest is created by your consulting contract with Friendship Public Charter Schools ("FPCS"), one of the public charter school operators that the D.C. Public Charter School Board ("PCSB") oversees, and whether recusal from any discussion, contemplation, or vote on any matter involving FPCS will suffice to cure any existing conflict of interest; and
2. Whether a conflict of interest exists concerning your relationship with Paul Public Charter School ("PPCS"), one of the Public Charter Schools that the PCSB oversees, and whether recusal from any discussion, contemplation, or vote on any matter involving PPCS will suffice to cure any existing conflict of interest.

Based upon information you provide in a related email, dated March 1, 2015, I conclude that although a financial conflict of interest exists regarding your consulting contract with FPCS, your consulting contract with FPCS is permissible as long as you fully recuse yourself from any and all FPCS matters that come before the PCSB. Additionally, I conclude that a financial conflict of interest does not exist concerning your relationship with PPCS, and you may participate in matters involving PPCS without recusal, though I urge recusal from the PPCS matter, as a best practice.

As background, you are a holdover member of the D.C. Public Charter School Board ("PCSB"), having been nominated and confirmed by the D.C. Council in 2013 to fill a vacancy. That term expired on February 24, 2015. You are hopeful that you will be nominated for another term in March 2015.

Per your first question, I first examine your employment status with the District and with FPCS. You are currently a Board Member of the PCSB, therefore, you are an employee

of the District of Columbia.¹ You are also currently under contract with FPCS to provide consulting services. This consulting contract expires no later than July 1, 2017 and is in an amount not to exceed \$65,000 per year.

The Ethics Act's Conflict of Interest provision states 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 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 financial interests of a person closely affiliated with the employee."²

Because you are serving as a contractor for FPCS, one of the Public Charter Schools that the PCSB oversees, actions you take as a PCSB Member regarding FPCS may have a direct and predictable effect on your financial interests. Therefore, a financial conflict of interest does exist. That said, you should recuse yourself from discussion, contemplation, or vote – indeed, any and all participation – with regard to FPCS matters that come before the PCSB, so that the financial conflict of interest may be remedied.

Per your second question, I again examine your employment status with the District and with PPCS. You are the former Head of School of PPCS. However, you retired from that position, and all employment with PPCS, on June 30, 2009. Otherwise, you have no financial connections to this charter operator. Therefore, because a financial conflict of interest does not exist, recusal is not necessary. That said, because you have close personal friendships with current PPCS employees, you must be aware of the appearance created by these close personal friendships.

The District Personnel Manual ("DPM") prohibits employees from taking actions that create the appearance that they are violating the law or ethical standards.³ Because of this appearance prohibition and your close personal friendships with current PPCS employees, I urge you, as a best practice, to fully recuse yourself from PPCS matters. If your close personal friendships create, for a reasonable person, even the appearance that you have lost impartiality, the mere appearance could be a Code of Conduct violation.

In sum, I conclude that a financial conflict of interest exists due to your consulting contract with FPCS and your position with the PCSB, but I recommend full recusal as an appropriate remedy. Additionally, I recommend that, as a best practice, you recuse yourself from PPCS matters to avoid creating even the appearance of an ethical violation.

¹ D.C. Official Code § 1-1161.01(18) defines an "Employee" as "unless otherwise apparent from the context, a person who performs a function of the District government and who receives compensation for the performance of such services, or a member of a District government board or commission, whether or not for compensation," and 6B DCMR § 1899.1 defines an "Employee/Government Employee" as "an individual who performs a function of the District government and who receives compensation for the performance of such services (D.C. Official Code § 1-603.01(7)), or a member of a District government board or commission, with or without compensation (D.C. Official Code § 1-602.02(3))..."

² D.C. Official Code § 1-1162.23(a).

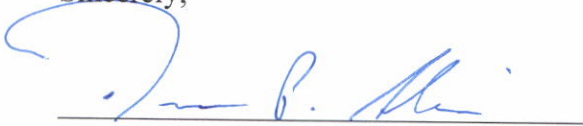
³ 6B DCMR § 1800.3(n).

Please be advised that this advice is provided to you pursuant to section 219 of the Ethics Act (D.C. Official Code § 1-1162.19), 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 (and others for you) have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion.

You also are advised that the Ethics Act requires this opinion to be published in the *D.C. Register* within 30 days of its issuance, but that your identity will not be disclosed unless you consent to such disclosure in writing. We encourage individuals to so consent in the interest of greater government transparency. Please, then, let me know your wishes about disclosure.

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,

A handwritten signature in blue ink, appearing to read "D. P. Sobin", is written over a horizontal line.

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

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