

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



Office of Government Ethics

October 18, 2017

XXXXXXXX XXXXXX  
XXXXXX XX XXX XXXXXXXX XX XXXXXXXX XXXXXXXX  
XXX XXXX Street, XX  
Washington, DC XXXXX  
[XXXXXXXX.XXXXXX@dc.gov](mailto:XXXXXXXX.XXXXXX@dc.gov)

Dear Ms. XXXXXX:

This responds to your request for advice concerning the possible ways in which your outside activity, ownership and operation of a XXXXXXXX company, might pose ethical issues for you in the workplace. Specifically, you asked for guidance as to whether, and under what circumstances you are permitted to sell XXXXXXXX to your colleagues. Based upon your representations, I conclude that, as an ethical matter, you may sell XXXXXXXX to your colleagues, subject to the restrictions set out below.

**Background**

You state that you are employed at the  
XX as an XXXXXXXX; you  
began working in that capacity on XXXXXXXXXXXXXXXXXXXXXXXX. You are  
XX  
XXXXXXXXXXXX. You advise that you have no official supervisory responsibilities.

Outside of your employment with XXXX, you own and operate a XXXXXXXX company. The  
XXXXXXX company is licensed in the state of XXXXXXXX. You operate your XXXXXXXX  
company via a web address; customers have the option to place their XXXXXXXX orders  
through your web portal or by phone. As a District government employee, Chapter 18 of  
Title 6B of the District of Columbia Municipal Regulations (also referred to as the  
District Personnel Manual (“DPM”)), and the Board of Ethics and Government  
Accountability Establishment and Comprehensive Ethics Reform Amendment Act of  
2011 (“Ethics Act”), effective April 27, 2012, District Law 19-124, District Official Code  
§ 1-1161.01 *et seq.*, are implicated by your inquiry. Though you state your belief that the  
operation of your company, in and of itself, does not violate the DPM or the Ethics Act, I  
will analyze the rules implicated by your ownership and operation of the XXXXXXXX  
business below. Please bear in mind that the examples listed herein are listed for  
reference and do not represent an exhaustive list of possible restrictions of the DPM and  
Ethics Act.

## **Outside Employment**

A District government employee is not permitted to engage in any outside employment or other activity incompatible with the full and proper discharge of his or her duties and responsibilities.<sup>1</sup>

As general guidance, this means that the operation of an outside business must not interfere with your ability to perform your District government job or impair the efficient operation of the District government. An example of where this might be an issue is if you were to prioritize xxxxxxx orders or deadlines over your District work assignments or deadlines. Certainly, you must not devote any District government time or resources to the operation of your outside business, and you may never direct or request of your co-workers that they assist you with such matters. You may also not divulge any official government information that is not available to the general public or appear before the District in any representative capacity (this includes appearing before any District agencies or signing any matter on behalf of the business that is submitted to the District).<sup>2</sup>

Another prohibition encompasses the duty to protect and conserve government property and to not use such property, or to allow its use, for other than authorized purposes.<sup>3</sup> Your agency's physical location, all other District owned or operated real property, as well as the physical items and supplies contained therein, constitute government property.<sup>4</sup> An example of a violation of this rule includes printing flyers for your xxxxxxx business on your District government printer.

It is also important to note that you are prohibited from acting in a manner that creates the appearance of a violation of the District's ethical standards. In other words, you could possibly violate the DPM without explicitly violating a particular rule, if, after consideration of the circumstances in the aggregate, there is the appearance of a violation.<sup>5</sup>

Finally, you must operate your xxxxxxx business within the bounds of the law and be sure to evaluate any changes in your business to make sure that those changes do not violate the outside employment rule or pose any conflicts of interest.

## **Conflicts of Interest**

Section 223(a) of the Ethics Act (D.C. Official Code § 1-1162.23) more closely addresses the essence of your inquiry with our office.

Pursuant to section 223(a) of the Ethics Act:

No employee shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval,

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<sup>1</sup> See DPM § 1807.1.

<sup>2</sup> See DPM § 1807.1(a)-(i)

<sup>3</sup> See DPM § 1808.1.

<sup>4</sup> See DPM § 1808.2.

<sup>5</sup> Pursuant to DPM § 1800.3(n), "[e]mployees shall not take actions creating the appearance that they are violating the law or the ethical standards set forth in...[chapter 18 of the DPM]. 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."

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.

Pursuant to this statutory provision, you may not use your title as a District government employee for personal gain, i.e., the betterment of your xxxxxxx business or your financial gain, in general. Though there is no issue with your colleagues simply patronizing your xxxxxxx business (outside of your tour of duty), you may not solicit business, sell xxxxxxx, or perform any operation of your xxxxxxx company on District government property or during your tour of duty. An example of a violation of section 223(a) includes taking orders *or* delivering orders placed by your colleagues or other D.C government employees while at work. Generally, you may sell xxxxxxx to your colleagues under the same circumstances under which you sell xxxxxxx to the public.

As a practical matter, when you are approached in the office by colleagues who want to discuss your xxxxxxx business, you are permitted to provide them with your company's contact information, i.e. address, web address, or phone number. You are not permitted to endorse your business during these encounters.

### **Posting of Notices and Information Bulletins**

DCMR § 1-1419 permits District employees to post personal notices, such as the sale of an employee's home, requests for car pool participants, and other notices of this type on bulletin boards in non-public areas of the building.<sup>6</sup>

This provision clearly notes that only personal notices can be posted by employees. An example of a personal notice is a posting about a Girl Scout cookie sale. Such a sale is considered personal because it is usually undertaken by a child and her parent as part of the child's participation in the Girl Scout program, is of a charitable nature and is not so frequently continuous as to be classified as an outside business. Conversely, your xxxxxxx business is considered a commercial enterprise because it serves only your financial interests and because your sale of the xxxxxxx occurs continuously. Therefore, any posting by you in reference to your xxxxxxx business is not permissible under DCMR § 1-1419.

### **Conclusion**

Assuming your representations to be complete as to pertinent facts and are entirely accurate, and further assuming that you would abide by the restrictions outlined above, I conclude that your operation of a xxxxxxx-based xxxxxxx business does not violate the DPM and that you may sell xxxxxxx to your colleagues under the conditions set out above. I encourage you to contact BEGA should you have any uncertainty about a

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<sup>6</sup> DCMR § 1-1401 provides that, "Only the following types of notices or information bulletins may be posted on bulletin boards in non-public areas of the building(s): (a) official business notices of the occupant agency; (b) request for donations which comply under § 1401.3; (c) notices to District employees by concessionaires and other District employees or groups; (d) personal notices of agency employees, such as the sale of an employee's home, request for car pool participants, and other notices of this type; or (e) notices by recognized labor organizations."

specific action you would like to take with regard to your outside activity. Additionally, this opinion, shall in no way impede your agency's prerogative to impose additional restrictions on your outside business activity should it determine that the activity impairs the efficient operation of the District government.

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 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](mailto:darrin.sobin@dc.gov).

Sincerely,

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

#1249-002

DS/BF/ASM