

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



Office of Government Ethics

April 2, 2013

VIA EMAIL TO:

Xxx Xxxx
D.C. xxxx
XXXXXXXXXXXX

Dear Xx Xxxxx:

This responds to your request for advice concerning whether a proposed outside activity for pay would be consistent with your ethical obligations as a government employee. Based upon the information you provide in your letter dated February 21, 2013, 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 Xxx Xxxx Xxxx with XX Xxxx xxx Xxxxx Xxxx (XXXX). Your duties as a Xxxx Xxxx Xxxx include coordinating the "Xxx Xxx" program, which performs xxx xxxx xx xxxx xxx xxxxx xxxxx, including xxxx xxxxx xxxxx xxx and coordinating the "Xxxx Xxxx Xxxx," which is a program designed to enhance XXXX worker's xxxx, improve xxxx, increase xxxx and improve xxxx. In addition, you work on issues of xxx xxxx to educate XXXX xxxxx.

You request advice on whether you permissibly may accept outside employment with Xxxx Xxxx Xxxx, a Xxx Xxxx Xxxx Xxxx in Washington, D.C. The nature of your work with Xxxx will consist of conducting monthly visits xx xxxx, xxx xxx xxx, where they xxxx xxxx xxxx, to monitor adherence to xxx xxxx xxxx xxxxx.

As a D.C. government employee, your outside activities are governed by Chapter 18, Title 6B of the D.C. Municipal Regulations.¹ The following summarizes the requirements/restrictions found in the DPM:

A District 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:²

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

² DPM § 1804.1.

- (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;³
- (b) Using government time or resources for other than official business . . . ;⁴
- (e) Engaging in any outside employment, private business activity, or interest which permits an employee, or others, to capitalize on his or her official title or position;⁵
- (g) Engaging in any outside employment, private business activity, or other interest which might impair an employee's mental or physical capacity to such an extent that he or she can no longer carry out his or her duties and responsibilities as a government employee in a proper and efficient manner.⁶

We find that your position with Xxxx is permissible if you ensure that you do not violate any of these prohibitions.

You state that your monthly visits for Xxxx will be conducted in the evenings/nights, weekends, and some holidays, but not during your D.C. government work hours, so you will not be using government time for other than official business. Likewise, D.C. government resources will not be used in the performance of your duties with Xxxx. Because you do not expect to be working more than 10 hours per week with Xxxx it is unlikely that the activity would impair the efficient operation of the D.C. government or interfere with your ability to perform your job at D.C. XXXX. In addition, because your proposed position with Xxxx is unrelated to your position with XXXX, it is unlikely that anyone, including yourself, will capitalize on your official title at XXXX.

Currently, Xxxx contracts with the D.C. Xxxx Xxxx Xxx (XXX), the D.C. Xxx Xxx Xxxx (XXX), and the D.C. Xxxx Xxx Xxxx (XXX). Xxxx does not, however, contract directly with XXXX. Although Xxxx's contractual relationship with the District creates the potential for a conflict of interest, because Xxxx does not contract directly with XXXX, we find that in your situation, no conflict currently exists.

If, in the future, Xxxx seeks or receives an XXXX contract, to avoid violating any of the provisions set forth above, you shall be required to notify XXXX, in writing, that you are an employee of Xxxx, and, formally recuse yourself from any work-related duties related to that procurement and oversight of that contract. In addition, because Xxxx contracts with other District agencies, you must ensure that you take no action that gives the appearance that you are trying to influence other District employees to award a contract to Xxxx, or to act favorably toward it during the administration of its contract.

Specifically, you must ensure that you do not violate the following provisions of DPM § 1803.1 (Responsibilities of Employees):

- (a) An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in or create the appearance of the following:

³ DPM § 1804.1(a).

⁴ DPM § 1804.1(b).

⁵ DPM § 1804.1(e).

⁶ DPM § 1804.1(g)

- (1) Using public office for private gain;
- (2) Giving preferential treatment to any person;
- (3) Impeding government efficiency or economy;
- (4) Losing complete independence or impartiality;
- (5) Making a government decision outside official channels; or
- (6) Affecting adversely the confidence of the public in the integrity of government.

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

AA-017-13