

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



Office of Government Ethics

January 16, 2013

VIA EMAIL TO:

XXXX XXXXXX
XXXXXXXX XXXXXXXX
XXXXXXXXXXXXXXXX XXXXXX XXXXXXXXXXXX
XXXX.XXXXXX@dc.gov

Dear xx. xxxxxxx:

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 provided in your email to me of January x, 2013, email exchanges you had with xxxxxxx xxxxxxxxxxxxxxx xxxxxx xxxxxxxxxxx xxxxx xxxxxxxxxxx, and your résumé and attachment, your proposed outside activity, as currently described, is not permissible.

You state that you are a xxxxxxx xxxxxxx with xxx xxx xxxxxxx xxxxxxxxxxx xxxxxx and, as such, are responsible for xxxxx xxxxxxxxxxx xxxxxxx xxxxxxxxxxx, xxxxxxx xxxxxx xxxxxxx, and xxxxxxx xxxxxxx xxxxxxx xxxxxxx. Your résumé also states that you xxxxxxx xxxxxxxxxxx xxx xxxxxxxxxxx, served as x xxxxxxx xxxxxxx xx x xxxxxxxxxxx, and xxxxxxxxxxx xxxxxxx.

In your January x, 2013, email to me, you wrote that your proposed outside activity for pay would be with xxxxxxx, a private company that has a history of providing xxxxx xxxxxxx xxx xxxxx xxxxxxxxxxx but which has xxxxxxx xxx xx xxxxx x xxxxx xxxxxxxxxxx xxx xx xxxxxxx. You state that xxxxxxx did not bid on the District's xxxxxx xxxxx xxxxxxxxxxx Request for Proposals, that you do not anticipate that xxx xxx xx xxxxxxx xxx xxxxxxxxxxx xxx x xx x xxx xxxxx, and that xxxxxxx provides xxxxxxx xxxxxxx xxxxxxx xxxxxxx and xxxxxxx to its xxxxxxx xxxxxxxxxxx clients. Your proposed outside activity for pay is consulting work for xxxxxxx, relating to xxxxxxx providing its clients with xxxxxxxxxxx xxxxxxx xxxxxxxxxxx xxx xxxxxxxxxxx xxxxxxx xxxxx xxxxxxx xxx xx xxxxx xxxxxxx xxxxx xxxxxxxxxxx xxxxxxx. You note that the District xxxxxx xx xxx xxxxx xxxxxxxxxxx xxxxxxx, xxxxxxx xx xxx xxx xxxxxxx [rather than xxx] manages xxxxxxxxxxx xxxxxxxxxxx xxx xxxxxxxxxxx xxxxxxx. Specifically, you state that your consulting work for xxxxxxx would entail working with xxxxxxx xxxxxxx xxxxxxxxxxx to xxxxxx their product, develop xx xxxxxxxxxxxxxx xxx xxx xxxxx xx xxxxxxx, develop x xxxxxxx xx xxxxxxxxxxx xxx xxxxx xxxxxxxxxxx, work with xxxxxxx to create xxxxxxxxxxx xxxxxxx, and create x xxxxxxxxxxx xxx xxx xxxxxxxxxxx xxx xxxxxxx.

The paperwork you submitted with your résumé provides additional details, which indicate that you would be “xxxxxxxxxxxx xxxxxxxxx xxx xxxxxxxx xxxxxxxx xxxxxxxxxxxx” in xxxxx xx xx xxx xxx xxx, and “xxxxxxxxxx xxxxxxxx xxxxxxxxxxxxxxx xxxxx xxx xxxxxxxxxxxxxx xxxxxxxxxxxxxxx xx xxx xxxxxxx xxxxx” [emphasis in the original] in xxxxx xx xx xxx xxx xxx. Finally, a review of the emails you submitted reveals that you were informed by xxx xxxxxxxxx xxxxx xx xxxxxxx xxxxxxx xxxxxxx, xxxxxxx xxxxxxx xxxxxxx, in an email dated January x, 2013, that xx believes that your proposed outside activity would be impermissible because “you would be using your xxxxxxxxx you gained working for xxx to further business for this company while still employed by xxx.” You provided no information to the contrary and xxxxxxxxx xxxxx xx xxxxxxx xxxxxxx denied your request for outside employment, based on the information you had provided to date.

There are essentially two applicable provisions of the Code of Conduct that inform my decision, each of which are found in Chapter 18, Title 6B of the D.C. Municipal Regulations.¹ The DPM states:

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:

(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.

As you know, you have worked for xxx since xxxxxxxxx xxx, and as stated above, xxx has determined that you have gained xxx xxxxxxxxx that you would be using to further xxxxxxxxx interests from your work for xxx. You have provided no information to the contrary. Because those xxxxxxxxx at xxxxxxxxx know you only as an xxx employee, if you now accepted an offer from them to market xxxxxxxxx product, you would, whether intentionally or unintentionally, be capitalizing on your official title or position with xxx to benefit xxxxxxxxx and yourself.

There is an additional concern. Many of xxxxxxxxx clients know you already as an xxx employee. If you contact these clients to xxxxxxx xxxxxxxxx product, there is a substantial risk that they may conclude that either xxx, or you as an xxx employee, endorses xxxxxxxxx product.² Again, whether intentionally or unintentionally, you would be capitalizing on your official title or position. Accordingly, your proposed outside activity as you have described it, would violate DPM § 1804.1(e).

Notwithstanding this prohibition, a second, separate prohibition in the DPM would similarly prevent you from engaging in this outside activity. The second provision states:

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

² Even if you expressly apprise these clients of your non-governmental role, given my other concerns addressed in this letter, I do not believe that this would be sufficient to overcome the overall prohibition.

1804.4 The information used by an employee engaging in an activity under § 1804.3³ shall not draw on official data or ideas which have not become part of the body of public information, except nonpublic information that has been made available on request for use in such capacity, or unless the agency head gives written authorization for use on the basis that its use is in the public interest.

You stated on your résumé that, while working for xxx, you developed xxx xxxxxxxx xxx and xxxxxxxx the xxxxxxxx xxxxxx xxxxxx xxxxxx. You stated in your email that xxxxxxxx also provides xxxxxxxx xxxxxxxx xxxxxxxx and xxxxxxxx to their xxxxxxxx xxxxxxxxxxxx clients and that your proposed outside activity, for pay, will include helping xxxxxxxx develop xxxxxxxxxxxx xxxxxxxx xxxxxxxxxxxxxxxx xxx xxxxxxxxxxxxxxxx xxxxxxxx xxx xxxxxxxx xxx xx xxx xxxxxxxxxxxx xxxxxxxx xxxxx xxx xxxxxxxxxxxx xxxxxxxx. This, you state specifically, will include working with xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxxxxxx to develop xxx xxxxxxxxxxxxxxxxxx, xxxxx xxx xxxxxxxxxxx, and xxxxxxxx xxx xxxxxxxx. It appears from these descriptions that you will be using the knowledge you gained at xxx xxxxxxxxxxxxxxx xxx xxxxxxxxxxx xxx xxx xxxxxxxxxxx xxxxxxxx xxxxxxx xxxxxx xx help xxxxxxxx develop x xxxxxxxxxxx xxxxxxxx xxxxxxxxxxxxxxx xxxxxxx xxx xxxxxxxxxxxxxxxx xxxxxxxx xx xxx xxxxxxxxxxx xxxxxxxx xxxxxxxx.

Further, you have provided no information to suggest that this information has become part of the body of public information. As the rule states, you are prohibited from using nonpublic information unless your agency head determines that its use is in the public interest and then provides you with written authorization that you may use such information. You have provided no such written authorization from your agency head.

Accordingly, in addition to the prohibition contained in 1804.1(e), you are also prohibited from engaging in the proposed activity because it would draw upon information that is of a nonpublic nature that you gained in the course of your employment with xxx. DPM § 1804.4.

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. If you disagree with my conclusions, you may appeal this Advisory Opinion to the three-member Board of Ethics and Government Accountability for their consideration. D.C. Official Code § 1-1162.19(c). If you wish to do so, please let me know within 10 business days from the date of this letter so I may provide you with instructions.

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.

³ The pertinent part of 1804.3 refers to “consultative activities.”

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