

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



Office of Government Ethics

January 31, 2013

**VIA EMAIL TO:**

XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXX  
D.C. Department of XXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX@dc.gov

Dear xx. XXXXXXXXXXXXXXX:

This responds to your December 10, 2012, email in which you seek guidance concerning an outside activity in which you wish to participate and your ethical obligations as a government employee. Based upon the factual predicates you provide in your email, as long as you ensure that you do not violate any of the provisions set forth below, your proposed outside activity is permissible.

You state that you are a xxxx xxxxxxxxxxxx xxxxxxxxxxxx with the D.C. Department of xxxxxxxxxxxx and you own a company called xxxxxxx, xxx, which is licensed to do business in the District and which seeks to do business with the District government, as well as other xxxxx xxxxxxxxxxxx in the area and private businesses. As a government employee, your outside activities are restricted and informed by federal statutes as well as District laws and rules. The following summarizes the various requirements/restrictions:

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:<sup>1</sup>

- (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;<sup>2</sup>
- (b) Using government time or resources for other than official business . . . ;<sup>3</sup>
- (d) Maintaining financial or economic interest in or serving (with or without compensation) as an officer or director of an outside entity if there is any

<sup>1</sup> D.C. MUN. REGS. tit. 6, § 1804.1. (Hereinafter Title 6 of the D.C. Municipal Regulations will be referred to as D.C. Personnel Manual or DPM.)

<sup>2</sup> DPM § 1804.1(a).

<sup>3</sup> DPM § 1804.1(b).

- likelihood that such entity might be involved in an official government action or decision taken or recommended by the employee;<sup>4</sup>
- (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;<sup>5</sup>
  - (f) Divulging any official government information to any unauthorized person or in advance of the time prescribed for its authorized issuance, or otherwise making use of or permitting others to make use of information not available to the general public . . . .<sup>6</sup>

In addition to the specific prohibitions identified above, a District employee may not engage in an outside activity that will:

- conflict with or “appear to conflict with the fair, impartial, and objective performance of officially assigned duties and responsibilities;”<sup>7</sup>
- interfere with the employee’s regular working hours;<sup>8</sup> or
- impair an employee's mental or physical capacity to carry out his or her duties.<sup>9</sup>

In your email, you did not state whether your company, xxxxxxxx, xxx, will seek business with the D.C. Department of xxxxxxxxxxxxxx. If it does seek or receive a D.C. Department of xxxxxxxxxxxxxx contract, to avoid violating any of the provisions set forth above, you shall be required to notify the D.C. Department of xxxxxxxxxxxxxx, in writing, that you are the owner of xxxxxxxx, xxx, and, formally recuse yourself from any work-related duties related to that procurement and oversight of that contract. In addition, if xxxxxxxx, xxx, seeks or obtains a District government contract with any District agency, including, but not limited to, the D.C. Department of xxxxxxxxxxxxxx, 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 xxxxxxxx, xxx, 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:
  - (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

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<sup>4</sup> DPM § 1804.1(d).

<sup>5</sup> DPM § 1804.1(e).

<sup>6</sup> DPM § 1804.1(f).

<sup>7</sup> D.C. Official Code § 1-618.02; DPM § 1800.3.

<sup>8</sup> Mayor’s Memorandum 2003-6. The Mayor’s Memorandum also states that outside employment must not “present a conflict with the interests of the District government.” *Id.* While the Mayor’s Memo does not explain what would constitute such a conflict, this is best understood in reference to the other applicable conflict of interest standards found in federal and District statutes and in District regulations.

<sup>9</sup> DPM § 1804.1(g).

(6) Affecting adversely the confidence of the public in the integrity of government.

In addition, you must take affirmative steps to ensure that you do not violate DPM § 1816 (Government Contracts), which states:

An employee shall not be a party to a contract with the District government and shall not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the government's needs cannot reasonably otherwise be met.<sup>10</sup>

Assuming that you obtain from the head of the procuring agency, a written determination that there is a compelling reason for contracting with xxxxxxx, xxx, recuse yourself, in writing, from any involvement in the award of a contract to or the administration of a contract for xxxxxxx, xxx, and take steps to ensure that you do not engage in conduct that violates DPM § 1803.1 (Responsibilities of Employees), I find that your proposed outside activity is permissible.

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

Sincerely,

/s/

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

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<sup>10</sup> DPM § 1816.1. As explained in DPM § 1816.2, "[t]his policy is intended to avoid any conflict of interest that might arise between an employee's private interests and the employee's District government duties, and to avoid the appearance of favoritism or preferential treatment by the District government toward its employees."