

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



Office of Government Ethics

February 26, 2013

VIA EMAIL TO:

xx. xxxxxxx xxxxx
xxxxx xx xxxxx, xxxxxx xx xxx xxxxxxxx
x.x. xxxxxxxxxxx xxxxxx xxxxxx
xxxxxxxx.xxx@dc.gov

This responds to your January 31, 2013, email in which you seek guidance regarding whether you would be permitted to accept outside employment as a xxxxxxxxxxxxxxxx xxxxxxxxxxx with xxxxxx xxxxxx, a company that manages xxxxxx xxxxxxxxxxx, a D.C. xxxxxx xxxxxx xxxxxx.

You state that you are the xxxxx xx xxxxx at the xxxxxxxxxxx xx xxxxxx xxxxxx (“xxx”) and that in this position you act as the xxxxxx xxxxxxxxxxx xxxxxx. You state that xx. xxxxxx xxxxxx, a xxx xxxxxx xxxxxx, also is the unpaid chair of the Board of Directors of xxxxxxx xxxxxxx (the “Board”). xx. xxxxxx asked you if you would be interested in submitting your resume for a xxxxxxxxxxx xxxxxxxxxxx position with xxxxxx xxxxxxx. The Board is responsible for approving the selection of the xxxxxxxxxxx xxxxxxxxxxx. You also state that xx. xxxxxx estimates that the work you would do would require xx to xx hours per month, with an hourly rate of \$xxx to \$xxx.

In a separate telephone interview, you stated that your xxx duties include managing the xxxxxxx xxxxxx of the xxxxxxx of xxx, supervising the xxx xxxxx xxxxxxxxxxx (xx) xxxxxxxxxxx, responding to xxxxx requests, and serving as a liaison between xxx and the xxxxxxx xx xxx xxxxxxx xx xxxxxxx and the xxxxxxxxxxx xxxxxx xx xxx xxxxx. xx. xxxxxx supervises all xxx xxxxxxx. Both you and xx. xxxxxx report directly to the xxxxxxx, and neither of you assign work to the other. You confirmed that both you and xx. xxxxxx are at a level xx pay grade, but you said that you believe that xx. xxxxxx makes more money than you do.

Based upon the information you provided, your proposed outside activity is permissible. Accepting a xxxxxxxxxxx position with xxxxxx xxxxxx does not, in and of itself, present a conflict of interest with your current position as xxx xxxxx xx xxxxx as it is unlikely that you will be in a position to influence or hinder the interests of xxx in your role as a xxxxxxxxxxx xxxxxxxxxxx with xxxxxx xxxxxxx. If, however, you feel that a conflict of interest does arise, at any point, you must immediately recuse yourself in writing from the applicable xxx activity. It is important that your government duties never overlap with your outside xxxxxxxxxxx activities.

Because you learned of the position through xx. xxxxxx, another xxx employee who is also Chair of the Board of Directors for xxxxxxxx xxxxxxxx, and, because if you engage in the proposed outside activity you will continue to deal with xx. xxxxxx in connection with that outside activity, it is imperative that you do not create the appearance of impropriety. In this regard, as a government employee, your outside activities are restricted and informed by federal statutes as well as District laws and rules. All employees have responsibilities, codified in Chapter 18, Title 6B of the D.C. Municipal Regulations,¹ to which they must adhere as District employees.

Specifically, DPM § 1804, Outside Employment and Other Outside Activities, is applicable to your set of facts. DPM §1804.1 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.

Accordingly, serving as the xxxxxxxxxxxx xxxxxxxxxxxx for xxxxxxxx xxxxxxxx, especially when working with xx. xxxxxx, must not interfere with your duties at xxx. (See, DPM § 1804.1(a)). Further, you must not devote District government time or resources to work that you perform for xxxxxxxx xxxxxxxx (See, DPM § 1804.1(b)) and you cannot order other xxx employees to work on matters related to xxxxxxxx xxxxxxxx. (See, DPM § 1804.1 (c)). You also must take utmost care that all confidential information and government contacts obtained during your employment with xxx are not shared with any outside source. (See, DPM § 1804.1(f)). Obviously, your responsibilities as an outside xxxxxxxxxxxx xxxxxxxxxxxx and the activities that you will perform must not violate federal or District law. (See, DPM § 1804.1(i)).

In addition, the DPM states:

1803.1(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*
- (6) Affecting adversely the confidence of the public in integrity of government.*

Your primary responsibility as an employee of the District government is to uphold the public trust.² Any action performed while serving as a xxxxxxxxxxxx xxxxxxxxxxxx that is adverse to your xxx duties and position may constitute a violation of the DPM.³ Therefore, if you take the position as a xxxxxxxxxxxx xxxxxxxxxxxx, you must ensure that

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

² See, DPM § 1800.1.

³ See, DPM §1800.3.

you do not engage in conduct that violates, or appears to violate, the provisions of DPM § 1803.1(a), listed above.

Bearing all of this in mind, I recommend under these circumstances, that xx. xxxxxx, as both a xxx employee and Chair of the Board of Directors, recuse herself from a vote of the Board of Directors to hire you for the xxxxxxxxxxxx xxxxxxxxxxxx position. It also would be best practice for xx. xxxxxx to recuse herself from any vote of the Board of Directors to terminate your services for the Board and/or to decide not to re-new your xxxxxxxxxxxx contract, should either of those situations arise. In a recusal situation, xx. xxxxxx must notify the other members of the Board of Directors, in writing, of the nature of the conflict of interest, i.e. that you are her colleague at xxx, that she informed you of the position at xxxxxxxx xxxxxxxx, and that you maintain an on-going professional relationship in connection with your mutual employment at xxx.

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