

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



Office of Government Ethics

November 27, 2012

Xxxx xxxxxxxx
xxxxx xxxxxx
XXXXXX XXXXXXXX
Xxxx xxxxxxxx
XXXXXX XXXXXXXX
Suite xxx
Washington, D.C. xxxxxx

Dear xxxxxx xxxxxx:

This responds to your letter dated November 15, 2012, 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 letter, I do not believe that your proposed outside work would conflict with your official government duties.

You state that you are the xxxxxx xxxxxx of xxx xxxxxxxx xx xxxxxx xxxxxx xxxxxxxxxxxx xxxxxxxxxxxx. The xxxxxx was established pursuant to the Home Rule Act, effective December 24, 1973 (xx Stat. xxxxx, D.C. Official Code § x-xxx.xx) and is tasked with xxxxxxxxxxxx xxxxxxxxxxxx for xxxxxxxxxxxx by the xxxxxxxx xx xxxxxx xxxxxxxx xxxxxx to xxx xx xxxxxxxx of the xxxxxxxx xx xxxxxxxx xxxxxxxx.

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:

1. Specifically prohibited activities

A District employee may not:

- serve in a representative capacity or as an agent or attorney for any outside entity involving any matter before the District,¹
- act as an agent or attorney for anyone before the District government or a D.C. court regarding a particular matter;²

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

- serve as officer or director of an outside entity if there is any likelihood that such entity might be involved in an official government action or decision taken or recommended by the employee.³

These three prohibitions apply to both paid and unpaid activities.

2. Criteria for outside activities

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;”⁴
- permit anyone to capitalize on the employee’s official title or position;⁵
- impair the efficient operation of the District;⁶
- interfere with the employee's ability to perform his/her job;⁷
- interfere with the employee’s regular working hours;⁸ or
- impair an employee’s mental or physical capacity to carry out his or her duties.⁹

3. Rules that District employees must respect regarding their outside activities

If the outside activity meets the criteria identified above, then an employee may engage in it, but the employee must not:

- use government time or resources for other than official business;¹⁰
- order subordinate employees to perform any personal services not related to official District government work;¹¹

² 18 USC § 205(b)(2); *see also* DPM § 1804.1(h) (prohibiting employees from “[s]erving in a representative capacity . . . for any outside entity involving any matter before the District”). This prohibition does not apply to an employee who is representing (without compensation) another employee in personnel administrative proceedings, 18 USC § 205(d)(1), DPM § 1804.8. It has more limited application to temporary or intermittent employees who qualify as “Special Government Employees.” 18 USC § 205(c).

The D.C. Official Code has a provision specifically prohibiting the Mayor and Council Members from representing anyone before a District regulatory agency or court, D.C. Official Code 1-1106.01(h). This prohibition applies to a broader set of activities than 18 USC § 205 in that it applies not just to “particular matters,” but also to discussions of policy, regulations-writing or rulemaking.

The D.C. Official Code provision contains an exception permitting Council Members (but not the Chair) who are licensed to practice law in the District to appear before a D.C. court “in any matter which does not affect his or her official position.” *Id.*

³ 1804.1(d).

⁴ D.C. Official Code § 1-618.02; DPM § 1800.3.

⁵ DPM § 1804.1(e).

⁶ DPM § 1804.1(a).

⁷ DPM § 1804.1(a).

⁸ 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.

⁹ DPM § 1804.1(g).

¹⁰ DPM § 1804.1(b) – with exception for work for other governments.

¹¹ DPM § 1804.1(c).

- divulge 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;¹² or
- if the outside activity involves serving as an officer, director, trustee, general partner or employee of another organization, then the District employee must not participate personally and substantially (as part of his/her District work) in any particular matter in which that outside organization has a financial interest.¹³

4. Restrictions on outside paid employment

If the outside activity involves compensation, then the District employee must not

- receive pay from either the federal or District government (or a combination of both) for more than 40 hours in any work week cumulative;¹⁴
- receive any gratuity or any share of or interest in any claim against the District in consideration of assistance in prosecuting such a claim;¹⁵
- receive “any compensation for any representational services” regarding any “particular matter in which the District of Columbia is a party or has a direct and substantial interest, before any department, agency, court, officer, or commission;”¹⁶ or
- receive compensation from a non-District source for the employee’s work for the District.¹⁷

These are the parameters against which your request for guidance is measured. In your request, you state that you wish to serve as a “subject matter expert” for a company named xxxxxx xxxxxxxx LLP. You advise that the firm has made a bid on a xxxx xxxxxxxx xxxxxxx (“xxx”) solicitation to assess that agency’s outcome and performance measurement system. Your role would be to brief the project team on xxx’s organization and operations, educate them on how xxx fits into the District’s xxxxxx xxxxxxxx system, and compare it to other xxxxxxx xxxxxxxx agencies in other jurisdictions. You might also be asked to brief members of the entity on the use of performance measures in the xxxxxxx xxxxxxxx context, speak with xxx personnel, review documents and make recommendations with regard to xxx performance measures and management processes.

Assuming these statements to be accurate, and further assuming that you would abide by the restrictions outlined above, I find no inherent conflict that would prevent you from pursuing this proposed outside activity. Your role as xxxxxxxx of the xxxx xxxxxxxx xxxxxxxx would appear to have little or no potential for overlap with the xxx consultation in which you wish to engage.

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-

¹² DPM § 1804.1(f).

¹³ *Id.*

¹⁴ Mayor’s Memorandum 2003-6.

¹⁵ 18 U.S.C. § 205(b)(1).

¹⁶ 18 U.S.C. § 203(b)(1).

¹⁷ 18 U.S.C. § 209 (salary supplementation).

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