

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



Office of Government Ethics

July 24, 2024

Marvin Briggs
mbriggs@psc.dc.gov

Mr. Briggs:

This advisory opinion responds to your request for advice on how you can continue your outside activity as President and CEO of Project Briggs, Inc. (“Project Briggs”), a non-profit organization located in Ward 8, in a manner that complies with the District's Code of Conduct. Specifically, you propose that you recuse yourself from any grant application processes concerning Project Briggs and request BEGA's opinion on whether your planned recusal and disclosures are sufficient to avoid violating the conflicts of interest law or other ethics rule. After reviewing the information you provided, I conclude that you may continue your outside activity with Project Briggs, subject to the limitations outlined below.

A. Background

You currently serve as a Records and Information Management Specialist for the DC Public Service Commission (“PSC”). In prior communications with this Office, you stated that you serve as President and CEO of Project Briggs. You are also one of several Project Briggs board members. In your request for an advisory opinion, you stated that board positions are unpaid volunteers. According to its website, Project Briggs operates under a 501(c)(3) status, and focuses on “leadership, brand building, and community advocacy through innovative fundraising and outreach”.¹ As President and CEO, you oversee strategic initiatives and partnerships.

Project Briggs is currently applying for District government grants to support its health and wellness outreach programs. Project Briggs is pursuing two grants in fiscal year 2025: (1) a community grant of up to \$50,000 from the DC Mayor's Office of LGBTQ Affairs to implement HIV/AIDS Education, PrEP linkage, harm reduction, and health and wellness outreach programs; and (2) a community outreach grant from DC Engage-Health HIV to support harm reduction. According to you, all grant funds will ultimately benefit District residents.,

B. Applicable Standards and Discussion

The Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012, District Law 19-124, District Official Code § 1-1161.01, *et seq.*, establishes the rules that are the District’s Code of Conduct. Chapter 18 of Title 6B of the District of Columbia Municipal Regulations – also referred to

¹ See [Homepage - Project Briggs, Inc.](#)

as the District Personnel Manual (“DPM”) – make up a large part of the Code of Conduct. The conflicts of interest law, along with the outside employment and private representation rules and public office for private gain rule are implicated by your inquiry. These regulations and statute were designed, in part, to prevent employees from using their official position or title for personal gain or influencing matters that could affect their financial interests or those of closely affiliated persons or entities. The rules on outside employment and private representations form the foundational guidance for employees conducting non-governmental work and activities.

1. Conflicts of Interest and Recusal

The Conflicts of Interest law prohibits District employees from using their official position or title, or personally and substantially participating in any matter that they know is likely to have a direct and predictable effect on their financial interests or the financial interests of a person closely affiliated with the employee.² The phrase “person closely affiliated with the employee” in the conflicts of interest statute, means a spouse, dependent child, general partner, a member of the employee’s household, or an affiliated organization.³ The term, “affiliated organization” includes an organization or entity in which the employee serves as officer, director, trustee, general partner, or employee.⁴ Because you serve as President/CEO and board member of Project Briggs it is your affiliated organization. This law prohibits your participation in any Project Briggs/District of Columbia grant processes because the grant application or award will have a direct and predictable effect on Project Briggs’ financial interests and your financial interests.

Employees must recuse themselves from official actions that might impact their financial interests or those of family members, business partners, current or potential employers, or closely affiliated entities.⁵ When an entity that is closely affiliated with an employee is seeking funding or grants from the government, the employee must ensure that the action does not pose a conflict for the employee and that they take no action regarding the matter. Consequently, in order to ensure that you are abiding by the District’s conflict of interest laws, if matters involving Project Briggs come before you in your capacity as a District government employee you should recuse yourself from any participation. A written recusal is an affirmative obligation and refraining from acting without writing the recusal does not satisfy the rule and could subject you to penalties⁶.

2. Outside Employment and Private Representations

In addition to the Conflicts of Interest law, you must adhere to the District’s outside employment restrictions⁷, including avoiding third party representations before the District.

The outside employment rules in section 1807 of the District Personnel Manual require employees to ensure that their outside employment or other activity is compatible with the full and proper discharge

² D.C. Official Code § 1-1162.23(a).

³ D.C. Official Code § 1-1161.01(43).

⁴ *Id.* at § 1-1161.01(3)(A)(i).

⁵ Advisory Opinion – Guidance on Recusal, dated May 3, 2023, <https://bega.dc.gov/publication/advisory-opinion-guidance-recusal>.

⁶ D.C. Official Code § 1-1162.23(c)(2) provides the criteria for filing a written statement of recusal.

⁷ *See* DPM §1807.1, et seq., “[a] District government employee shall not engage in any outside employment or other activity incompatible with the full and proper discharge of his or her duties and responsibilities.”

of their duties and responsibilities.⁸ The rule provides a non-exhaustive list of activities or actions that are not compatible with government employment including engaging in outside activity that interferes with job performance, using government time or resources for outside business, ordering, directing or requesting that a District employee use government time or resources for outside business, maintaining a financial interest in an outside entity if there is a likelihood that entity will have business with the District, engaging in outside activity which permits you to capitalize on your District government title or position, divulging any official government information to unauthorized parties, engaging in outside activity that might impair your mental or physical capacity, and finally outside activity that violates District or federal law.⁹ You must be certain to avoid engaging in Project Briggs matters while on duty for the District or using government resources such as equipment or your official email account.¹⁰

The representation rule is one of the aforementioned prohibitions that is especially relevant to your inquiry. The rule prohibits you from serving in a representative capacity or as an agent or attorney for any outside entity involving any matter before the District of Columbia.¹¹ You are therefore, prohibited from serving as a representative of Project Briggs (or any other third party) before the District. Activities such as attending meetings, signing and submitting documents, applying for grants, or negotiating with the District government on behalf of Project Briggs are tantamount to representation for purposes of this rule. You stated that Project Briggs is pursuing two grants for the fiscal year 2025. You are prohibited from applying for those grants, signing any documents related to grant applications, and submitting the grant applications to the District. In other words, you are prohibited from participating in any stage of the grant process.

You are also prohibited from communicating with the District on matters that may arise if a grant is awarded to Project Briggs, such as submitting performance or compliance documents, sending updates, or communications regarding payment disputes. The restrictions herein apply to you and not to other representatives of Project Briggs who are not District government employees. It is highly recommended that Project Briggs appoint a third-party representative who is not affiliated with the District government to handle all aspects of the grant application and any interactions with District agencies regarding this matter.

Note, the representation rule does not prohibit Project Briggs from listing you as President/CEO or board member of the company, rather it prohibits your interactions with the District government while serving in that capacity.

3. Other Ethics Rules

Additionally, the Code of Conduct prohibits employees from using their public office or position for the private gain of themselves or others.¹² This means that you are prohibited from using your District government position or title to further the interests of Project Briggs. You must keep both positions separate. Pursuant to DPM § 1800.3(n), employees shall not take actions creating the appearance that they are violating the law, or the ethical standards set forth in [chapter 18 of the DPM]. In other words,

⁸ See BEGA Advisory Opinion, “Outside Employment and Private Representation”, dated September 7, 2022, <https://bega.dc.gov/publication/outside-employment-and-private-representation>.

⁹ See DPM § 1807.1, *et seq.*

¹⁰ See DPM § 1807.1(b).

¹¹ *Id.* at § 1807.1(h).

¹² DPM § 1800.3(g).

conduct that creates the appearance of an ethics violation is itself a violation. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts. In the instant case, this Office advises you to inform your Project Briggs colleagues of the restrictions imposed on you because of your status as a District government employee, recuse yourself if a matter concerning Project Briggs comes before you in your District government work, and ensure that you are not included in any communications between Project Briggs and the District.

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. Pursuant to Chapter 3 of the D.C. Municipal Regulation Regulations § 5405.7, this proposed advisory opinion shall be published in the District of Columbia Register for a 30-day public comment period during which time a person may submit information or comment to bega@dc.gov.

Please let me know if you have any questions or wish to discuss this guidance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ashley D. Cooks', written over a horizontal line.

ASHLEY D. COOKS
Director of Government Ethics
Board of Ethics and Government Accountability