



CITY OF PITTSBURGH

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January 3, 2019

[REDACTED], Esq.

Re: 18-A-001 Request for Advisory Opinion on Section 197.06(a) Post-Employment Restrictions

Dear [REDACTED]:

This responds to your letter dated November 12, 2018 in which you requested an advisory opinion from the City of Pittsburgh Ethics Hearing Board ("Board") pursuant to Section 197.13 of the City of Pittsburgh Code of Conduct ("Ethics Code") and constitutes the formal advisory opinion of the Board.

Issue:

Whether an attorney formerly employed by the City of Pittsburgh Law Department may represent a client before the City of Pittsburgh in legal matters that he or she was not engaged in while employed by the City of Pittsburgh Law Department prior to the expiration of the one-year period set out in Section 197.06(a) of the Ethics Code?

Facts:

This advisory opinion is based upon the facts that you have submitted. The Board does not engage in an independent investigation of the facts, nor does it speculate as to facts that have not been submitted. It is your burden to truthfully disclose all of the material facts relevant to the inquiry. Section 197.13 of the Ethics Code.

You are an attorney admitted to the Bar of the Supreme Court of Pennsylvania.

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You served the City of Pittsburgh (“the City”) for a number of years through your employment as an attorney with the City Law Department. Your employment with the City ended in early April 2018. In late April 2018, you joined the law firm of [REDACTED] (“Law Firm”). You advise that in your role with Law Firm, you may be asked to represent persons or entities on matters before the City. In particular, one of your clients would like you to represent her in asking the City for a reasonable accommodation to a City ordinance due to a disability.

You seek guidance regarding whether Section 197.06(a) of the Ethics Code would impose prohibitions or restrictions on you with regard to representing a Law Firm client before the City in legal matters that you were not engaged in while you serving as an attorney with the City Law Department.

Discussion:

The following sections of the Ethics Code are relevant to your inquiry:

Section 197.06(a) provides:

For a period of 12 months from the time employment or service is terminated, no person who has served as a public official or public employee shall represent a person, with or without compensation, on any matter before the governmental body with which he has been associated.

Pursuant to Section 197.02(i) a “Public Official” is:

Any person elected by the public or appointed by a governmental body or an appointed official in the executive[,] legislative or judicial branch of this Commonwealth or any political subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expenses or to otherwise exercise the power of the State or any political subdivision thereof.

Section 197.02 (j) defines a “Public Employee” as:

Any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with regard to:

- (1) Contracting or procurement;
- (2) Administering or monitoring grants or subsidies;
- (3) Planning or zoning;
- (4) Inspecting, licensing, regulating or auditing; or,
- (5) Any other activity where the official's action has an economic impact of greater than a *de minimus* nature

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The term shall not include individuals who are employed by this Commonwealth or any political subdivision thereof in teaching as distinguished from administrative duties.

Section 196.06(a) of the Ethics Code prohibits a former public official or public employee from representing any person before the governmental body with which he or she had been associated for one year after the termination of his or her service or employment,.

In Shaulis v. Pennsylvania State Ethics Commission, 833 A.2d 123 (Pa. 2003), over-ruled in part by Yocum v. Pennsylvania Gaming Control Board, 161 A.3d 228 (Pa. 2017), consideration was given to a section in the State Ethics Act which provided that "no former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body." The Supreme Court held that this provision was unconstitutional as applied to attorneys because that court has the exclusive authority to regulate the conduct of an attorney insofar as it constitutes the practice of law.

The provision at issue in Shaulis is nearly identical to Section 196.06(a) of the Ethics Code. Therefore, the Supreme Court's analysis in Shaulis applies with equal force to the interpretation of Section 196.06(a).

Conclusion

The governmental body with whom you were associated when you left your position with the City was the City Law Department. Therefore, for the first year following the termination of your service with the City, Section 196.06(a) of the Ethics Code would prevent you from representing a person before the City Law Department except to the extent that the representation constitutes the practice of law.

Furthermore, during the first year following the end of your service with the City, Section 196.06(a) of the Ethics Code would not prohibit you from representing a client of Law Firm before the City in legal matters that you were not engaged in while you were serving as an attorney for the City Law Department, provided that in doing so, you do not engage in activities that would involve representation before the City Law Department that do not constitute the practice of law.

This advisory opinion only relates to Section 196.06(a) of the Ethics Code. No position is being expressed regarding the effect and application of other provisions of the Ethics Code. The Board also expresses no opinion regarding other statutes, codes, ordinances, regulations or other rules of conduct, including but not limited to, the Rules of Professional Conduct, which may be implicated as a result of your former service for the City.

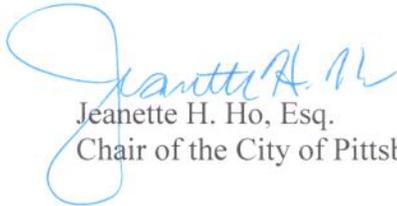
You may rely on this advisory opinion only to the extent that the disclosure of facts and circumstances provided in your request are accurate and complete.

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This letter is a public record and will be indexed and maintained on file by the Board and will also be available on the Board's website.

If you disagree with this advisory opinion, or if you have any reason to challenge same, you may ask the Board for reconsideration. Any request for reconsideration must be in writing and received by the Board within thirty days of the date of this advisory opinion. The request must also describe how you believe the Board has erred in its application of the relevant law and/or facts. The conclusion contained in this advisory opinion will remain in full force and effect unless and until it is amended or revoked.

Very truly yours,



Jeanette H. Ho, Esq.

Chair of the City of Pittsburgh Ethics Hearing Board