



CITY OF PITTSBURGH

Ethics Hearing Board

William Peduto
Mayor

Leanne Davis, Esq.
Executive Manager
Ethics Officer

Members of the Board

Jeanette H. Ho, Esq.
Chair

Lynn W. Davenport, J.D.
Vice Chair

Orlando Portela Valentin, Ph.D., LL.M.
Secretary

Khalif Ali, M.S.W.

Patrick J. Bigley

Fred W. Brown, M.S.W.

Sean Coleman, Esq.

Melanie Harrington, J.D.

Gregory M. Monaco, Esq.

Via electronic and first-class mail
February 8, 2019



Re: Request for Advisory Opinion on public official conducting training for compensation using knowledge gained during employment

Dear :

This responds to your correspondence of December 30, 2018, and January 3, 2019, in which you request an advisory opinion from the City of Pittsburgh Ethics Hearing Board (“Board”).

In responding to your request, the Board has evaluated Section(s) 197.03(a) and 197.04(c)-(d) of the City of Pittsburgh Code of Conduct (“Ethics Code”) as well as Section 706 of the Home Rule Charter.

Issue:

Is it a violation of Section(s) 197.03(a) and 197.04(c)-(d) of the Ethics Code or Section 706 of the Home Rule Charter for a City of Pittsburgh (“City”) official to use nonproprietary and publically available information obtained during the course of employment with the City for private pecuniary gain?

Stated Facts:

It is initially noted that pursuant to Section 197.13 of the Ethics Code, advisory opinions are issued based upon the facts that you, the requester, have submitted. In issuing the advisory opinion, this 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 the burden of the requester to truthfully disclose all of the material facts relevant to the inquiry.

CITY OF PITTSBURGH ETHICS HEARING BOARD
ADVISORY OPINION 19-A-001

In your public capacity, you are an appointed public official serving as [REDACTED] for the City of Pittsburgh Bureau of Police (“Bureau of Police” or “police”). One of your duties is to provide implicit bias or anti-bias training to police officers, community groups and faith-based organizations at no cost; you have conducted these trainings for around the past two years.

In your private capacity, you, along with two other police officers, organized a company that would provide an anti-bias training course. In providing this training, your clients would be charged a fee and you and the other officers receive a private pecuniary gain. You state the resources used to create the training are generally available to the public or are your own: the training course was developed with open-source materials, a privately-owned version of PowerPoint and a personal computer. Similarly, you state the information used to create the training course is not private, confidential or proprietary; the City owns no rights to any of the materials used to create the course.

Your request discusses several qualifying factors or conditions as to how you would operate your business. You state:

- you will not conduct or solicit any business for your private company while on City time;
- you will not use any City resources, facilities, or on-duty staff for your company;
- you will conduct all business for the company during your personal, off-duty time;
- you will not solicit business through use of your authority or police powers; and
- you will not wear police uniforms, nor indicate or imply that you are representing the City while teaching the course for profit.

You seek guidance as to whether the Ethics Code and/or the Home Rule Charter would impose any prohibitions or restrictions upon you with regard to engaging in private business activities related to your official duties.

Discussion:

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

Section 197.03(a) states:

No public official or public employee shall exert influence with respect to property or a business with which he or a member of his or her direct family is associated.

Section 197.04 (c) and (d) provide:

(c) No public official or City employee shall use or permit the use of his or her official title, insignia or position in connection with any private business from which the public official or City employee receives compensation.

(d) No public official or City employee shall use or allow to be used any City facilities, property, staff or information obtained in the course of his or her employment for personal use other than would be generally available to the public at large.

CITY OF PITTSBURGH ETHICS HEARING BOARD
ADVISORY OPINION 19-A-001

The following section(s) of the Home Rule Charter are relevant to your inquiry:

Section 706. Prohibitions in General:

No elected official, officer or employee shall in any manner receive benefit from the profits or emoluments of any contract, job work or service for the City, or accept any service or thing of value directly or indirectly upon more favorable terms than those granted to the public generally, from any person, firm or corporation having dealings with the City. No elected official, officer, or employee shall solicit or receive any compensation, gratuity or other thing for any act done in the course of public work. This section shall be broadly construed and strictly enforced. Any violation of this section shall cause the offending official, officer, or employee to forfeit office or employment.

Section(s) 197.03(a) and 197.04(c)-(d) of the Ethics Code as well as Section 706 of the Home Rule Charter do not prohibit private employment by public officials; rather, they prohibit public officials from using their official position to obtain personal financial gain that would not otherwise be available to them but for the holding of their official position. *See Commonwealth v. Orié*, 88 A.3d 983, 1026 (Pa.Super.2014)(holding that the conflict-of-interest “statute places no restrictions on a public official's federal or state protected rights of expression and association, but only prohibits officials from using state-funded resources for non-de minimis private pecuniary gain”).

Your use of the knowledge you and the other officers gained as a result of your employment with the City does not alone violate this prohibition as long as the information used in your private business is generally available to the public. However, pursuant to the Ethics Code and the Home Rule Charter, a public official’s private endeavors must always be kept completely separate from their official duties and tasks.

The anti-bias training you developed and conducted at the City’s expense will not bar you and the other officers from receiving compensation for performing other anti-bias trainings as long as you adhere to the following guidelines for outside employment:

1. You may not work, solicit and/or promote your private business on City time.
2. You may not use City supplies, facilities, equipment, personnel, records or any other City resources to carry out your private business.
3. You may not use your official authority, insignia, or representations thereof in your private business.
4. You may not condition any official action toward a third party on a private business relationship with that third party.
5. You may not use confidential or proprietary information obtained during the course of your employment with the City for your private business.
6. You may not solicit or receive any compensation, gratuity or other thing of value for any act done in the course of public work.

CITY OF PITTSBURGH ETHICS HEARING BOARD
ADVISORY OPINION 19-A-001

7. You may not duplicate the training presentation or any work product from your employment with the City for private gain. The training and any resources used in your private business must be materially different from the training presentations you and the other officers developed for the City.
8. You may not receive compensation for providing training to any organization or individual that qualifies to receive free training from the City.

Based on the facts presented, this advisory opinion only relates to Section(s) 197.03 and 197.04 of the Ethics Code and Section 706 of the Home Rule Charter. No position is being expressed regarding the effect and application of other provisions of the Ethics Code or Home Rule Charter. The Board also expresses no opinion regarding other statutes, codes, ordinances, regulations or other rules of conduct, including but not limited to any policies of the Bureau of Police. Section 197.20 of the Ethics Code allows for the Bureau of Police to create more restrictive policies or procedures than is expressed in this advisory opinion.

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. Under Section 197.13(c), this advisory opinion is binding upon the Board in any subsequent proceeding concerning the person or entity that requested the opinion, or to which the advisory opinion referred. Therefore, this advisory opinion is binding upon the other officers involved with your private company, to the extent that the factual circumstances are the same.

This advisory opinion 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 the 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 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
Chair of the City of Pittsburgh Ethics Hearing Board

Dated this 8th day of February, 2019