



CITY OF PITTSBURGH

Ethics Hearing Board

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Alex Matthews

Gregory M. Monaco, Esq.

Via electronic and first-class mail

June 6, 2019

Re: Request for Advisory Opinion on post-employment restrictions of those who perform polygraph examinations

Dear [REDACTED]:

This responds to your correspondence of May 6, 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 the City of Pittsburgh Code of Conduct ("Ethics Code") Sections 197.02 and 197.06.

Issue:

Are former police officers who serve as polygraph examiners for the City of Pittsburgh ("City") subject to the post-employment restrictions of Section 197.06 of the Ethics Code?

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.

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You serve the City of Pittsburgh ("City") as the [REDACTED]. As part of your work duties, you employ directly, or through outside consultants, those who provide polygraph examination services. Your direct hires who provide this testing include police officers. These persons may be called upon to defend their findings, made on behalf of the City, through expert testimony in administrative hearings or other forums.

You seek guidance as to whether the Ethics Code would impose any prohibitions or restrictions upon you with regard to hiring former employees to conduct polygraph examination services on behalf of the City during the twelve-month period after their termination.

Discussion:

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

Section 197.02 (c) and (j) "Definitions" provides:

(c) "City Employee." Any individual employed by the City of Pittsburgh in any capacity. A City employee may or may not also be a public employee as that term is defined in the State Statute.

(j) "Public Employee." 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 minimis nature

Section 197.06 "Post-Employment Restrictions" provides:

- (a) 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.
- (b) 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 personally act in a representative capacity, with or without compensation, on behalf of any person with respect to any case, proceeding, approval, contract or other matter with respect to which the person had substantial participation, of a nonministerial nature, during the period of his service or employment.

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The following section(s) of Title 51 of the Pennsylvania Code, which sets forth the Regulations of the Public Official and Employees Ethics Act (“State Statute”), are relevant to your inquiry:

Section 11.1.(v)(A) “Public employee” provides:

(v) Persons in the following positions are generally not considered public employees:

(A) City clerks, other clerical staff, road masters, secretaries, police officers, maintenance workers, construction workers, equipment operators and recreation directors.

Pursuant to the definitions and regulations provided in the Ethics Code and the Pennsylvania Code, police officers are “generally not considered public employees.” The definition of City employee includes “[a]ny individual employed by the City of Pittsburgh in any capacity.” Therefore, without any additional information to demonstrate indicia to the contrary, the position of police officer is considered to be a “City employee” in this instance. As Section 197.06 only references public officials and public employees, and not city employees, the post-employment restriction would not apply to former police officers.

Based on the facts presented, this advisory opinion only relates to Section 197.06 of the Ethics Code. 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 Pittsburgh Bureau of Police. Section 197.20 of the Ethics Code allows for the City 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.

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 last date this advisory opinion is signed below. 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.

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 after: (a) 31 days of the date of this letter or (b) the disposition of a timely request for reconsideration, if such a request is received.

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This advisory opinion has been reviewed by the Board and approved by the Board's signatories below during its meeting on the 23 day of May, 2019.

On behalf of the Board:

Patrick G. Bigley
Patrick Bigley

5-28-19
Date

Sean Coleman
Sean Coleman

6/5/19
Date

Lynn Davenport
Lynn Davenport

6/5/19
Date

Melanie Harrington
Melanie Harrington

6/5/19
Date

Jeanette Ho
Jeanette Ho

6/5/19
Date

Alex Matthews
Alex Matthews

5-28-19
Date