

Advisory Opinion 11-01

Question

What impact will the Ethics Code's post-employment restrictions have on a former employee's ability to remain involved in issues on which the employee worked while with the City?

Short Answer

The Ethics Code limits a former employee's ability to assist others with particular matters in which the employee participated, and also limits a former employee's ability to communicate with his or her former colleagues regarding particular matters. The Ethics Code does not, however, place limits on a former employee's ability to assist others on issues which do not constitute particular matters.

Facts

You are a former Human Services Department (HSD) division director. In your time with the City, you participated in City initiatives focused on assisting commercially sexually exploited children (CSEC). The City's work with CSEC can be divided into three broad categories: supporting a residential recovery program for prostituted youth, providing training to community members who deal with CSEC, and coordinating a regional response to the plight of CSEC.

The cornerstone of the residential recovery program is a contract between the City and YouthCare, entered into under your leadership, under which YouthCare provides housing and services to prostituted youth trying to make a fresh start. In addition to funding the residential recovery program the contract between the City and YouthCare, also created a half-time training position. This half-time trainer coordinates three eight-hour trainings per year for those in the community who work with prostituted youth.

Finally, under your leadership, HSD convened 70 local stakeholders in August 2010 to begin developing a three to five-year strategic plan for improving region-wide services and safety for CSEC. For the past several months, you have been facilitating meetings of a 25-member steering committee comprised of representatives from King, Pierce and Snohomish counties. Employees from HSD, the Seattle Police Department (SPD), and the City Council participate in the regional steering committee. Recently, some members of the committee have suggested broadening the planning effort to encompass all of Washington state, since trafficking is not limited to the three counties currently involved in the planning effort.

As a former City employee, you would like to remain involved in efforts to assist CSEC, and have asked how you may do so consistent with the City's Ethics Code.

Relevant Law

The post-employment restrictions in the City's Ethics Code were changed substantially in the summer of 2009. The sections of the law that are relevant to your question provide that:

1. For two years after leaving the City, a former City employee may not assist any person on a matter in which he or she participated while a City employee; and
2. For one year after leaving the City, a former City employee may not communicate on behalf of any person on a matter involving the City with an employee in his or her former agency. SMC 4.16.075.B and .C.

Note that both of these prohibitions hinge on assistance or communications pertaining to a "matter." "Matter" is defined in the Ethics Code to mean "an application, submission, request for a ruling or other determination, permit, contract, claim, proceeding, case, decision, rulemaking, legislation, or other similar action. Matter includes the preparation, consideration, discussion, or enactment of administrative rules or legislation. Matter does not include advice or recommendations regarding broad policies and goals." SMC 4.16.030.

The term "participate," which is relevant to the first prohibition but not the second, is defined to mean "to consider, investigate, advise, recommend, approve, disapprove, decide, or take other similar action." SMC 4.16.030.

Analysis

1. Assistance with matters in which you participated.

Advising on what assistance you may provide to any person other than the City flows from an analysis of the matters in which you participated while you were with the City. Providing services to CSEC is **not** a "matter" as that term is defined in the law. When the law was amended to double from one year to two the length of time that a former employee is barred from assisting others, the law was also revised to describe with particularity the "matters" on which an employee is barred from providing assistance. The intent was to clarify for former employees that they are not barred from using the expertise they developed while with the City to their benefit or the benefit of their new employers. Instead, they are barred from using their inside knowledge of specific permits, contracts, claims, cases, etc. for the benefit of anyone other than the City.¹

Applying the terms of the law with precision, we arrive at the determination that the matter in which you participated is the contract with YouthCare for the residential recovery program and the half-time trainer. The work around the regional response plan and the nascent effort to develop a statewide plan both lack the particularity that is the essential feature of a

¹ There is an exception to this rule to those who work as employees or agents of other government agencies, but this request for an opinion does not require a discussion of that exception.

“matter.” In fact, the planning efforts to date most closely approximate an exercise in goal-setting, which is specifically excluded from the definition of matter.

It follows, then, that the Ethics Code bars you from assisting any person on the contracts between YouthCare and the City. This interpretation of the Code aligns well with its purpose. Your inside knowledge of HSD’s bargaining and execution of these contracts could prove tremendously valuable to YouthCare in its dealings with HSD, precisely the situation that the Ethics Code was intended to prevent.

It also follows, however, that the Ethics Code does not preclude you from assisting anyone with regional and statewide planning efforts. Your involvement in the planning efforts to date does not have the capacity to advantage a new employer or client vis-à-vis the City, or to give a new employer or client an advantage over another agency.

2. *Communicating with HSD personnel on matters involving the City.*

The second prong of the post-employment restrictions differs from the first in two important respects. First, there is no requirement that the former employee have participated in the matter, only that it be a matter involving the City. Second, it covers only communications between the former employee and personnel from their former department. This “cooling off” period covering matters even in which an employee did not participate was added to the law in 2009. Because this new provision addresses a former employee’s relationships, and not his or her inside knowledge of City matters, the Commission recommended to the City Council that the bar only reach an employee’s communications with his or her former department.

Since the regional and statewide planning efforts are not a matter, you may communicate with HSD personnel regarding these efforts. On matters, however, you may not communicate with HSD employees. For example, if someone asks you to write a letter, send an e-mail, place a telephone call, or set up a meeting with someone at HSD, to help them in their efforts to secure a City contract, you may not do so for one year after you leave HSD. This is true whether or not you had any connection to the contract while you were at HSD.

Conclusion

You may not assist any person on the contracts between HSD and YouthCare, nor may you communicate with anyone at HSD on behalf of any person interested in either these contracts or any other City matter.

Since regional and statewide planning efforts do not constitute a matter, you may assist another person with these efforts, and you may communicate with personnel at HSD regarding these planning efforts.