



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

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MAYOR**

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ADVISORY OPINION 2023-01

December 8, 2023

INTRODUCTION

This advisory opinion has been requested by Councilmember Clay Capp, pursuant to the procedures set out in the Standards of Conduct, Metropolitan Code § 2.222.040(B).

QUESTION PRESENTED

Section 2.222.020(d) of the Metropolitan Code provides that employees “[s]hall not accept or solicit any cash of any amount, other than in compliance with election campaign laws and fully reported pursuant to same, irrespective of the intent of the payor, if such payment or solicitation is in any way directly or indirectly related to the employee's position in the metropolitan government”.

May a Councilmember accept employment for a political organization or a political action committee (PAC), with job responsibilities that include fundraising, provided that any solicitation made by the Councilmember is in compliance with election campaign laws and fully reported pursuant to same?

ANSWER

The Board cautions that there is a heightened potential for actual or perceived conflict of interest in the scenario presented by the question. However, a Councilmember may accept employment for a political organization or PAC, with job responsibilities that include fundraising, provided that:

- (i) any solicitation by the Councilmember is conducted in compliance with election campaign laws and fully reported pursuant to same; and

- (ii) any solicitation by the Councilmember is conducted in a manner that complies with other applicable laws, including provisions of the Metropolitan Standards of Conduct and state laws addressing official misconduct.

ANALYSIS

Section 2.222.020 of the Metropolitan Code outlines ethics standards that apply to Metropolitan Government officials. Section 2.222.020(d) of the Standards of Conduct states:

Employees ... [s]hall not accept or solicit any cash of any amount, other than in compliance with election campaign laws and fully reported pursuant to same, irrespective of the intent of the payor, if such payment or solicitation is in any way directly or indirectly related to the employee's position in the metropolitan government

In addition to section 2.222.020(d), there are other provisions of the Standards of Conduct that could be implicated when a Metropolitan Government official engages in fundraising for a political organization. These provisions of the Standards of Conduct address the improper use of Metropolitan Government information and official position for private gain and are outlined below:

- Metropolitan Code § 2.222.020(h) – Employees “[s]hall not use for personal gain, or for the gain of any family member or employer, information pertaining to metropolitan government which is not a matter of common knowledge, or use his or her position to secure information about any person or entity for any purpose other than the performance of official responsibility”;
- Metropolitan Code § 2.222.020(i) – Employees “[s]hall not use their metropolitan government positions improperly to secure unwarranted privileges or exemptions for themselves, relatives or others, provided, however, that this provision does not preclude employees from acting in a manner consistent with their official duties or from zealously providing public services to anyone who is entitled to them”; and
- Metropolitan Code § 2.222.020(l) – Employees “[s]hall not use or disclose, other than in the performance of their official duties or as may be required by law, confidential information gained in the course of or by reason of their positions”.

In light of the foregoing provisions of the Standards of Conduct, any fundraising for the political organization is required to be conducted in a manner that does not utilize: (i) an

official's Metropolitan Government position to secure unwarranted privileges for the official or another employer; and (ii) non-public Metropolitan Government information for private gain or the benefit of another employer.

Section 2.222.020(m) of the Metropolitan Code states that employees “[s]hall not violate the direct or indirect conflict of interest, consulting, lobbying, or any other requirements of state law existing or which may be adopted regulating the conduct of municipal or county officials or employees”.

State laws addressing official misconduct prohibit the use of Metropolitan Government property for private gain or political campaign purposes. *See* T.C.A. § 39-16-402 (It is unlawful for a public servant to intentionally receive any benefit not otherwise authorized by law).

Further, state law forbids the use of non-public Metropolitan Government information for private gain or political campaign purposes. *See* T.C.A. § 39-16-404 (“A public servant commits an offense who, by reason of information to which the public servant has access in the public servant's official capacity and that has not been made public, attains or aids another to attain a benefit”).

In summary, to comply with the Standards of Conduct, any solicitation of funds made on behalf of the political organization shall not utilize the Councilmember's official Metropolitan Government position, government property, or non-public information and must be conducted in accordance with all applicable laws.

***THIS ADVISORY OPINION APPLIES ONLY TO THE SPECIFIC
QUESTION AND FACTS PRESENTED.***

Adopted: December 8, 2023

Adopted By: Diane DiIanni, Chair
Joseph Gutierrez, Member
John Spragens, Member
Kinika Young, Member

In Attendance: Zulfat Suara, President Pro Tempore of the Council (Non-Voting Member)