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Formal Advisory Opinion 2005-5 Restrictions on Work of Former Deputy City Attorney for One Year

Opinion Summary

A former deputy city attorney generally may not, for a period of one year after leaving the city, appear before any city agency or represent a client that has a claim against the City of Atlanta unless that claim involves a new matter about which the deputy gained no knowledge or information while employed with the city.

Questions Presented

1. May a former deputy city attorney, for a one-year period after leaving the city, represent a client having a case, claim, or controversy against the City of Atlanta that arose after the date that she left the city, if she does not appear before any city tribunal?
2. May a former deputy city attorney, for a one-year period after leaving the city, represent a client having a case, claim, or controversy against the City of Atlanta that arose after the date that she left the city, if she makes appearances before city tribunals, such as the City Council, License Review Board, and Civil Service Board; makes appearances before city-related entities, such as neighborhood planning units or the Board of Zoning Adjustment; or contacts city employees or officials to resolve the problem.
3. May a former deputy city attorney, for a one-year period after leaving the city, represent a client having a case, claim, or controversy against the City of Atlanta that arose prior to her leaving the city but (a) about which she had no actual knowledge or any decision-making role or (b) about which other attorneys working under her may have had actual knowledge.

Facts

A deputy city attorney retired from the City of Atlanta Law Department to join a law firm that has several pending matters involving the city. During her last 18 months with the city, the deputy supervised other attorneys and paralegals who represented the procurement, planning, zoning, finance, and real estate functions of city government;

she also appeared on matters before the City Council and participated in staff meetings within the Law Department. The City Attorney has executed a contract waiver with the deputy's law firm that identifies the specific matters in which the former deputy has an actual or potential conflict of interest under the Georgia Rules of Professional Conduct, which govern the legal profession. Attached to the waiver is a list of the firm's pending matters involving the city as an adverse or potentially adverse party. The former deputy has requested a former advisory opinion from the Board of Ethics to address any restrictions on the scope of her law practice during the first year after her separation from city employment.

Discussion

The City's Code of Ethics places limitations on the appearances and compensation of former city employees for one year after they leave city employment in section 2-810. Entitled "Representation after separation from employment," section 2-810 is the city's "revolving door provision" and provides for a one-year "cooling off" period after a city official or employee leaves the city. It states:

No person who has served as an official or employee shall, for a period of one year after separation from such service or employment, appear before any agency or receive compensation for any services rendered on behalf of any person, business or association in relation to any case, proceeding, or application with respect to which such former official or employee was directly concerned or in which such official or employee personally participated during the period of such official's or employee's service or employment or which was under such official's or employee's active consideration or with respect to which knowledge or information was made available to such official or employee during the period of such official's or employee's service or employment. Nothing in this section shall be construed to preclude a former official or employee from being engaged directly by the city to provide services to or on behalf of the city during this one-year period.

The purpose of this provision is to prevent former city employees from attempting to further their own or others' financial interests by using inside information obtained during city service, deriving personal benefits from actions made while employed with the city, or asserting undue influence on former colleagues who continue to work for the city.

The Board of Ethics has previously interpreted the revolving door provision as placing two separate restrictions on the work that former employees may perform for one year after leaving city service. First, in a case involving an employee who helped evaluate waste water treatment proposals, then left the city to work for the selected contractor, the Board determined that former employees are precluded from making any presentations before the City of Atlanta or its agencies for one year. The Board chose to broadly construe the one-year ban against appearances before city agencies to prevent not only an actual conflict of interest but also the appearance of impropriety. The Board was concerned that former employees would use their contacts and personal relationships developed while with the city to receive favorable treatment for their clients and companies immediately after moving to the private sector.

Second, the Board has determined that section 2-810 bans former employees from being paid for services related to any matter in which they were directly concerned, personally participated, or actively considered, or in which information was made available to them while employed with the city. Thus, the Board concluded in an earlier formal advisory opinion that a former city council policy analyst who had advised the city council on legislation related to taxi driver training was precluded for one year from receiving compensation or appearing before an agency in connection with taxi driver training by his company or himself. See FAO 2004-3 (Restrictions on Representation after Leaving City Employment).

Taken together, these decisions mean that former employees may not, within one year after leaving city service, appear or practice before any city agency and may not receive compensation in any matter in which they have special knowledge gained while employed by the city. The first prohibition applies across the board to any appearances whereas the second depends on the specific participation and knowledge of the employee.

The former deputy city attorney poses a series of questions dealing with her representation of clients against the city in matters that arose both before and after she left the city. In response, the Board adopts the following answers, which provide general guidelines on the post-city service of the former deputy:

1. A former deputy city attorney may advise, consult, and represent clients in claims against the city on any new matter that has arisen since she left the city so long as the issue was not pending during her employment, she gained no knowledge or information about the matter while employed with the city, and she makes no appearances on the matter before city agencies for one year.
2. A former deputy city attorney may not appear or practice for one year before any city agency, which includes city boards, departments, and offices, on behalf of a client having a case, claim, or controversy against the City of Atlanta. To “appear before any city agency” includes formal presentations, letters, telephone calls, conversations, and other forms of communication in which the former employee seeks to influence city decisions on behalf of another business or person.
3. A former deputy city attorney may not represent clients in claims against the City of Atlanta on any prior matter that arose before she left her city job about which she knew or should have known. As a deputy in the city’s legal department, she presumably was given reports or information through meetings, correspondence, and conversations about issues that exposed the city to liability, created potential legal problems, and involved pending claims. It would be problematic to create a rule that restricted the revolving door provisions solely to matters about which a department head or deputy department head had actual knowledge.
4. Finally, after the one-year cooling off period ends, the City’s Code of Ethics does not restrict the appearances of former city employees or their representation of clients in connection with matters involving the City of Atlanta.

The Board commends the deputy city attorney for seeking a formal advisory opinion concerning the effect of the city’s ethical standards on her law practice. Since the questions raised in this opinion do not present any facts related to a specific client,

claim, case, or controversy, the Board has provided only general guidance regarding restrictions on the post-employment activities of former employees and will more fully address the effect of the second restriction in the revolving door provision on a former employee's compensation when a specific case is presented.

Adopted July 21, 2005

City of Atlanta Board of Ethics

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