



## **City of Atlanta Board of Ethics Formal Advisory Opinion 2008-2 Disclosure of Conflicts of Interest**

### **Opinion Summary**

Officials or employees have a conflict of interest when they, their employer, or their immediate family have a financial or personal interest in a contract, proposed legislation, or a decision that is pending before them or their agency. All city officials and employees are disqualified from participating in decisions involving their own financial or personal interests, but only city elected officials, board members, and certain employees must file the online Disclosure of Conflicts of Interest form.

### **Question Presented**

When are officials and employees required to publicly report their financial or personal interest in matters pending before them or their agency and file an online form disclosing these interests?

### **Relevant Provisions in Ethics Code**

The ethics law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. The purpose of the code is to ensure that city officials and employees make decisions in the best interests of the city, rather than in their own financial or personal interests.

Section 2-812 on participation in contracts prohibits all officials and employees from participating directly or indirectly in any "any contract or subcontract and any solicitation or proposal" when the official or employee knows or with reasonable investigation should know that there is a financial or personal interest possessed by the official or employee, an immediate family member, an employer, or a prospective employer. It coverage includes, but is not limited to, officials and employees identified in section 2-813 (b).

Section 2-813 addresses when officials and employees disclose conflicts of interest. Subsection (a) states:

Every official or employee listed in paragraph (b) of this section who knows or with reasonable investigation should know that the official or employee has a financial interest or personal interest, direct or indirect, in any proposed legislation or in any

decision pending before that official or employee or the agency of which the official or employee is a member or employee shall not vote for or against, discuss, decide, in any way participate in considering the matter or seek to influence the votes or decisions of others on such matter.

Subsection (b) lists 23 categories of officials and employees, including city elected officials, 15 types of city employees, city board members, and neighborhood planning unit officers. It is the same list of officials and employees who are covered under section 2-814 (b) on disclosure of income and financial interests.

## **Discussion**

### **What is a Conflict of Interest**

Officials or employees have a conflict of interest when they have a financial or personal interest in a contract, proposed legislation, or a decision that is pending before the individual or the agency which employs them. Having a conflict of interest does not mean that a city official or employee has done something wrong; it means that the individual has a personal interest that disqualifies him or her from participating in a matter.

### **How to Address Conflicts**

- Pending legislation. City council members who have a financial or personal interest in pending legislation should decline to participate in the discussion or vote on the matter and then file a conflicts disclosure form
- Pending matter. Employees or board members who have a financial or personal interest in a matter pending before them or their agency should immediately remove themselves from the decision-making process, and, when required, file a conflicts disclosure form

### **Procedure for Disclosure**

- Prior to any decision, verbally disclose the conflict at the meeting, if any, at which the decision will be made
- Have the disclosure placed in the minutes of the meeting or on the agency's official records
- Complete an online Conflicts of Interest Disclosure form at the Electronic Filing System at <https://apps.atlantaga.gov/efile>

### **When to File a Conflicts Disclosure Form**

Knows or should know. The code requires disclosure when the official or employee “knows or with reasonable investigation should know” that the employee has a financial or personal interest in proposed legislation or a decision pending before the employee or the employee’s agency.

*Example:* A board member serving on an authority board learns from the meeting agenda that a member of her law firm is representing a developer in a

proposal before the board. She files a disclosure form as soon as she learns about her firm's representation of the developer.

*Financial or personal interest.* A financial interest is "any interest which shall yield, directly or indirectly, a monetary or material benefit to the official or employee" and any employer or immediate family member of the official or employee. Personal interest is defined "as any interest arising from relationships with immediate family or from business, partnership, or corporate associations, whether or not any financial interest is involved."

*Example:* A council member works for an engineering firm that the planning department selects to provide consulting services for Brownfield assessment and cleanup. Based on his employment, the council member has a financial interest in the resolution that gives the Mayor authority to enter into a contract with his firm.

*Example:* A neighborhood planning unit chair is a real estate broker who has been retained as a sales agent by a property owner. The property owner appears at an NPU meeting to seek support for a rezoning. The NPU chair has a financial interest in the zoning matter based on her sales contract with the property owner.

*Pending matter.* There needs to be a matter pending before the City. An official or employee is not required to file a disclosure form under the Code of Ethics because he, an employer, or a family member's employer has done business with the City in the past or is likely to seek city business in the future.

*Example:* An audit report on the airport's procurement processes for fixed base operators is pending before the audit committee, a city board. Two board members decline to participate in the committee's review of the report, one because the airport general manager is a client of his accounting firm and another because she intends to respond to a procurement request for proposal on an airport project.

*Example:* A local law firm hires the sister of an attorney in the law department. The firm is not currently doing work for the city, but did work for the City in the past and may seek the city's business in the future. The attorney is not required to file a conflicts disclosure statement based on a completed contract or the possibility of a future contract.

*No blanket disclosure.* An official or employee must file a disclosure form every time there is a separate piece of legislation or decision pending before the individual or his or her agency.

*Example:* A council member must file a disclosure statement every time the Council votes on a resolution awarding a contract to a company in which she has a financial interest.

*Example:* An attorney in the law department must file a disclosure form every time his spouse's law firm is hired to handle a case or bond offering.

Filing deadline. The disclosure should be filed online as soon as the official or employee becomes aware of the conflict. It is recommended that the filing be made no later than seven days after the meeting or decision.

### **How Departments Should Handle Conflicts**

Most employees' conflicts are handled informally within the department, and the department removes the employee from the situation or transfers the matter to another employee.

*Example:* The planning department learns that a permit expediter has hired the adult daughter of the employee who gives final approval to permit applications. The department moves the employee to a new position where she will have no role in approving permits submitted by her daughter.

*Example:* The son of a human resources specialist applies for a position in the department. The specialist is removed from the decision-making process.

*Example:* A member of a procurement evaluation panel discovers that her brother's company is listed as a subcontractor on one of the bids. She informs her supervisor and the head of the panel and is removed from her role on the panel.

### **Who Files the Form**

All officials and employees are prohibited from participating in a decision in which they have a financial or personal interest under section 2-812, but only individuals filing the annual financial disclosure statement are required to file a conflicts disclosure form under section 2-813. Persons who must file disclosure forms include the mayor, council president, council members, municipal court judges, chief operating officers, chiefs of staff, commissioners and department heads, deputy department heads, bureau directors, division heads, executive directors of city boards, city board members, members appointed by the city to other public boards, hearing officers, NPU officers, inspectors, attorneys, auditors, zoning administrators, and employees with discretionary authority over city investments, contracts, and finances.

### **General Guidelines**

These guidelines provide general guidance about when a conflict of interest disqualifies an official or employee from voting on legislation or participating in a matter. Persons with questions not covered under these guidelines are encouraged to seek advice about their specific situation.

Adopted February 21, 2008

### **City of Atlanta Board of Ethics**

John Lewis, Jr., Chair  
MaryAnne F. Gaunt  
Cathy R. Daniels  
Susan Housen