



**City of Atlanta Board of Ethics
Formal Advisory Opinion 2009-1
Participation in Contracts**

Opinion Summary

Neither a city official nor employee may directly or indirectly engage the services of or buy products from an immediate family member or the company in which an immediate family member has a financial interest.

Question Presented

Under what conditions may a city official or employee engage the services of a company in which an immediate family member has a financial interest?

Facts

Council member Ceasar Mitchell has asked the Board of Ethics to address when a city official may use city funds to engage the services of a sibling's firm to provide products and services for a council member's office. He originally engaged the services of his brother's firm in 2004 to assist his council office in constituent outreach activities and continued to engage the company's services on a month-to-month basis through February 2008.

Discussion

The Code of Ethics seeks to ensure that a city official's decisions are based solely on the city's best interest. See Atlanta, Ga., Code § 2-802. A conflict of interest occurs when a city official acting in his or her official capacity is involved in a decision or public action that affects the official's financial or personal interests. See § 2-813.

Section 2-812 on contract participation states no official or employee shall participate directly or indirectly in any matter pertaining to any contract, subcontract, solicitation, or proposal when the official knows or should know that there is a financial or personal interest possessed by the official, an immediate family member, an employer, or a prospective employer. Specifically, section 2-812 states:

No official or employee, including but not limited to those identified in section 2-813(b), shall participate directly or indirectly through decision making, approval, disapproval, recommendation, the preparation of any part of specifications or requests for proposal, influencing the content of any specification or contract standard, rendering advice,

investigating, auditing or reviewing of any proceeding or application, request for ruling or other determination, claim or other matter pertaining to any contract or subcontract and any solicitation or proposal therefore or seek to influence the votes or decisions of others with respect thereto when the official or employee knows or with reasonable investigation should know that there is a financial or personal interest possessed by:

- (1) The official or employee;
- (2) One or more members of the immediate family of the official or employee;
- (3) A business other than a public agency in which the official or employee, or a member of the official's or employee's immediate family, serves as an officer, director, stockholder, creditor, trustee, partner or employee; or
- (4) Any other person or business with whom the official or employee or a member of the official's or employee's immediate family is negotiating or seeking prospective employment or other business or professional relationship.

In July 2006, the Code of Ethics was amended to change the definition of the term "immediate family member." As amended, the term now includes a spouse, registered domestic partner, mother, father, sister, brother, and children of an official or employee. See § 2-812; 06-O-1368 (adopted July 17, 2006). Prior to that date, the provision only prohibited participation in contracts that involved a spouse, registered domestic partner, or dependent child. Under that more narrow definition, the Board determined that a city employee could not participate, seek to influence, or decide any matter involving a real estate development company in which his wife served on the board of directors. See FAO2003-2, Potential Conflicts of Interest Related to an Authority President.

Under the plain language of the Code of Ethics, a city official may not use city funds to directly or indirectly engage the services or buy products from an immediate family member or a company in which an immediate family member has a financial interest. This prohibition applies to companies in which a spouse, registered domestic partner, parent, sibling, or child has a financial interest or serves as an officer, director, stockholder, creditor, trustee, partner, or employee. Therefore, as a general rule, there are no conditions under which a city official or employee may engage the services of an immediate family member's company.

Although it has been argued that section 2-812 applies solely to contracts for more than \$20,000 that must comply with a formal procurement process, there is nothing in the contract participation clause to support that distinction. Instead, the provision applies to any contract or agreement regardless of its dollar amount, what is purchased, or the way it is procured. The contract participation clause applies equally to formal contracts over \$20,000 and small purchases under \$20,000; to the purchase of supplies, equipment, services, or real estate; and to sole source procurements, emergency procurements, and month-to-month consulting contracts.

Adopted March 19, 2009

City of Atlanta Board of Ethics

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