



## City of San Antonio, Texas

Ethics Advisory Opinion No. 2012-06

December 5, 2012

*Issued By: City Attorney's Office*

### **I. Issue:**

May a city employee engage in outside employment as a contractor for another governmental entity, providing a type of service similar to their work for the city?

### **II. Inquiry**

A non-uniformed city employee inquired whether they may submit a bid for, and accept a contract for a job with another governmental entity, which would require them to provide services similar to those that they currently render for the City of San Antonio. The employee has advised the outside employment would take place largely on personal time, but will also require them to take personal leave, and that the work will not involve the use of any city resource such as a computer, office space, city time, or materials.

### **III. The Ethics Code and Personnel Rules**

#### **A. The Ethics Code Prohibits Outside Employment that Impairs or is Related to the Employee's City Responsibilities**

Outside employment for non-uniformed city employees is governed by both the Ethics Code and the Personnel Rules.

**Ethics Code Section 2-48** (Conflicting Outside Employment) provides:

- (a) General Rule. A city official or employee shall not solicit, accept, or engage in concurrent outside employment which could reasonably be expected to impair independence of judgment in, or faithful performance of, official duties.
- (b) Special Application. The following special rule applies in addition to the general rule: A city official or employee shall not provide services to an outside employer related to the official's or employee's city duties.
- (c) Other Rules. The general rule stated above applies in addition to all other rules relating to outside employment of city officials and employees, including

requirements for obtaining prior approval of outside employment as applicable.

The employee has advised that they do not anticipate this outside employment would greatly interfere with their city responsibilities, but that some of the work will be required to be done during the day, which will require them to take leave. The employee also indicated that the outside contract would involve work similar in nature to their city employment. The work the employee performs for the city is substantially the same job as that they would perform for the other governmental entity, but the two jobs are not related – that is, the work for the city does not overlap, or is not the same work for the other entity, such as working on a contract the other entity has with the city, resulting in drawing two paychecks for performing one job. Further, the employee would not be in a supervisory role at either entity, for the work done for the other employer. Accordingly, the Ethics Code would not preclude the employee from engaging in the outside employment. However, the determination as to whether or not the employee may engage in the outside employment rests with the employee's department director, as set forth by the City's Administrative Directive on outside employment.

#### **B. Public Property and Resources**

Under Section 2-49 of the Ethics Code, A city official or employee cannot use, request or permit the use of city facilities, personnel, equipment or supplies for private purposes except to the extent and according to the terms that those resources are lawfully available to the public. Therefore, the employee cannot use any city resource, including the time for which they are scheduled to work for the city, for a private purpose, including attending to his outside employment. Taking leave is permitted, but doing so must not impair their ability to faithfully perform their duties for the City. The determination of this issue rests with the employee's supervisor and department director or designee.

#### **C. Employees Must Obtain Approval of Outside Employment from their Department Director under Personnel Rules**

Personnel Rule XXIV, and Administrative Directive 4.47 require city employees to obtain written approval from their department before engaging in the outside employment. The department director may approve the request if he believes the outside employment will not impair or interfere with the employee's city responsibilities. However, the director has the authority to decline to provide approval for the reasons he or she deems appropriate.

#### **IV. Conclusion**

Under the facts and circumstances presented in this inquiry, the Ethics Code would not prohibit the non-uniformed employee from accepting outside employment that is substantially the same, but not related to or the same as, their work for the city. The employee is required under the Personnel Rules, however, to obtain written approval from their department director to engage in the outside employment. Further, the

employee must not use any city resource, including their own duty time, in connection with this outside endeavor. Finally, the employee must consult with their supervisor to determine that taking time off from their city duties to perform that outside work would not interfere with their obligation to faithfully perform the job they have with the City.