



## City of San Antonio, Texas

Ethics Advisory Opinion No. 2014-02

December 16, 2014

*Issued By: City Attorney's Office*

### **I. Issue:**

May a civilian employee enter into a discretionary contract with the City, performing work dissimilar to that which they provide to the City?

### **II. Inquiry**

A City employee has submitted an application to obtain a River Walk Vendor Permit from the City, and has submitted a request for approval of outside employment to his supervisor. The supervisor has inquired whether the Ethics Code would prohibit the employee from engaging in this outside work. He advised that the outside employment would take place on their personal time and will not involve the use of any City resources.

### **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 City employees is governed by both the Ethics Code and the Personnel Rules. The City's 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 supervisor indicated that he does not anticipate the proposed outside employment would interfere with any City responsibilities, nor is the work similar in nature to the employee's City employment, but noted that the vendor program is one the department oversees, but the employee is not in that division of the department, and is not involved in any way with the administration of the program. Accordingly, the Ethics Code would not preclude the employee from engaging in this 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. Employees cannot use any City resource for a private purpose. Employees must also ensure that time taken off from City scheduled work to attend to outside employment does not leave the City without adequate staff to take on the duties the employees would otherwise be performing. All City employees must ensure that their City work is of primary importance, and that they faithfully perform that work.

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

Personnel Rule XXIV requires an employee 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 an 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 employee from the proposed outside employment. The employee is required under the Personnel Rules to obtain written approval from their department director to engage in this additional employment. Further, the employee may not use any City resource in connection with this outside endeavor.