

CITY OF BALTIMORE
STEPHANIE RAWLINGS-BLAKE, Mayor

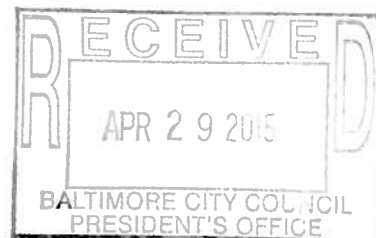


BOARD OF ETHICS
OF BALTIMORE CITY

LINDA B. "LU" PIERSON, Chair
AVERY AISENSTARK, Director
626 City Hall
Baltimore, Maryland 21202

April 28, 2015

The Honorable President and Members
of the Baltimore City Council
Fourth Floor, City Hall
Baltimore, Maryland 21202
c/o Natawna Austin, Executive Secretary



Re: Bill 15-0500 {"Public Ethics Law – Prohibited Interests – Clarifications"}

You have referred Bill 15-500 {"Public Ethics Law – Prohibited Interests – Clarifications"} to the Ethics Board for comment. As indicated in the Title to Bill 15-500, the bill's purpose is largely corrective: to "clarify" expressly that certain [secondary-employment] prohibitions encompass employment by or financial interests in persons having or negotiating certain "blanket" and other contracts with the City or with any agency of the City".

1. The change in § 6-11(2)(i)(A) is an express codification, for clarity and fair notice, of the code's implicit coverage of so-called "blanket" contracts, in accord with what has long been the Ethics Board's contemporaneous and long-standing interpretation and practice. *See* Ethics Opinion No. 87 (1986) (Attachment A).

As that Opinion explains, the statutory reference to a contract "with" a public servant's "agency" cannot realistically be read to apply only to a contract directly made with that agency. Rather, the relevance of the reference speaks to the "important role [that user] agencies – and individuals working in [those] agencies – can play in shaping product specifications" or, we might add, in determining the scope of an agency's usage under the contract.

Thus, the specific, clearer wording being proposed by here is new, but the net effect is not at all new to the long-standing, consistent practice in applying the secondary-employment provisions of the City's Ethics Code. In this regard, *see, e.g., Kim v. Maryland State Bd. of Physicians*, 423 Md. 523, 535 (2011) ("an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given

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To: City Council
From: Ethics Board

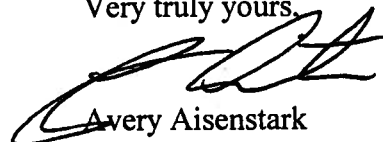
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considerable weight by reviewing courts.”); *Baltimore Gas & Electric Co. v. Public Service Comm'n*, 305 Md. 145, 161 (1986) (“the contemporaneous interpretation of a statute by the agency charged with its administration is entitled to great deference, especially when the interpretation has been applied consistently and for a long period of time”).

2. The addition of new § 6-11(2)(i)(B) is a non-substantive formatting change. Its wording is nothing more than a transfer and verbatim replication of the provisions currently appearing as § 6-11(b).
3. The addition of new § 6-11(2)(i)(C) would require that, if a public servant has an interest in an entity seeking some City contract not otherwise prohibited or regulated, the public servant must disclose that interest to the procuring agencies. Notably, this provision would *not* prohibit any type of interest that is not already prohibited by the Code. It is simply intended to further the Ethics Code’s overriding purpose of “guard[ing] against improper influence or even the appearance of improper influence, and ensur[ing]”, through “disclos[ure]” (i.e., transparency), “public trust in the government”. See Ethics Code § 1-2(2).

The Ethics Board respectfully requests your consideration and approval of Bill 15-500.

Very truly yours,



Avery Aisenstark

cc: The Honorable James B. Kraft
Robert Pearre, Inspector General
Ms. Angela Gibson

BOARD OF ETHICS OPINION NO. 87

A city policeman in his off-duty hours runs a police supply store dealing in such items as pants, shoes, boots, night sticks, bullet proof vests, firearms and ammunition. He has requested that his store be placed on the bid list for Baltimore City. The City Purchasing Agent has requested an opinion of the Board of Ethics on whether this business qualifies, without conflict of interest, for inclusion in the bidding list for police supplies.

Under Section 4-3(a)(2) of the City Ethics law, a municipal employee "shall not... have a financial interest in any business entity which is negotiating or has entered into a contract for which the consideration exceeds \$5000 with the City agency that the... employee is affiliated with...."

The Bureau of Purchases, Department of Finance handles City purchasing procedures by receiving requisitions from individual agencies, developing specifications if necessary, and advertising for bids. After opening bids, the Bureau makes recommendations to the Board of Estimates for contract awards to the winning bidders. Contracts are ultimately executed between the Mayor and City Council of Baltimore and the firm awarded the contract through bidding. Other than the limited authority lodged in each agency for small purchase orders, virtually no contracts in Baltimore City are made with individual city agencies -- all must go through the Bureau of Purchases.

If the words of Section 4-3(a)(2) are read to apply only to a contract directly made with a city agency, the conflict of interest provisions of the Ethics law would apply to no one, since the Bureau of Purchases handles contract procedures for all city agencies. The relevance of the agency reference in Section 4-3(a)(2) is the important role agencies -- and individuals working in agencies - can play in shaping product specifications which are often determinative of the outcome of the bidding process.

Therefore, the terms of Section 4-3(a)(2) prohibit the qualification of the police supply store owned by a city police employee for bidding on city contracts that exceed \$5000.

June 19, 1986

