

City of Memphis Board of Ethics

June 7, 2023

Formal Ethics Opinion 2023-01

This opinion responds to a specific question presented, particularly whether certain behavior is permissible pursuant to the City of Memphis Code of Ethics, Ordinance 5206, as amended. This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

Question

Whether it is permissible, pursuant to the City of Memphis Code of Ethics for City Officials, for a City of Memphis employee (hereinafter referred to as “City manager”) to personally lease real property to an employee she supervises in her capacity as a City employee?

Opinion

The Code of Ethics for City Officials prohibits City employees from accepting compensation from anyone other than the City for the performance of an act or to influence action. In this instance, there is no evidence that the City manager is receiving compensation from the subordinate employee. Accordingly, there appears to be no violation of the Code of Ethics Ordinance. However, due to the potential familial relationship with the landlord, the City manager should be cautioned about use of City information and use of position or authority.

Facts

The request for an opinion was submitted to this Board by the City Auditor she received a disclosure from Human Resources/Equity, Diversity and Inclusion Office, advising that a City manager rents a home to one of her subordinate employees. The City Auditor reviewed personnel records to confirm the employment relationship and confirmed that the City manager does in fact manage the employee. It was also confirmed that the subordinate employee does in fact identify the real property in question as her residence. However, public records reveal that the real property in question is NOT owned by the City manager. Instead, the real property is owned by an individual who is believed to be the brother of the City manager.

The City manager is not required to file an Annual Disclosure of Financial Interests pursuant to Mayor Strickland’s Executive Order No. 1-2016. There is no written evidence that the City manager disclosed a financial interest related to the subordinate employee’s residential address.

Analysis

Sec. 2-10-5 of the City of Memphis Code of Ethics for City of Officials, prohibits an employee from accepting, directly or indirectly, any monies or consideration of any kind from anyone other than the City:

1. For the performance of an act, or refraining from the performance of an act, that he would be expected to perform or refrain from performing, in the regular course of his duties; or
2. That might reasonably be interpreted as an attempt to influence his actions, or reward him for past action, in executing business of the City.

As stated heretofore, the City manager does not own the property in question. Even assuming arguendo that the City manager receives indirectly any portion of the rent payments, it does not appear that any said financial benefit is for the performance of an act or to influence the City manager in executing business of the City.

Sec. 2-10-6, Use of Information, prohibits an employee from using information obtained in his/her position of employment with the intent to result in financial gain for himself/herself or any other person. Because the subordinate employee's landlord is the brother of the City manager, it is important to caution City manager not to use information she obtains in her position of employment and not to share the same with her brother for his benefit.

Sec. 2-10-8, Use of Position or Authority, prohibits an employee from using his/her position to secure any privilege or exemption for himself or others. Further, the Mayor's Executive Order provides that no employee shall "Use, disclose or allow the use of official information which was obtained through or in connection with his or her City employment and which has not been made available to the general public for the purpose of furthering the private interests or personal profit of any person, including the employee." Therefore, the City manager shall not use any information derived from her employment in an effort to secure a benefit or privilege for her brother or others.

Sec. 2-10-9, Outside Employment, prohibits an employee from accepting outside employment if the work unreasonably inhibits the performance of any affirmative duty of the City position. As stated heretofore, there is no evidence that the City manager owns the subject property and is deriving income therefrom. However, even if the City manager did receive rental income from the property, there is no evidence that the rental business would necessarily inhibit her work performance. In this instance, the City manager should disclose secondary employment with Human Resources.

Conclusion

Based on the foregoing and specifically the fact that the City manager does not own the property at issue, it is the opinion of this Board that no violation exists.

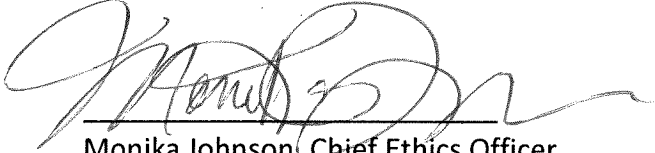
Board of Ethics, City of Memphis

Karen R. Williams

Chairman, Judge Karen R. Williams

(By Unanimous Vote of the Board of Ethics on June 7, 2023)

Approved as to Form:



Monika Johnson, Chief Ethics Officer
Secretary, Board of Ethics

Requested by:

Debbie Banks, City Auditor