

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**



Office of Government Ethics

VIA EMAIL

February 3, 2014

Emily Bloomfield
[REDACTED]

Dear Ms. Bloomfield:

This responds to your January 10, 2014 letter, by which you request advice concerning your role as a current member of the Public Charter School Board (“PCSB” or “Board”) and your work with Monument Academy, Inc. (“Monument”), an organization that intends to apply for a charter to open a new public charter school after your PCSB term expires. You also request advice concerning a continued role with the school, assuming the charter is granted.

Based upon the information you provided in your letter and in your follow-up conversation with a member of my staff, I conclude that you may permissibly continue to work with Monument during your PCSB tenure, as long as you meet the requirements discussed below, and that you may permissibly work with the school, including representing it before the PCSB, after your term expires.

You state in your letter that you founded Monument; that, without compensation, you chair its Board of Directors; that you have been working with a group of several people in writing a charter application for a new public charter school and otherwise planning for the potential school; that Monument intends to file the charter application with the PCSB on March 3, 2014; and that, if the charter is granted, you would continue in some substantial, yet still undetermined, leadership role with the school.

You also state in your letter that your current PCSB term will expire on February 24, 2014, and that you do not intend to seek re-nomination.

In a January 29, 2014 telephone conversation, you advised my Senior Attorney Advisor that your PCSB service entails fewer than sixty days in a calendar year; that your work with the Monument group involves consultative activities; and that the charter application and the consultative activities make use of publicly available information.

Engaging in Outside Activities

Inasmuch as PCSB members are not compensated,¹ you are not considered to be a District government employee for purposes of the District of Columbia Government Comprehensive Merit

¹ See D.C. Official Code § 38-1802.14(c) (providing that “[m]embers of the [PCSB] shall serve without pay”).

Personnel Act of 1978 (“CMPA”), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*),² and certain provisions of Chapter 18 of Title 6B of the District of Columbia Municipal Regulations (“DCMR”), which are based on the CMPA. Nevertheless, this Office considers those provisions to reflect best practices for members of the District’s boards and commissions, such as the PCSB, and they appear to have been followed in your outside work with the Monument group. I find nothing in your letter or my staff member’s report of your follow-up conversation to indicate that the charter application writing or school planning efforts have been incompatible with your duties as a PCSB member.³ Furthermore, you may continue those activities during your PCSB tenure, as long as you continue to use publicly available information.⁴

Post-Employment Restrictions

Former District government employees are subject to certain prohibitions on their post-employment activities. After your PCSB term expires, you would be subject to these restrictions, even though you served on the Board without compensation. This is because, for post-employment purposes, the DCMR defines the term “Government employee” to include “special Government employees.”⁵ Special Government employees, in turn, are officers or employees “retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for not to exceed one hundred and thirty (130) days during any period of three hundred and sixty five (365) consecutive days.”⁶ However, the DCMR lifetime ban on appearing in a representational capacity before, or communicating with, a District government agency would not apply to you after your PCSB term ends, because the Monument charter application will not be filed with the Board until after you leave.⁷

² See section 301(7) of the CMPA (D.C. Official Code § 1-603.01(7) (defining “employee” as meaning, generally, “an individual who performs a function of the District government and who receives compensation for the performance of such services”).

³ See 6B DCMR § 1804.1 (“An employee may not engage in any outside employment or other activity which is not compatible with the full and proper discharge of his or her duties and responsibilities as a government employee.”).

⁴ See 6B DCMR § 1804.1(f) (prohibiting employee’s divulgence of “any official government information to any unauthorized person or in advance of the time prescribed for its authorized issuance, or otherwise making use of or permitting others to make use of information not available to the general public” in any outside activity); *see also* 6B DCMR § 1804.4 (prohibiting employee engaged in, among other things, outside consultative activities from “draw[ing] on official data or ideas which have not become part of the body of public information”).

⁵ See 6B DCMR § 1814.1 (defining “Government employee” as “[a]ny officer or employee of the District government who performs a function and who receives compensation for the performance of such service, and special Government employees”).

⁶ *Id.* Also note that, while certain substantively similar post-employment prohibitions of 18 U.S.C. § 207 apply to District government employees, “the receipt of compensation is not an element of any of [those] restrictions.” *See* federal Office of Government Ethics Informal Advisory Letter 97 x 9 (May 21, 1997).

⁷ Respectively, *see* 6B DCMR § 1814.4 (prohibiting former employee “from knowingly acting as an attorney, agent, or representative in any formal or informal appearance before an agency as to a particular government matter involving a specific party *if the employee participated personally and substantially in that matter as a government employee*” (emphasis added)); 6B DCMR § 1814.5 (prohibiting former employee “from making any oral or written communication to an agency with the intent to influence that agency on behalf of another person as to a particular government matter

In addition to the lifetime prohibitions, senior employees also are subject to a one-year ban prohibiting “any transactions with [their] former agency intended to influence the agency in connection with any particular government matter pending before the agency or in which it has a direct and substantial interest, whether or not such matter involves a specific party.”⁸ The one-year ban “is aimed at the possible use of personal influence based on past governmental affiliations to facilitate the transaction of business”⁹ and, for that reason, applies “without regard to whether the former senior employee had participated in, or had responsibility for, the particular matter, and shall include matters which first arise after the senior employee leaves government service.”¹⁰ However, even assuming that, as a PCSB member, you can be considered a senior employee,¹¹ the DCMR exempts from the one-year ban special Government employees, such as yourself, who serve for fewer than sixty days in a calendar year.¹²

All this said, you would be free after your PCSB term ends to do such things as join the group that submits the charter application, participate in informal Board staff interviews, testify in support of the application, and, assuming the application is granted, represent the school before the Board in the future.

Please be advised that this advice is provided to you pursuant to section 219 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.19), which empowers me to provide such guidance. As a result, no enforcement action for violation of the District’s Code of Conduct may be taken against you in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion.

You also are advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that your identity will not be disclosed unless you consent to such disclosure in writing. Please, then, let me know your wishes about disclosure.

Footnote 7 (continued)

involving a specific party *if the employee participated personally and substantially in that matter as a government employee*” (emphasis added)); *see also* 18 U.S.C. § 207(a)(1) (containing substantively similar restrictions).

⁸ 6B DCMR § 1814.12.

⁹ 6B DCMR § 1814.13.

¹⁰ *Id.*

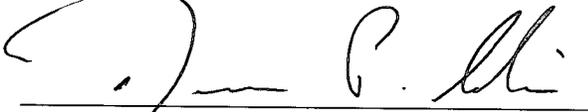
¹¹ *See* 6B DCMR § 1814.1 (defining “senior employee”).

¹² *See* 6B DCMR § 1814.12 (providing that “a special Government employee who serves for fewer than sixty (60) days in a calendar year” shall not be subject to one-year ban). Also note that you would not appear to be subject to the two-year post-employment “cooling off” period under federal law, given the fact that the Monument charter application would not have been “actually pending under [your] official responsibility as [a PCSB member] within a period of 1 year before the termination of” your term. *See* 18 U.S.C. § 201(a)(2)(B).

Emily Bloomfield
February 3, 2014
Advisory Opinion

If you have any questions or wish to discuss this matter further, I can be reached at 202-481-3411, or by email at darrin.sobin@dc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "D. P. Sobin", written over a horizontal line.

DARRIN P. SOBIN
Director of Government Ethics
Board of Ethics and Government Accountability

DPS/jjg

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