

Advisory Opinion 2020-01

Question Presented

Short Answer

Facts

You were employed by the City's Transportation Department (SDOT) for five years, separating from the City in January 2019. You were hired by a transportation consulting firm in January 2020. You have asked how the post-employment restrictions apply to your prospective involvement at your new place of business in two particular SDOT projects.

Roosevelt RapidRide Transit Project

While you were at SDOT, your duties included service as the project manager for the Roosevelt to Downtown High Capacity Transit Project (now commonly known as the Roosevelt RapidRide project). In that role, you managed the corridor design work up to the 10% design milestone. Upon reaching the 10% design milestone, the project was transferred to another SDOT division. The project has now reached the 30% design milestone, and SDOT is preparing to issue a Request for Qualifications to procure final design services. Your new employer would like to include you on the project team they submit as part of their proposal.

Route 40 Transit Improvements Project

You developed the initial Request for Qualifications (RFQ) for design services for the Route 40 Transit Improvements Project. (Route 40 runs between Northgate and Downtown.) You left SDOT with a working draft of the RFQ, but it was not finalized or advertised before you left.

Two months after you left SDOT, your new employer responded to the RFQ and was selected as the designer. They would like you to work on the project.

Relevant Law

SMC 4.16.075 governs the post-employment activities of City employees. Two sections of the law are pertinent to your situation:

- A. A former Covered Individual may not disclose or use any **confidential information** gained by reason of his or her City work;

- B. A former City officer or City employee may not, during the period of two years after leaving City Office or employment, **assist** any person on a **matter** in which he or she **participated**.¹

The bolded terms are defined in the law as follows:

“Assist” means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person.

“Confidential Information” means (i) specific information, rather than generalized knowledge, that is not available to a person who files a public records request, and (ii) information made confidential by law.

“Matter” means an application, submission, request for a ruling or other determination, permit, contract, claim, proceeding, case, decision, rulemaking, legislation, or other similar action. Matter includes the preparation, consideration, discussion, or enactment of administrative rules or legislation. Matter does not include advice or recommendations regarding broad policies and goals.

“Participate” means to consider, investigate, advise, recommend, approve, disapprove, decide, or take other similar action.

Analysis

Questions for Commission:

- 1. Is the Roosevelt RapidRide Transit Project the same “matter” in which the requestor participated?**
- 2. Is the Route 40 Transit Improvements Project the same “matter” in which the requestor participated?**

If we take the RFQ as the “matter,” it would appear that she participated in the RFQ for the Route 40 Transit Improvements Project, and is therefore barred from assisting her new employer on that matter until January of 2021. It would also appear that she did not participate in the RFQ for the Roosevelt RapidRide, and therefore may assist her new employer on the team that responds to that RFQ.

An RFQ is an invitation to bid for a contract, so designating that as the “matter” has a lot of support in the text of the law.

¹ A third provision of SMC 4.16.075 barred you from communicating with SDOT on behalf of your new employer for one year after separating from the City. Because you have been gone for more than a year, this restriction is no longer applicable to your situation.

If commissioners want to say that she is not permitted to assist her new employer on the Roosevelt RapidRide project either, that is a more difficult conclusion to reach under the law.

I look forward to the discussion.