

CITY OF SPOKANE ETHICS COMMISSION

Ethics Commission's Advisory Opinion Requested by Bob Turner

On April 17, 2020, Bob Turner, an engineer with the City of Spokane's Street Department, requested an opinion from the City of Spokane's Ethics Commission. SMC 1.04A.170 states that an employee may request an advisory opinion from the Ethics Commission concerning the applicability of the Ethics Code to situations solely related to the person making the request. On April 29, 2020, the Ethics Commission met to discuss and respond to Mr. Turner's request, which consists of his April 17, 2020 letter to the Commission and his supplemental documentation regarding the prohibited conducted listed in SMC 1.04A.030. A copy of Mr. Turner's request and supplemental documentation are included as Attachment No. 1.

Mr. Turner's request for an advisory opinion is based upon his desire to accept a position working part time as a professional engineer for TO Engineers, a regional consulting engineering company. The record before the Commission demonstrates that Mr. Turner would primarily be working on projects outside of Washington State. Any work he would perform within Washington State would exclude any work or association with the City of Spokane. His part time work would be performed outside of his duties for the City and would not interfere with his responsibilities as an engineer for the Street Department. Mr. Turner's work for the City does not involve him managing or creating contracts for engineering services. Mr. Turner has never done any work as a City employee involving TO Engineering nor is there any indication that the City has had any contracts with TO Engineering.

The Ethics Code has several provisions relating to employment conduct of City employees including but not limited to:

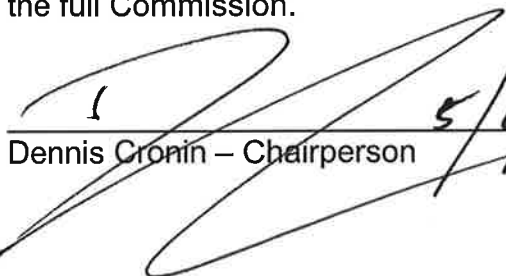
- 1) SMC 1.04A.030 A (general prohibition on conflicts of interest), which prohibits City officers or employees from engaging in business, transactions or professional activities that might be seen as conflicting with the City officer or employee's proper discharge of his or her official duties, the conduct of official City business or as adverse to the interests of the City;
- 2) SMC 1.04A.030 B (prohibition on personal interest in contracts), which prohibits City officers or employees from participating in making a contract in which he or she has a personal interest or performs in regards to such a contract some function requiring the exercise of discretion on behalf of the City; and
- 3) SMC 1.04A.030 D (prohibition on personal influence on contract selection), which prohibits a City officer or employee from having influence on the City's selection of a person or firm having or proposing

to do business with the City if the City officer or employee has a personal interest in the selected person or firm.

- 4) SMC 1.04A.030 F (prohibition on private employment), which prohibits City officers and employees from engaging in private employment or rendering services when such employment or services is incompatible with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.
- 5) SMC 1.04A.030 K (regarding fair and equitable treatment), which prohibits City officers and employees from using his or her office or position, employment, or City equipment, material, assets or property for personal or private benefit, gain or profit, special privileges or convenience or profit.

It is the opinion of the Ethics Commission that the part-time work to be performed by Mr. Turner is not incompatible with his proper discharge of his official duties and would not impair his independent judgment or action in the performance of his official duties. Furthermore, there is no direct or indirect relationship between the City of Spokane and TO Engineers that would indicate an actual or potential conflict of interest. If, in the future, TO Engineers were to develop a relationship with the City or to become a contractor providing services to the City, the City and Mr. Turner would have to reassess the situation to assure Mr. Turner remains compliant with the Ethics Code.

In conclusion, the Ethics Commission determines that Mr. Turner's part-time work would not create an actual or potential violation of the City's Ethics Code. The Commission's advisory opinion is approved by a seven to zero vote of the full Commission.


Dennis Cronin – Chairperson


Date

To: Michael Piccolo and the City of Spokane Ethics Commission

From: Bob Turner

Date: April 17, 2020

RE: Request for legal decision

Dear Mr. Piccolo and the City of Spokane Ethics Commission,

My name is Bob Turner and I am a full time employee for the City of Spokane. I work as a licensed professional engineer in the Street Department, primarily working as the Traffic Operations Engineer.

The purpose of my letter to you is to receive a legal decision regarding my desire to accept a position working part time (20 hours a week) as a professional engineer for a regional consulting engineering company, TO Engineers.

My part time employment will not interfere with my full time employment responsibilities at the City of Spokane. I will primarily be working on projects outside of Washington state. Any work that I will be doing in Washington state will exclude any work for, or associated with, the City of Spokane.

I have reviewed the Spokane Municipal Code, chapter 1.04A and specifically 1.04A.030. I have prepared a supplemental document to address specific sections in 1.04A.030, I have highlighted in yellow specific sections and given my comments in red.

The intent of this correspondence is receive a legal decision about my intention to work part time for the consulting firm, TO Engineers.

Further, my intention is to use that legal decision as part of my disclosure to Human Resources and the Street Department concerning my intention to work part time as described.

Please contact me if you have any questions. My work email is bturner@spokanecity.org, my personal email is turnerrobert@msn.com, and my personal cell phone number is 509-994-3239.

Thank you for your time.

A handwritten signature in black ink, appearing to read "Bob Turner", with a stylized flourish at the end.

Bob Turner

Title 01 General Provisions

Chapter 01.04A Code of Ethics

Section 01.04A.030 Prohibited Conduct

The following shall constitute a violation of this Code of Ethics:

A. General Prohibition Against Conflicts of Interest.

In order to avoid becoming involved or implicated in a conflict of interest or impropriety, or an appearance of conflict of interest or impropriety, no current City officer or employee shall have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that might be seen as conflicting with the City officer or employee's proper discharge of his or her official duties, the conduct of official City business or as adverse to the interests of the City. Performance of a legally required duty by a City officer or employee shall not be considered a violation of the Code of Ethics.

My working for TO Engineers on a part time basis will not conflict with my duty as a city employee nor will it be adverse to the interests of the City. My part time work will primarily be on projects outside of Washington state and any work in Washington will not be in the City of Spokane or connected to the City of Spokane.

1. Any employee who becomes aware that he or she might have a potential conflict of interest that arises in the course of his or her official duties shall notify in writing his or her supervisor or appointing authority of the potential conflict.

I will do this upon immediately identifying a conflict of interest. However, as a part time employee and in declining to work on any projects associated with the City of Spokane, I do not foresee any conflict of interest.

2. Upon receipt of such a notification, the supervisor or appointing authority shall take action to resolve the potential conflict of interest within a reasonable time, which may include, but is not limited to, designating an alternative employee to perform the duty that is involved in the potential conflict. The supervisor or

appointing authority shall document the disposition of the potential conflict in writing in files maintained by the appointing authority. The supervisor or appointing authority may request an advisory opinion from the Ethics Commission before addressing and resolving of the potential conflict.

B. Personal Interests in Contracts Prohibited.

No City officer or employee shall participate in his or her capacity as a City officer or employee in the making of a contract in which he or she has a personal interest, direct or indirect, or performs in regard to such a contract some function requiring the exercise of discretion on behalf of the City. Except, that this prohibition shall not apply where the City officer or employee has only a remote interest in the contract, and where the fact and extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract, and thereafter the governing body authorizes, approves or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the City officer(s) having the remote interest as defined below.

My current duties at the City of Spokane do not directly, or indirectly, involve me in managing or creating contracts for engineering services or any other activity with the City that would require the creation or execution of a contract.

C. Remote Interest.

For purposes of this section, a "remote interest" means:

1. that of a non-salaried non-compensated officer of a nonprofit corporation;
2. that of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
3. that of a landlord or tenant of a contracting party;
4. that of a holder of less than one percent of the shares of a corporation, limited liability company or other entity which is a contracting party.

I would not have, and do not currently have, any remote interest as defined above as it would pertain to my part time work for TO Engineers

D. Personal Influence in Contract Selection Prohibited.

No City officer or employee shall influence the City's selection of, or its

conduct of business with, a corporation, person or firm having or proposing to do business with the City if the City officer or employee has a personal interest in or with the corporation, person or firm, unless such interest is a remote interest and where the fact and extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract, as defined in the preceding section. Provided, however, that no City officer or employee may receive anything of value from the City as a result of any contract to which the City shall be a party except for the City officer or employee's salary or lawful compensation.

As stated above, my current duties at the City of Spokane do not directly, or indirectly, involve me in managing or creating contracts for engineering services or any other activity with the City that would require the creation or execution of a contract. As described I would therefore not be in a position to exercise personal influence in a contract or business transaction.

E. Representation of Private Person at City Proceeding Prohibited.

No City officer or employee shall appear on behalf of a private person, other than himself/herself or a family member or household member, as defined in this chapter, or except as a witness under subpoena, before any regulatory governmental agency or court of law in an action or proceeding to which the City or a City officer in an official capacity is a party, or accept a retainer or compensation that is contingent upon a specific action by the City. Representation of a private person pursuant to a legally required duty by a City officer or employee is permitted and shall not be considered a violation of the Code of Ethics.

F. Certain Private Employment Prohibited.

No City officer or employee shall engage in or accept private employment, or render services for, any private interest when such employment or service is incompatible with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.

Working part time for TO Engineers will primarily be for projects outside of Washington state and any projects in Washington state will exclude projects associated with the City of Spokane. As described, I do not foresee my part time employment being incompatible with my official duties or impairing my independence or judgement of my official duties.

G. Personal Interest in Legislation Prohibited.

No City officer or employee may benefit either directly or indirectly from any legislation or contract to which the City shall be a party except for the lawful compensation or salary of the City officer or employee unless such interest is a remote interest where the facts and extent of such interest is disclosed. City council members' participation in the enactment of legislation shall be governed by chapter 42.23 RCW – The Code of Ethics for Municipal Officers and chapter 42.36 RCW – The Appearance of Fairness Doctrine. City council members shall not be prohibited from participating in the adoption of legislation when the council member has only a remote interest in the legislation, which has been disclosed, and the legislation is applicable to the general public and not unique to the council member.

H. Continuing Financial Interest.

Where a City officer, employee, or family member of a City officer or employee, has a substantial ongoing financial relationship with a corporation, firm, or person seeking a contract, or proposing to do business with the City, such City officer or employee shall not:

1. Influence or participate in the City's contract selection of or conduct business with such corporation, firm, or person; nor
2. Influence or participate in the City's contract selection of, or conduct business with, a corporation, firm, or party competing against a party that a City officer or employee has such a substantial ongoing financial relationship.
3. For purpose of this section, a substantial ongoing financial relationship is defined as: expanding beyond just a formal contractual relationship. Rather it encompasses any financial interest, direct or indirect, where a City officer, employee, or family member of a City officer or employee is involved in a client-service relationship in which:
 - a. the City officer, employee, or family member of a City officer or employee, receives a substantial portion of his or her revenue or like compensation through such relationship, whether received through his or her corporation, firm, or as an individual; or
 - b. such client-service relationship is likely to continue to provide considerable potential business or has provided substantial business in the past. This does not include prior financial relationships that are so far removed in time or rare in frequency as to be insignificant.

I do not have any ongoing relationship with TO Engineers. My offer from them for part time employment was the first time I have interacted with them. As described previously, my current position does not involve me in the process of contract management or selection, which would not put me in a position to exercise any influence in that process.

4. Corporations, firms or persons doing business with the City shall be advised of this provision, and shall certify, as part of any contract with the City, that they are aware of the restrictions in this policy.

I. Disclosure of Confidential Information

1. Disclosure of Confidential Information

No City officer or employee shall, except as required or reasonably believed to be required for the performance of his/her duties, disclose confidential information gained by reason of his/her official position or use such information for his/her own personal interest. "Confidential information" is all information, whether transmitted orally or in writing, that the employee has been informed, is aware, or has reason to believe is intended to be used only for city purposes, is not intended for public disclosure, or is otherwise of such a nature that it is not, at the time, a matter of public record or public knowledge.

I agree with this paragraph and do not intend to disclose any confidential information in the exercise of my part time employment. Further, I have stated to TO Engineers that with any work they intend to pursue with the City of Spokane I should be excluded from any conversations related thereto.

2. Confidential information includes, but is not limited to, personal information regarding City officials and employees; private financial and other personal information provided by city taxpayers, license holders, contractors, and customers; intelligence and investigative information, including the identity of persons filing complaints; formulas, designs, drawings, and research data obtained or produced by the city and preliminary, non-final assessments, opinions, and recommendations concerning city policies and actions. Any public official who is uncertain as to whether certain information is confidential should consult the City Attorney. An employee who is uncertain as to

whether certain information is confidential should consult their immediate supervisor or department head.

J. Acceptance of Compensation, Gifts, Favors, Rewards or Gratuity.

City employees shall not, directly or indirectly, solicit any gift or give or receive any gift, whether it be money, services, loan, travel, entertainment, hospitality, promise, or any other form, under the following circumstances:

1. It could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties; or
2. The gift was intended to serve as a reward for any official action on their part. Public officials and city employees may accept de minimis gifts such as, but not limited to, calendars, coffee mugs, flowers, candy, and other similar items that are given as a customary business practice and have no material significance to the recipient, with such gifts from any one source not to exceed one hundred dollars in value in any twelve-month period. City employees should report any gift to their immediate supervisor. This section shall not apply to gifts made to the city. All such gifts shall be given to the mayor for official disposition. This prohibition shall not apply to those items which are excluded from the definition of gift in SMC 1.04A.020.

K. Fair and Equitable Treatment.

1. No City officer or employee shall knowingly use his or her office or position to secure personal benefit, gain or profit, or use position to secure special privileges or exceptions for himself/herself or for the benefit, gain or profits of any other persons.
2. No City officer or employee shall employ or use the employment of any person under the City officer's or employee's official control or direction for the personal benefit, gain or profit of the City officer or employee or another beyond that which is available to every other person.
3. No City officer or employee shall use City-owned vehicles, equipment, materials, money or property for personal or private convenience or profit. Use is restricted to such services as are available to the public generally, for the authorized conduct of official business (not personal use), and for such purposes and under such conditions as can be reasonably expected to be approved by City policies.
4. Except as authorized by law and in the course of his or her official duties, no City officer or employee shall use the power or authority

of his or her office or position with the City in a manner intended to induce or coerce any other person to provide such City employee or any other person with any compensation, gift, or other thing of value directly or indirectly.

5. City Officers and employees are encouraged to participate in the political process on their own time and outside of the workplace by working on campaigns for the election of any person to any office or for the promotion of or opposition to any ballot proposition, but shall not use or authorize the use of City facilities of resources for such purposes except as authorized by the provisions of RCW 42.17A.555.

I agree with sections J and K above and do not see my part time employment, which will be focused on work in states other than Washington and the exclusion of any work associated with the City of Spokane, as being in conflict with these sections.

L. False and Frivolous complaints prohibited.

No person subject to the Code of Ethics shall knowingly file a false complaint or report of a violation of this Code of Ethics. A person who files a complaint with a good faith belief that a violation of the Code of Ethics has occurred shall be protected by the City's Whistleblower Protection policy as set forth in SMC 1.04A.180.

M. Aiding others prohibited.

No City officer or employee may knowingly aid or assist any City officer or employee in the violation of any provision of this Code of Ethics.

N. Commission of Acts of Moral Turpitude or Dishonesty Prohibited.

No City officer or employee shall commit any act of moral turpitude or dishonesty relating to his or her duties or position as a City officer or employee or arising from business with the City. Conviction of a felony or a misdemeanor involving moral turpitude or dishonesty, the nature of which demonstrates lack of fitness for the position held, shall be considered conclusive evidence of a violation of this Code of Ethics. Demonstrated acts of moral turpitude or dishonesty are not limited to felony or misdemeanor criminal convictions.

O. Prohibited Conduct After Leaving City Service.

1. Disclosure of Privileged, Confidential or Proprietary Information Prohibited.

No former City officer or employee shall disclose or use any privileged, confidential or proprietary information gained because of his or her City employment.

2. Participation in City Matters Prohibited.

No former City officer or employee shall, within a period of one year after leaving City office or employment:

- a. participate in matters involving the City if, while in the course of employment with the City, the former City officer or employee was officially involved in the matter, or personally and substantially participated in the matter, or acted on the matter;
- b. represent any person as an advocate in any matter in which the former City officer or employee was involved while a City officer or employee; or
- c. participate as or with a bidder, vendor or consultant in any competitive selection process for a City contract in which he or she assisted the City in determining the project, or work to be done, or the process to be used.

3. Duty to Inform.

Whenever a City officer or employee wishes to contract with a former City officer or employee for expert or consultant services within one year of the latter's leaving City service, advance notice shall be given to and approval received from the Ethics Commission. Said approval shall be in written form and copied to the mayor at the same time that it is given to the individual making the request.

4. Exceptions.

- a. The prohibitions of subsections (2)(a) and (2)(b) of this section shall not apply to a former City officer or employee acting on behalf of a governmental agency if the Ethics Commission has determined that the service to the agency is not adverse to the interest of the City.
- b. Nothing in this chapter shall prohibit an official elected to serve a governmental entity other than the City of Spokane from carrying out their official duties for that government entity.

5. Corporations, firms or persons doing business with the City shall be advised of this provision, and shall certify, as part of any contract with the City, that they are aware of the restrictions in this policy. If a firm or person doing business with the City assists an employee in violating the provisions of the Code, the firm or business may be disbarred, excluded from contracting with the City for 5 years.

P. Failure to Produce Public Records

No City officer or employee shall willfully and without just cause delay or fail to produce any city records in his or her possession or control in response to a public records request filed with the city pursuant to Chapter 42.56 RCW.

1. A "city record" is a "public record" as defined by RCW 42.56.010(3).
2. "Just cause" to delay or fail to produce means:
 - a. A reasonable belief that production of the record is exempt from public disclosure pursuant to Chapter 42.56 RCW or other statute which exempts or prohibits disclosure of specific information or records; and/or
 - b. The city record is subject to legal review to determine whether it is subject to an exemption from disclosure pursuant to Chapter 42.56 RCW; and/or
 - c. The requester has been notified in writing that additional time is required to produce the city record and/or determine whether it is subject to an exemption from disclosure pursuant to Chapter 42.56 RCW.

Date Passed: Monday, November 14, 2016

Effective Date: Sunday, December 18, 2016

ORD C35451 Section 1